



Supplementary Conditions to CCDC 2 Stipulated Price Contract, 2020

The standard Construction Document CCDC 2 Stipulated Price *Contract*, 2020, English version, consisting of; the Agreement Between the *Owner* and *Contractor*, Definitions and General Conditions are hereby made part of these *Contract Documents* with amendments, additions and modifications as follows:

<u>SC#</u>	<u>GC#</u>	<u>Supplementary Conditions</u>
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AGREEMENT BETWEEN OWNER AND CONTRACTOR

SC#1 Article A-3 Amend paragraph 3.1 to remove and replace the following bullets:

- Add Tender Document, Addendum, Appendices, drawings, specifications.

SC#2 Article A-5 Delete paragraph 5.2 in its entirety and substitute new paragraph 5.2 as follows:

5.2 Interest

Interest will be paid by the Municipality on any amount that is not paid when it is due to be paid under Part I.1 of the Construction Act, commencing the date that the payment was due, at the prejudgment interest rate determined under subsection 127 (2) of the Courts of Justice Act. In no other circumstances, will interest accrue on any amount due by the Municipality to the Contractor.”

SC#3 Article A-5 Add new paragraph 5.3 as follows:

- 5.3 The *Contractor* shall have no claim for interest on invoiced amounts which have not been certified by the *Consultant*.

DEFINITIONS

SC#4 Definitions: Add the following new definition(s):

Act

Act means the Construction Act (Ontario) as amended.

OHSA

OHSA means the Occupational Health and Safety Act (Ontario).

WSIB

WSIB means the Workplace Safety and Insurance Board.

Submittals

Submittals are documents or items required by the *Contract Documents* to be provided by the *Contractor*, such as; shop drawings, samples, models, mock-ups, manuals, etc.

PART 1 GENERAL PROVISIONS

SC#5 Where a General Condition or paragraph of the General Conditions of the Stipulated Price *Contract* is deleted by these Supplementary Conditions, the numbering of the remaining General Conditions or paragraphs shall remain unchanged, and the number of the deleted items will be retained, unused.

GC 1.1 CONTRACT DOCUMENTS

SC#6 GC1.1.5.1 Delete paragraph 1.1.5.1 and replace with the following:

- Tender Document including Addenda to the tender document issued by the *Owner*
- Supplemental Conditions to the CCDC 2 2020
- The CCDC 2 2020 Stipulated Price Contract between the *Owner* and the *Contractor*
- Change Orders
- Drawings
- Technical Specifications
- Division 1 of the Specifications
- Material and Finishing Schedules
- Purchase order issued by the *Owner*

GC 1.4 ASSIGNMENT

SC#7 GC1.4 Assignment

Delete paragraph 1.4.1 in its entirety and replace with:

The *Contractor* shall not assign the *Contract*, either in whole or in part, without the written consent of the *Owner*.”

GC 1.5 TIME IS OF THE ESSENCE

SC#8 GC1.5 Add new GC 1.5 – TIME IS OF THE ESSENCE as follows:

GC 1.5 TIME IS OF THE ESSENCE

GC1.5.1 Time is of the essence in this *Contract*. The *Contractor* shall commence the *Work* on the date first set out in paragraph 1.3 of Article A-1 of the Agreement – THE *WORK* and proceed with the *Work* in an orderly fashion so as to ensure that the *Work* attains Ready-for- Takeover by the second date set out in paragraph 1.3 of Article A-1 of the Agreement – THE *WORK*.

PART 2 ADMINISTRATION OF THE CONTRACT

GC2.2 ROLE OF THE CONSULTANT

- SC#9 GC2.2.6 Amend paragraph 2.2.6 by deleting the words:
“Except with respect to GC 5.1 FINANCING INFORMATION
REQUIRED OF THE OWNER.”
- SC#10 GC2.2.13 Add the words “which are provided” before the words “in accordance”

GC2.4 DEFECTIVE WORK

- SC#11 GC2.4.1 Add new subparagraph .1 to paragraph 2.4.1:
.1 The *Contractor* shall rectify, in a manner acceptable to the *Owner* and the *Consultant* and at no cost to the *Owner*, all defective *Work* and deficiencies throughout the *Work*, whether or not they are specified by the *Consultant*.

PART 3 EXECUTION OF THE WORK

GC3.4 CONSTRUCTION SCHEDULE

- SC#12 GC3.4.1 Add at the beginning of subparagraph .1 “within 10 calendar days following the award of the *Contract*,”

GC3.5 CONSTRUCTION SCHEDULE

- SC#13 GC3.5.1 Add to the end of subparagraph .1 “and upon the *Contractor* obtaining the *Owner’s* reasonable written consent.”

GC3.6 SUBCONTRACTORS AND SUPPLES

- SC#14 GC3.6.3 Delete subparagraph 3.6.3 and replace with the following:
The *Owner* may, for reasonable cause, at any time, object to the use of a proposed *Subcontractor* or *Supplier* and require the *Contractor* to employ one of the other Subcontract bidders.

GC3.7 LABOUR AND PRODUCTS

- SC#15 GC3.7.2 Add second sentence to the end of subparagraph .2 “The *Contractor* shall not change the source of supply and any *Product* without the written authorization of the *Consultant*.”
- SC#16 GC3.7 Add new paragraph 3.7.4 as follows:
GC3.7.4 The *Contractor* is responsible for the safe on-site storage of *Products* and their protection (including *Products* supplied by the *Owner* and other *Contractors* to be installed under the *Contract*) in such ways as to avoid dangerous conditions or contamination to the *Products* or other persons or property and in locations at the *Place of Work* to the

satisfaction of the *Owner* and the *Consultant*. The *Owner* shall provide all relevant information on the *Products* to be supplied by the *Owner*.

GC3.8 SHOP DRAWINGS

SC#17 GC3.8 Add new subparagraph 3.8.8 as follows:

GC3.8.8 *Shop Drawings* which require approval of any legally constituted authority having jurisdiction shall be provided to such authority by the *Contractor* for approval.

GC3.9 CLEAN UP

SC#18 GC3.9 Add new GC 3.9 – CLEAN UP as follows:

GC 3.9 CLEAN UP

GC3.9.1 The *Contractor* shall maintain the *Work* in a safe and tidy condition and free from the accumulation of waste products and debris, other than that caused by the *Owner*, other *Contractors* or their employees.

GC3.9.2 Prior to application for *Ready-for-Takeover*, the *Contractor* shall remove any remaining products, tools, *Construction Equipment*, *Temporary Work*, and waste products and debris, other than those resulting from the *Work* of the *Owner*, other *Contractors* or their employees.

GC3.9.3 The *Owner* shall have the right to back charge cleaning to the *Contractor* if the cleaning is not completed within 24 hours of written notice to clean and the *Owner* shall have the right to back charge the cost of damage to the *Place of Work* caused by the *Contractor's*, *Subcontractor's* or *Supplier's* transportation in and out of the *Place of Work* if not repaired within 5 *Working Days* or written notice to repair or before final payment, whichever is earlier.

GC3.10 STANDARD OF CARE

SC#19 GC3.10 Add new GC 3.10 – STANDARE OF CARE as follows:

GC 3.10 STANDARD OF CARE

GC3.10.1 In performing its services and obligations under the *Contract*, the *Contractor* shall exercise a standard of care, skill and diligence that would normally be provided by an experience and prudent *Contractor* supplying similar services for similar projects. The *Contractor* acknowledges and agrees throughout the *Contract*, the *Contractor's* obligations, duties and responsibilities shall be interpreted in accordance with this standard. The *Contractor* shall exercise the same standard of care and diligence in respect of any *Products*, personnel, or procedures which may be recommended by the *Owner*.

- GC3.10.2 The *Contractor* further represents, covenants and warrants to the *Owner* that there are no pending, threatened or anticipated claims that would have a material effect on the financial ability of the *Contractor* to perform its *Work* under the *Contract*.

GC3.11 USE OF THE WORK

- SC#20 GC3.11 Add new GC 3.11 – USE OF THE WORK as follows:

GC 3.11 USE OF THE WORK

- GC3.11.1 The *Owner* shall have the right to enter and occupy the *Work* in whole, or in part, for the purpose of placing fittings and equipment or for other uses before completion of the *Contract*. Such entry and occupation shall not be considered acceptance of the *Work* or in any way relieve the *Contractor* from his responsibility to complete the *Contract*.

PART 4 ALLOWANCES

GC4.1 CASH ALLOWANCES

- SC#21 GC4.1.4 Add to the end of paragraph .4 “and approved by the *Owner* through the *Consultant*.”

- SC#22 GC4.1.8 Add new paragraph 4.1.8 as follows:

The *Owner* reserves the right to have the *Contractor* call for competitive bids for portions of the *Work* which are to be paid for from cash allowances.

PART 5 PAYMENT

GC5.1 FINANCING INFORMATION REQUIRED OF THE OWNER

- SC#23 GC5.1 Delete GC 5.1 in its entirety.

GC5.2 APPLICATIONS FOR PAYMENT and PAYMENT

- SC#24 Delete GC5.2 and GC5.3 and replace with the following:

- GC5.2.1 A “proper invoice” (as that term is defined in the *Construction Act*) shall be delivered to the *Owner* and the *Consultant* by the first day of every month for the previous month’s *Work*. Subject the terms of the *Contract Documents*, including the holdback provisions of the *Contract Documents* and the *Construction Act* the *Owner* shall pay the amount approved and certified by the *Consultant* as payable under a proper invoice no later than 28 days after receiving the invoice from the *Contractor*.

- GC5.2.2 The copy of the proper invoice delivered to the *Owner* shall be provided by email to: invoices@clarington.net. The *Contractor* shall reference the invoice number and purchase order number in the email subject line.
- GC5.2.3 No less than 7 days prior to the delivery of a proper invoice, the *Contractor* shall submit to the *Owner* and the *Consultant* a payment certificate (in a form prescribed by the *Consultant*) and all necessary supporting documentation, a WSIB clearance certificate and a Statutory Declaration of Progress Payment Distribution. For clarity, no proper invoice shall be submitted earlier than 7 days following submission of a duly completed payment certificate.
- GC5.2.4 Notice of non-payment may be made by email to the *Contractor*. For greater clarity, this provision constitutes the consent of the *Contractor* to service of the notice of non-payment in this manner.
- GC5.2.5 The *Contractor* shall, within 10 days of signing the *Contract*, and prior to the first claim for payment, submit to the *Owner* a detailed breakdown of the lump sum tender price for the purpose of establishing monthly expenses. The *Owner*, acting reasonably, reserves the right to modify costs allocated to the various breakdown items to prevent unbalancing.
- GC5.2.6 Payment for mobilizing and setting up plant, temporary buildings and services, premiums and other disbursements, shall be prorated based on the value of the *Work* performed during the billable period.
- GC5.2.7 Payment for bonds will be paid 100 percent on the first progress payment, provided that respective invoices are submitted as proof of payment.
- GC5.2.8 Prior to the first progress draw, the *Contractor* shall submit a monthly projected payment schedule based on the detailed construction schedule for the duration of the *Contract*.
- GC5.2.9 The *Contractor* agrees that the *Owner* shall be under no obligation to have recourse to the right afforded to it under subsection 24(2) of the *Construction Act*, and that the *Owner* is under absolutely no obligation to make any payment to the *Contractor* in the face of either a registered lien or a notice of lien until the same is discharged.

GC5.4 SUBSTANTIAL PERFORMANCE OF THE WORK AND PAYMENT OF HOLDBACK

SC#26 GC5.4.1 Delete GC5.4.1 in its entirety and substitute the following:

GC5.4.1 The *Consultant* will review the *Work* to verify the validity of the application for *Substantial Performance of the Work* and shall

promptly, and in any event, not later than 20 calendar days after receipt of the *Contractor's* complete deficiency list and application:

.1 prepare a final deficiency list incorporating all items to be completed or corrected. Each item is to have an indicated value for correction or completion. Determination of the value of items on the deficiencies list shall be as agreed by the parties. The final deficiency list complete with values is to be included with the *Consultant's* draft verification and shall be reviewed with the *Owner* prior to paragraph 5.4.1.2; and

.2 having completed paragraph 5.4.1.1, the *Consultant* shall:

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

SC#27 GC5.4.2 Delete GC5.4.2 in its entirety.

SC#28 GC5.4.4 Replace the words "GC5.3 - Payment" with "GC5.2 Application for Payment and Payment" and add "the *Contractor* shall submit:

.1 a written request for release of holdback including the financial holdback calculation and a declaration that no written notices of lien have been received by it,

.2 a Statutory Declaration CCDC 9A-2001, and

.3 a valid *Workplace Safety and Insurance Board Clearance Certificate*.

SC#29 GC5.4.7 Add new subparagraph 5.4.7 as follows:

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

.1 guarantees,

.2 warranties,

.3 certifications,

.4 testing and balancing reports,

.5 distribution system diagrams,

- .6 spare parts,
- .7 maintenance manuals,
- .8 samples
- .9 existing reports and correspondence from authorities having jurisdiction in the *Place of Work*, and
- .10 other materials or documentation required to be submitted under the *Contract*.

GC5.5 FINAL PAYMENT

SC#30 GC5.5.4 Delete the “5” in “5 calendar days” and replace with the number “28”.

SC#31 GC5.5 Add new paragraph 5.5.5 as follows:

GC5.5.5 As additional requirements for the release of finishing portion of the lien holdback, the *Contractor*, shall submit the following documentation:

- .1 the *Contractor’s* written request for release of holdback, including a declaration that no written notices of lien have been received by it,
- .2 the *Contractor’s* Statutory Declaration CCDC9A-2001, and
- .3 the *Contractor’s* valid *Workplace Safety and Insurance Clearance Certificate*.

GC5.8 CONSTRUCTION LIENS

SC#32 GC5.8 Add new GC 5.8 – CONSTRUCTION LIENS as follows:

GC 5.8 CONSTRUCTION LIENS

GC5.8 Add new paragraphs 5.8.1 to 5.8.8:

GC5.8.1 The *Contractor* shall give the *Owner Notice in Writing* in the prescribed form under the *Construction Act*, immediately, of all lien claims or potential lien claims coming to the knowledge of the *Contractor* or their agents.

GC5.8.2 The *Contractor* shall, at the *Contractor’s* expense, remove any liens arising out of this *Contract* and registered or filed against the *Place of Work*, provided such liens represent a claim for *Work* performed, or materials supplied, after commencement of construction.

GC5.8.3 If, at any time, the *Owner* receives notice of a lien from any person, firm, corporation, or other entity, the *Owner* may withhold 125% of the

lien amount from any payments due under the *Contract* until such lien is satisfied or security has been paid into or posted with the court by the *Contractor* to vacate the lien and, where necessary, any certificate of action in respect of such lien. No interest shall be payable on any payments withheld under this paragraph.

- GC5.8.4 At the option of the *Owner* and without imposing any obligation whatsoever on the *Owner* to do so, the *Owner* may pay into court an amount sufficient to vacate any lien and, where necessary, any certificate of action in respect of such lien. Any such payment and the costs of so doing, including legal costs on a substantial indemnity basis together with all interest, costs and expenses incurred by the *Owner*, may be treated as a payment to the *Contractor* by the *Owner* on this or any other *Contract*.
- GC5.8.5 The *Contractor* agrees that all costs incurred by the *Owner* relating to liens filed by *Contractors*, *Workers*, or material or equipment *Suppliers*, including legal fees on a substantial indemnity basis, shall be paid by the *Contractor* to the *Owner* on demand or, at the option of the *Owner*, may be treated as payment to the *Contractor* under the *Contract* and deducted from amounts otherwise owing to the *Contractor* by the *Owner* on this or any other *Contract*.
- GC5.8.6 Where any lien claimant asks from the *Owner* the production for inspection of the *Contract Documents* or the state of the accounts between the *Owner* and the *Contractor*, the *Contractor* shall be liable for an administration fee of up to Two Hundred Dollars (\$200.00) for each request made as compensation for the preparation of such accounting or for the preparation of the *Contract Documents*, or both, as the case may be.
- GC5.8.7 Where an application is brought to a judge of a competent jurisdiction to compel production of any particular document to a lien claimant, the *Contractor* further agrees to indemnify the *Owner* from reasonable legal fees on a substantial indemnity basis incurred in appearing on such an application and in addition agrees to pay the *Owner* its reasonable costs incurred in producing such documents to the extent that the same is made necessary under the disposition of the matter to such judge.
- GC5.8.8 Any and all fees, costs, or expenses of any nature whatsoever which are the responsibility of the *Contractor* under this GC 5.8 shall be deductible from monies otherwise payable to the *Contractor* under the terms of the *Contract Documents*.

PART 6 CHANGES IN THE WORK

GC6.2 CHANGE ORDER

SC#33 GC6.2 Add new paragraphs 6.2.3 to 6.2.5

GC6.2.3 The procedures of evaluation including applicable overhead and profit mark-up provisions for Change Orders shall be as described under GC 6.1 CHANGES IN THE WORK.

GC6.2.4 When submitting a price in response to a proposed *Change Order* or costs in respect of a *Change Directive*, the Contractor shall be allowed a mark-up for combined overhead and profit calculated as follows:

- .1 for work performed by the *Contractor* (but not its *Subcontractors*), a total mark-up of not more than 10% for changes \$25,000 or less and not more than 5% for changes in excess of \$25,000 up to \$150,000 of the estimated net increase in the cost of such Work as determined in accordance with paragraph 6.2.3;
- .2 for work performed by a *Subcontractor* (and excluding any Work performed by the *Contractor*), a total mark-up by the *Contractor* of not more than 5% of the costs payable to such *Subcontractor* for such work, subject to the limitation that this markup shall not be applied to the *Subcontractor's* mark-up for overhead and profit; and
- .3 The *Contractor* shall not accept any mark-up by its *Subcontractors* of more than 10% for changes \$25,000 or less or more than 5% for changes in excess of \$25,000 up to \$150,000 of the estimated net increase in the cost of such *Work* as determined in accordance with paragraph 6.2.3;
- .4 The *Contractor* is not entitled to be paid any amounts by the *Owner* that are in excess of these thresholds.

GC#6.2.5 In connection with any adjustment of the *Contract Price* in accordance with paragraph 6.2.2 the *Contractor* shall not be allowed a mark-up on account of overhead and profit as follows:

- .1 no mark-up for overhead and profit will be permitted in respect of *Value Added Taxes*.
- .2 no mark-up for overhead and profit will be permitted with respect to unit prices proposed in the bid submissions, including but not limited to unit prices, labour rates, alternate unit prices, separate unit prices, and itemized pricing;
- .3 no mark-up or deduction for overhead and profit will be permitted in respect of a net decrease or credit in the cost of the *Work* as a result of a *Change Order*; and

- .4 no mark-up on travel and subsistence expenses of the *Contractor's* personnel.

GC6.3 CHANGE DIRECTIVE

SC#34 GC6.3.7 Delete subparagraphs 6.3.7.7, 6.3.7.17, 6.3.7.19

SC#35 GC6.3.14 Add new paragraph as follows:

GC6.3.14 For greater certainty, and without limitation, the cost of performing the *Work* attributable to the *Change Directive* does not include, and no payment shall be made for:

- .1 head office salaries and benefits and all other overhead or general expenses, except only for wages, benefits, compensation, contributions, assessments, or taxes described in paragraph 6.3.7.1;
- .2 capital expenses and interest on capital;
- .3 general clean-up, except where the performance of the *Work* in the *Change Directive* causes specific additional and extraordinary clean-up requirements;
- .4 wages paid for project managers, superintendents, assistants, watch persons and administrative personnel, provided the *Change Directive* does not result in extension of *Contract Time*;
- .5 wages, salaries, rentals, or other expenses that exceed the rates that are standard in the locality of the *Place of Work*, that are otherwise deemed unreasonable by the *Consultant*;
- .6 any costs or expenses attributable to the negligence, improper *Work*, deficiencies, or breaches of *Contract* by the *Contractor* or *Subcontractor*;
- .7 any cost of quality assurance, such as inspection and testing services, charges levied by authorities, and any legal fees unless any such costs or fees are pre-approved in writing by the *Owner*.

GC6.4 CONCEALED OR UNKNOWN CONDITIONS

SC#36 GC6.4 Add new paragraph 6.4.5 as follows:

GC6.4.5 The *Contractor* confirms that, prior to bidding on the *Project*, it has carefully investigated the *Place of Work* and applied to that investigation the degree of care and skill described in paragraph 3.10.1, given the amount of time provided between the issue of the bid documents and the actual closing of bids, the degree of access provided to the *Contractor* prior to submission of bid, and the

sufficiency and completeness of the information provided by the *Owner*. The *Contractor* is not entitled to compensation or to an extension of the *Contract Time* for conditions which could reasonably have been ascertained by the *Contractor* by applying the degree of care and skill described in paragraph 3.10.1, by such careful investigation undertaken prior to the submission of the bid.

GC6.5 DELAYS

SC#37 GC6.5.1 Amend paragraph 6.5.1 by deleting the last sentence in its entirety and substituting the following:

The *Contractor* shall be reimbursed by the *Owner* for reasonable direct costs directly flowing from the delay, but excluding the costs of the *Contractor's* head office personnel and overhead costs, any consequential, indirect or special damages, and any loss of profit or loss of opportunity costs and damages arising from or caused by such delay, regardless of whether any such excluded costs, damages or claims are made or incurred by the *Contractor*, or any *Subcontractor* or *Supplier*.

SC#38 GC6.5.2 Amend paragraph 6.5.2 by deleting the last sentence in its entirety and substituting the following:

The *Contractor* shall be reimbursed by the *Owner* for reasonable direct costs directly flowing from the delay, but excluding the costs of the *Contractor's* head office personnel and overhead costs, any consequential, indirect or special damages, and any loss of profit or loss of opportunity costs and damages arising from or caused by such delay, regardless of whether any such excluded costs, damages or claims are made or incurred by the *Contractor*, or any *Subcontractor* or *Supplier*.

SC#39 GC6.5 Add new paragraphs 6.5.6, 6.5.7, 6.5.8, 6.5.9, 6.5.10 as follows:

GC6.5.6 If the *Contractor* is delayed in the performance of the *Work* by an act or omission of the *Contractor* or anyone employed or engaged by the *Contractor* directly or indirectly, or by any cause within the *Contractor's* control, then the *Contract Time* shall be extended for such reasonable time as the *Consultant* may decide in consultation with the *Contractor*. The *Owner* shall be reimbursed by the *Contractor* for all reasonable costs incurred by the *Owner* as the result of such delay, including all services required by the *Owner* from the *Consultant* as a result of such delay by the *Contractor* and, in particular, the cost of the *Consultant's* services during the period between the date of *Ready-for-Takeover* stated in Article A-1 (as may be extended) and any later, actual date of *Ready-for-Takeover* achieved by the *Contractor*.

- GC6.5.7 The *Contractor* shall be responsible for the care, maintenance and protection of the *Work* in the event of any suspension of construction as a result of the delay described in paragraph 6.5.1, 6.5.2 or 6.5.3.
- GC6.5.8 Without limiting the obligations of the *Contractor* described in GC 3.2 – CONSTRUCTION BY OWNER OR OTHER CONTRACTORS and GC 9.4 – CONSTRUCTION SAFETY, the *Owner* may, by *Notice in Writing*, direct the *Contractor* to stop the *Work* where the *Owner* determines that there is an imminent risk to the safety of the persons or property at the *Place of the Work*. In the event that the *Contractor* receives such notice, it shall immediately stop the *Work* and secure the *Project* site. The *Contractor* shall not be entitled to an extension of the *Contract Time* or to an increase in the *Contract Price* unless the resulting delay, if any, would entitle the *Contractor* to an extension of the *Contract Time* or the reimbursement of the *Contractor's* costs as provided in paragraphs 6.5.1, 6.5.2 or 6.5.3.
- GC6.5.9 In addition to the amount set out in paragraph 6.5.6, the *Contractor* recognizes and agrees that the *Owner* will suffer a financial loss if the *Work* is not completed within the time prescribed by the *Contract*. The *Contractor* also recognizes the delays, expenses and difficulties involved in proving the actual loss suffered by the *Owner* if the *Work* is not completed on time. Accordingly, instead of requiring any such proof, the *Contractor* agrees that as liquidated damages for delay (but not as penalty) the *Contractor* shall pay the *Owner* an amount per day, as designated in the Special Conditions of Contract for each and every day's delay from the specified time for *Ready-for-Takeover* until the actual date of *Ready-for-Takeover*, and it is further expressly acknowledge and agreed by the *Contractor* that:
- (a) this amount is a reasonable estimate of the actual damages that will be incurred by the *Owner* due to any failure to attain *Ready-for-Takeover* within the time required by this *Contract*;
 - (b) the *Owner* may deduct the amount due under this section from any monies that may be due or payable to the *Contractor*, whether under the *Contract* or any other agreement; and,
 - (c) the liquidated damages provided for in this section shall be without prejudice to any other remedy to which the *Owner* is entitled at law or in equity.
- GC6.5.10 In the event that paragraph 6.5.9 is held by a court of competent jurisdiction to be invalid, unenforceable or void, or if no liquidated damages are designated in the Special Conditions of the *Contract*, the *Contractor* shall be held responsible for the payment of the *Owner's* actual costs associated with the delay in achieving *Ready-for-Takeover*. The *Owner's* costs will include, but are not limited to, the amounts relating to the items set out in paragraph 6.5.6 and all

other costs directly or indirectly associated with the delay in the completion of the *Work* by the *Contractor*. The amounts payable pursuant to paragraph 6.5.10 are in addition to the amounts payable by the *Contractor* to the *Owner* pursuant to paragraph 6.5.6.”

GC6.6 CLAIMS FOR A CHANGE IN CONTRACT PRICE

SC#40 GC6.6.1 Amend paragraph 6.6.1 by deleting the period at the end of the paragraph and adding the following:

“within 30 *Working Days* of the commencement of the *Work* giving rise to the claim.”

SC#41 GC6.6.5 Amend paragraph 6.6.5 by adding “and the *Consultant*” at the end of the paragraph.

PART 7 DEFAULT NOTICE

GC7.1 OWNER’S RIGHT TO PERFORM THE WORK, TERMINATE THE CONTRACTOR’S RIGHT TO CONTINUE WITH THE WORK OR TERMINATE THE CONTRACT

SC#42 GC7.1.2 Delete paragraph 7.1.2 in its entirety and replace it with the following:

If the *Contractor* neglects to perform the *Work* properly or otherwise fails to comply with the requirements of the *Contract* to a substantial degree, the *Owner* may, without prejudice to any other right or remedy the *Owner* may have, give the *Contractor Notice in Writing*, containing particulars of the default including references to applicable provisions of the *Contract*, that the *Contractor* is in default of the *Contractor’s* contractual obligations and instruct the *Contractor* to correct the default in the 5 *Working Days* immediately following the receipt of such *Notice in Writing*. Failure by the *Owner* to provide such notice shortly after the default has occurred shall not constitute condonation of the default.

SC#43 GC7.1.5 Add subparagraph 7.1.5.5 as follows:

.5 charge the *Contractor* for any damages the *Owner* may have sustained as a result of the default.

GC7.2 CONTRACTOR’S RIGHT TO SUSPEND THE WORK OR TERMINATE THE CONTRACT

SC#44 GC7.2.3.4 Delete “except for GC 5.1 – FINANCING INFORMATION REQUIRED OF THE OWNER”

PART 8 DISPUTE RESOLUTION

GC8.2 ADJUDICATION

SC#45 GC8.2 Add new paragraph 8.2.2 as follows:

GC8.2.2 The parties agree that no other matter may be referred to adjudication unless the parties agree in writing. The parties agree and consent that any *Construction Act Document* may be sent to the other party and any adjudicator via electronic mail and that service of such *Construction Act Documents* will be effective at the time and date of sending, except that where an electronic mail message is sent after 4:00 p.m. Eastern Time, service of such *Construction Act Documents* will be deemed to be effective the following day. The e-mail message to which a *Construction Act Document* is attached shall include the sender's name, address, telephone number and the name and telephone number of a person to contact in the event of a transmission problem. Any *Construction Act Documents* shall be served in accordance with this section unless the parties subsequently agree otherwise in writing or an adjudicator directs otherwise.

PART 9 PROTECTION OF PERSONS AND PROPERTY

GC9.1 PROTECTION OF WORK AND PROPERTY

SC#46 GC9.1.1 Add to the end of subparagraph 9.1.1.1 "which the *Contractor* could not have discovered applying the standard of care described in paragraph 3.10.1;

SC#47 GC9.1.1 Add to the beginning of subparagraph 9.1.1.2 "negligent"

SC#48 GC9.1 Add new paragraphs 9.1.5 and 9.1.6 as follows:

GC9.1.5 Without in any way limiting the *Contractor's* obligations under this GC 9.1, should the *Contractor* or any *Subcontractor* or supplier cause loss or damage to trees or other plantings, whether owned by the *Owner* or third parties, the *Contractor* shall be liable for the replacement cost of the trees or the plantings damaged, including the cost of any arborist or other *Consultant*, and such costs may be deducted by the *Owner* from amounts otherwise owing to the *Contractor*.

GC9.1.6 The *Contractor* shall neither undertake to repair and/or replace any damage whatsoever to the *Work* of other *Contractors*, or to adjoining property, nor acknowledge the same was caused or occasioned by the *Contractor*, without first consulting the *Owner* and receiving written instructions as to the course of action to be followed from either the *Owner* or the *Consultant*. However, where there is danger

to life or public safety, the *Contractor* shall take such emergency action as it deems necessary to remove the danger.

GC9.4 CONSTRUCTION SAFETY

SC#49 G9.4.1 Delete paragraph 9.4.1 in its entirety and replace with the following:

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

SC#50 GC9.4.4 Delete paragraph 9.4.4 in its entirety and replace with the following:

The *Contractor* hereby represents and warrants to the *Owner* that appropriate health and safety instruction and training have been provided and will be provided to the *Contractor's* employees, *Subcontractors* and *Suppliers*, before the *Work* is commenced and agrees to provide the *Owner*, if requested, proof of such instruction and training.

SC#51 GC9.4 Add new paragraphs 9.4.6 and 9.4.7 as follows:

GC9.4.6 Prior to the commencement of the *Work*, the *Contractor* shall submit to the *Owner*:

- .1 a current *WSIB* clearance certificate
- .2 documentation of the *Contractor's* in-house safety-related programs;
- .3 a copy of the *Notice of Project* filed with the Ministry of Labour naming itself as "constructor" under the *OHS*A;
- .4 a copy of the *Contractor's* insurance coverage that has application to the *Project*;
- .5 documentation of the *Contractor's* site-specific health and safety plan; and
- .6 confirmation that all other *contractors*, labour, *Consultant*, personnel and site staff are fully familiar with the safety policy and procedure set down for the *Project* and shall ensure that the *Contractor* is responsible for ensuring such procedure in accordance with the rules, regulations and law of the workplace.

- GC9.4.7 The *Contractor* shall indemnify and hold harmless the *Owner*, its agents, officers, directors, employees, consultants, successors and assigns from and against the consequences of any and all safety infractions committed by the *Contractor* or *Subcontractors* under the *OHS*A, including the payment of legal fees and disbursements on a full indemnity basis.

PART 10 GOVERNING REGULATIONS

GC10.1 TAXES AND DUTIES

SC#52 GC10.1 Add new paragraphs 10.1.3 and 10.1.4 as follows:

GC10.1.3 Custom duties, penalties, or any other penalty, fine or assessment levied against the *Contractor*, shall not be treated as a tax or customs duty for the purpose of this GC 10.1.”

GC10.1.4 The *Contractor* must provide a detailed breakdown of additional taxes if requested by the *Owner* in a form satisfactory to the *Owner*.

GC10.2 LAWS, NOTICES, PERMITS, AND FEES

SC#53 GC10.2.5 Delete the first word “The” from paragraph 10.2.5 and replace with: “Subject to paragraph 3.10.1, the”.

GC10.3 PATENT FEES

SC#54 GC10.3.1 Amend paragraph 10.3.1 by adding the words, “indemnify and” before the words, “hold the”, in the second line.

SC#55 GC10.3.2 In paragraph 10.3.2, add the words, “by the *Owner*”, after the words, “supplied to the *Contractor*”.

PART 11 INSURANCE

GC11.1 INSURANCE

SC#56 GC11.1.1 Delete paragraph 11.1.1 in its entirety and replace with the following:

GC11.1.1 It is the responsibility of the *Contractor* and their Insurance Broker to review all potential operations and exposures to determine if the coverage and limits noted below are sufficient to address all insurance related exposures presented by the specifications of the *Project, Work or Supply*. The *Contractor* shall insure its undertaking, business and equipment under the following coverage so as to protect and indemnify and hold harmless the *Owner*:

- (a) **General Liability Insurance:** The *Contractor* shall maintain liability insurance acceptable to the *Owner* throughout the term of this Agreement from the date of commencement of work until one

year from the date of *Ready-for-Takeover*. Liability coverage shall be provided for completed operations hazards from the date of substantial performance of the work, as set out in the certificate of substantial performance of work, on an ongoing basis for a period of 6 years following *substantial performance of work*. Coverage shall consist of a comprehensive policy of public liability and property damage insurance, with all available coverage extensions/endorsements, in an amount of not less than \$5,000,000 per occurrence. **Such insurance shall name The Corporation of the Municipality of Clarington and any other person or party identified in the contract documents, as an additional insured with a cross liability endorsement and severability of interests provision.** The policy SIR/deductible shall not exceed \$100,000 per claim and if the policy has an aggregate limit, the amount of the aggregate shall be double the required per occurrence limit. A combination of primary coverage plus umbrella or excess liability insurance may be used.

If applicable to the construction project described in the Agreement: such insurance coverage shall be endorsed to cover shoring, blasting, excavation, underpinning, demolition, pile driving, caisson work and work below ground surface including tunnelling and grading.

The *Owner* reserves the right to request an alternative to the Commercial General Liability Insurance coverage in the form of a **Wrap-Up Liability Insurance** policy.

- (b) **Owned and Non-Owned Automobile Liability Insurance:** The *Contractor* shall maintain liability insurance on all Owned, Non-Owned and Leased Automobiles used in the performance of this work to a limit of \$5,000,000 per occurrence throughout the term of this Agreement from the date of commencement of work and until one year after the date of *substantial performance of work*.
- (c) The *Contractor* shall provide and maintain during the term of the Agreement, **Broad Form Contractors' Equipment Insurance** coverage for construction machinery and equipment used by the *Contractor* for the performance of the work. Such insurance shall be in a form acceptable to the *Owner* and shall not allow subrogation claims by the Insurer against the *Owner*.
- (d) The *Contractor* shall provide and maintain during the term of the Agreement an **All Risk Installation Floater Insurance** policy covering the installation of any machinery and equipment associated with the construction project. Coverage shall be in an amount equal to the value of the machinery and/or equipment and shall include coverage while it is in transit to, while stored at a temporary location and awaiting installation at the work site.

- (e) The *Contractor* shall provide and maintain **Boiler & Machinery Insurance** coverage on a Comprehensive Plus Form to the full replacement cost of the boiler and machinery equipment.
- (f) The *Contractor* shall **ensure** its professional consultants, architects, landscape architects, planners and engineers, providing a professional service in connection with the contract, maintain until three (3) years after the Agreement, **Professional Liability Insurance** to a limit not less than \$2,000,000 per claim providing coverage for acts, errors and omissions arising from their professional services performed under this Agreement. The policy SIR/deductible shall not exceed \$100,000 per claim and if the policy has an aggregate limit, the amount of the aggregate shall be double the required per claim limit. Certificates evidence such coverage shall be supplied to the City prior to the completion of the project and in accordance with the provisions stated above.
- (g) The *Contractor* shall take out and keep in force **Contractor's Pollution Liability** (CPL) coverage to ensure that their work does not exacerbate any pre-existing environmental condition during construction. Coverage shall be in an amount of not less than \$2,000,000 per claim or per occurrence, or such greater amount as the municipality may from time to time require, naming the *Owner* as an additional insured, which coverage shall be maintained in force for 1 year following the termination of the Contract. The policy SIR/deductible shall not exceed \$100,000 per claim (unless approved by risk management) and if the policy has an aggregate limit, the amount of the aggregate shall be double the required per occurrence limit.
- (h) **Provisions:** Prior to the commencement of work the *Contractor* shall forward a *Certificate of Insurance* evidencing this insurance with the executed Agreement and thereafter on or prior to the expiry of the insurance coverage. The Certificate shall state that coverage will not be suspended, voided, cancelled, reduced in coverage or in limits except after thirty (30) days (ten (10) days if cancellation is due to non-payment of premium) prior written notice by certified mail to the *Owner*.

It is also understood and agreed that in the event of a claim any deductible or self-insured retention under these policies of insurance shall be the sole responsibility of the *Contractor* and that this coverage shall preclude subrogation claims against the *Owner* and any other person insured under the policy and be primary insurance in response to claims. Any insurance or self-insurance maintained by the *Owner* and any other person insured under the policy shall be considered excess of the *Contractor's* insurance and shall not contribute with it. The minimum amount of insurance required herein fully indemnify the *Owner* under this Agreement.

The *Owner* reserves the right to modify the insurance requirements as deemed suitable. If the *Owner* requests to have the amount of insurance increased or to obtain other special insurance for this Project then the Contractor shall endeavour forthwith to obtain such increased or special insurance at the *Owner's* expense.

- (i) **Third Party Claims Process:** The *Owner's* claims process for Third Party claims is to refer the claimant directly to the *Contractor* and to leave the resolution of the claim with the *Contractor*. This applies regardless of whether or not it is an insured loss.

As the *Owner* has a responsibility to the taxpayers, we must ensure that claimants are dealt with in a fair and efficient manner. Claims reported to the *Contractor*, either directly by a third party or through the *Owner* shall be promptly investigated by the *Contractor* (its insurer or adjuster). The *Contractor* shall make contact with the third party claimant upon receipt of notice of a claim. The *Contractor* shall initiate an investigation of the claim immediately upon notice, and advise the third party claimant in writing (preferably by a qualified third party adjusting firm), with a copy to the *Owner*, of its position regarding the claim upon completion of this investigation. Such investigation shall be done in a professional manor and reasonable time frame consistent with Insurance Institute of Canada practices. The *Contractor* shall include in their response the reasons for their position. Should this position not resolve the claim and be accepted by the third party claimant, the *Contractor* shall immediately report the claim to its Insurer. If the *Contractor* fails to follow this procedure, the *Owner* may report such claims to the *Contractor's* insurer.

Nothing herein shall limit the right of the *Owner* to investigate and resolve any such claims notwithstanding the response of the *Contractor* and/or its Insurer and to seek indemnification from the *Contractor* or to exercise any other rights under the Contract. (Costs may include but not limited to: adjusting fees, settlement awards, reasonable legal fees, administrative costs, etc.)

The *Owner* may, without breaching this contract, retain from the funds owing to the *Contractor* an amount that, as between the *Owner* and the *Contractor*, is equal to the balance in the *Owner's* favour of all outstanding debts, claims or damages, whether or not related to this contract.”

PART 12 OWNER TAKEOVER

GC12.1 READY-FOR-TAKEOVER

SC#57 GC12.1.5 Delete paragraph 12.1.5 in its entirety and replace with the following:

Immediately prior to the confirmation of the date of *Ready-for-Takeover*, the *Contractor*, in consultation with the *Consultant*, shall establish reasonable dates for finishing the *Work* and correcting deficiencies.

GC12.2 EARLY OCCUPANCY BY THE OWNER

SC#58 GC12.2.1 Delete the following words from paragraph 12.2.1 “only as agreed by the *Contractor* which agreement shall not be reasonably withheld”.

GC12.3 WARRANTY

SC#59 GC12.3.2 Delete the first word of paragraph 12.3.2 “The” and replace with “Subject to paragraph 3.10.1, the”.

SC#60 GC12.3 Add the following paragraphs as 12.3.7, 12.3.8 and 12.3.9:

GC12.3.7 Any *Product*, or equipment requiring excessive servicing during the warranty period (or free maintenance period, if applicable) shall be considered defective and the warranty (or free maintenance period) shall be deemed to take effect from the time that the defect has been corrected so as to cause excessive servicing to terminate.

GC#12.3.8 Following *Substantial Performance of the Work*, and without limiting the *Contractor's* warranty under GC 12.3, the *Contractor* shall assign to the *Owner*, to the extent assignable, the benefit of all warranties and guarantees relating to the *Work*. The assignment shall expressly reserve the rights of the *Contractor* to make any claims under such warranty and guarantees and such assignment shall in no way prejudice any rights of or benefits accruing to the *Contractor* pursuant to such warranties and guarantees.

GC12.3.9 The *Contractor* shall make good in a permanent manner, satisfactory to the *Owner*, any and all damage to the work both during construction and during the period of warranty as aforesaid. The *Contractor* shall commence repairs on any work identified as defective within 48 hours or receipt of notice from the *Owner* or the *Consultant*.

PART 13 INDEMNIFICATION AND WAIVER

GC13.1 INDEMNIFICATION

SC#61 GC13.1.1 Delete paragraph 13.1.1 in its entirety and replace with the following:

GC13.1.1 The *Contractor* shall indemnify, defend, and hold harmless the *Owner* and the *Consultant*, and their respective agents and employees from and against all claims, demands, losses, costs, damages, actions, suits or proceedings whether in respect to losses suffered by them or in respect to claims by third parties that arise out of, or are attributable in any respect to their involvement as parties to this *Contract*, provided such claims are:

- .1 made within a period of six (6) years from the date of *Ready-for-Takeover* as set out in the written confirmation of *Ready-for-Takeover*, issued pursuant to paragraph 12.1.4.2 of GC-12.1 – READY-FOR-TAKEOVER or within such shorter period as may be prescribed by any limitation statute of the province or territory of the *Place of Work*;
- .2 attributable to bodily injury, sickness, disease, or death, or to injury to or destruction of tangible property;
- .3 caused by negligent acts or omissions of the *Contractor* or anyone for whose acts the *Contractor* may be liable;
- .4 caused by a failure of the *Contractor* to fulfill the terms and conditions of the *Contract*; or
- .5 caused by a breach of *Applicable Law* by the *Contractor* or its Subcontractors or those for whom the contractor is responsible pursuant to *Applicable Law*.

SC#62 GC13.1.2 Delete paragraph 13.1.2 in its entirety.

SC#63 GC13.1.3 Delete paragraph 13.1.3 in its entirety and replace with the following:
The obligation of the *Contractor* to indemnify hereunder shall be inclusive of interest and all legal costs.

GC13.2 WAIVER OF CLAIMS

SC#64 GC13.2.5 Delete paragraph 13.2.5 in its entirety.

SC#65 GC13.2.8 In paragraph 13.2.8 delete “The Party” and replace with “The *Contractor*”.

PART 14 OTHER PROVISIONS

SC#66 Add new PART 14 as follows:

GC 14.1 DAILY REPORTING/DAILY LOGS

GC14.1.1 The *Contractor* shall cause its supervisor or such competent person as it may delegate, to prepare a daily log or diary reporting on weather conditions, work force of the *Contractor*, *Subcontractors*, *Suppliers* and any other forces on site and also record the general nature of *Project* activities. Such log or diary shall also include any extraordinary or emergency events which may occur and also the identities of any persons who visit the site who are not part of the day-to-day work force.

GC14.1.2 The *Contractor* shall also maintain records, either at its head office or at the job site, recording manpower and material resourcing on the *Project*. The *Contractor* shall make these records available to the *Owner* and/or the *Consultant* for inspection upon reasonable notice.

GC14.2 PUBLIC STATEMENTS

GC14.2.1 The *Contractor* shall not publish issue or make any statements or news release, electronic or otherwise concerning the *Contract*, the *Work*, or the *Project*, without the express written consent of the *Owner*.

GC14.3 OWNER SET-OFF

GC14.3.1 In addition to and without limiting any other rights the *Owner* may have under the *Contract* and at law, the *Owner* may retain from monies owing to the *Contractor* under the *Contract* an amount sufficient to cover any outstanding or disputed liabilities including the cost to remedy deficiencies, the reduction in value of substantial portion of the *Work*, claims for damages by third parties, and any assessment due to the Workplace Safety and Insurance Board.”