

REQUEST FOR TENDER DOCUMENT

REFERENCE NO. 2026-132-P02234

Prince of Wales Elementary School Outdoor Playground
Alteration

77 Melrose Avenue North, Hamilton ON, L8L 6X4

SUBMISSION TYPE: Electronic Tender Submission Only

CLOSING DATE: Wednesday, April 22, 2026

CLOSING TIME: 2:00:00 PM, local time

COMMUNICATIONS NOTICE

If you encounter any problem with the Bidding System, contact their support email: support@bidsandtenders.ca

All questions or requests for information, instructions or clarifications regarding this competitive process must be set out in writing through the Bidding System by clicking on the “Submit a Question” button for the specified competitive process document which shall then be directed to the Procurement representative for this competitive process:

Natalie Poltrock

Buyer, Procurement and Risk Management Services

Npoltroc@hwdsb.on.ca

All questions or requests for clarification related to this competitive process must be made no later than the Closing for Questions date identified in the Project Schedule in order that the Board may have sufficient time to respond. The Board cannot guarantee a response to any questions received after this deadline. The Board reserves the right to extend the deadline for questions regarding this competitive process, if required.

Written answers or clarifications to issues of substance will be shared with all Bidders and issued as part of the competitive process in the form of an Addendum. All Addenda issued will only be posted on the following website:

hwdsb.bidsandtenders.ca

It is the sole responsibility of each Bidder to monitor the website for any, and all, Addenda that have been issued for this competitive process.

For the purposes of this competitive process, Bidders shall not contact anyone other than the designated Procurement representative listed above. Any unauthorized communications may result in disqualification.

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DEFINITIONS

Capitalized words and phrases used in these Instructions to Bidders, Tender Documents, Specifications, terms of reference and the Form of Tender shall have the following meanings, unless expressly stated otherwise.

- a. "Addendum" means a written instruction and/or clarification issued to the Tender Documents. The term addenda is to mean the same as Addendum.
- b. "Alternative" means anything for which Bidders provide a price in a manner that gives the Board options in determining the actual Work of the Contract and may include such items as an optional product, system, installation, method, design and requirement. The Board shall not be obliged to purchase an Alternative when accepting a Tender, but may, at its discretion elect to purchase all, some or none of the Alternatives offered.
- c. "Alternative Price" means the amount stipulated by the Bidder for an Alternative, which can be stated as an addition, a deduction, or no change to the Total Contract Price. The Alternative Price will include all labour, materials, products, services and respective overhead and profit, excluding Value Added Taxes and, where it amends the Total Contract Price, a statement that same will be used to certify Substantial Performance of the Work of the Contract.
- d. "Application for Payment" means the following documentation is to be provided in hardcopy via courier to HWDSB Accounts Payable to fulfill the Prompt Payment Process:
 - i. Printout of email issuing invoice to Payment Certifier and HWDSB Capital Project Supervisor. Date and time must be clearly visible on the email printout.
 - ii. Signed Certificate of Payment by the Payment Certifier
 - iii. Proper Invoice
 - iv. Supporting Schedule of Values for Proper Invoice
 - v. Current WSIB clearance certificate;
 - vi. Original Statutory Declaration complete with seal confirming payment of subtrades, suppliers and taxes;
 - vii. Current Construction schedule
 - viii. Current Insurance certificate
- e. "Bidder(s)" means the company and/or company representative authorized to submit a Tender in accordance with the terms and conditions set forth in the document.
- f. "Bidding System" means the electronic system used by the Board for the advertisement of public bid opportunities, for dissemination of information by, or on behalf of, the Board and for submissions from Bidders for this competitive process.
- g. "Board" means the Hamilton-Wentworth District School Board or HWDSB and includes any of its designated employees, officials or agents who are engaged to represent the Board for this Project.
- h. "Change Order" means a written amendment to the Contract prepared by the Consultant and signed by the Owner and the Contractor stating their agreement upon:
 - i. A change in the Work;
 - ii. The method of adjustment or the amount of the adjustment in the Contract price, if any; and
 - iii. The extent of the adjustment in the Contract time, if any.

- i. “Compliance Requirements” means services provided shall be compliant with all laws, regulations or orders, including the order of any board or court of competent jurisdiction, rule, regulation or requirement of the Canadian Government or the Government of the Province of Ontario or any competent local government, board, commission, department or officer.
- j. “Consultant” means the person or entity engaged by the Owner and identified as such in the Contract. The Consultant is the Architect, the Engineer or entity licensed to practise in Ontario. The term Consultant means the Consultant or the Consultant’s authorized representative.
- k. “Contract” means the agreements, covenants and undertaking by the parties to perform their respective duties, responsibilities and obligations as prescribed in the Contract Documents and represents the entire agreement between the parties.
- l. “Contract Documents” means those documents listed in Article A-3 of the CCDC 2 2020 and amendments agreed upon between the parties.
- m. “Contractor” means the person or entity identified as such in the Contract. The term Contractor means the Contractor or the Contractor’s authorized representative as designated to the Owner in writing.
- n. “Drawings” means the graphic and pictorial portions of the Contract Documents, wherever located and whenever issued, showing the design, location and dimensions of the Work, generally including plans, elevations, sections, details, and diagrams.
- o. “Form of Tender” means the form that is supplied as part of the competitive process which is to be completed and confirmed by the Bidder and submitted back to the Board in its entirety through the Bidding System.
- p. “Good(s)” means any product of any description required to be installed, supplied, or consumed in order to complete the Work.
- q. “Itemized Price” means the amount stipulated by the Bidder for an item of Work which is to be included in the Total Contract Price.
- r. “Lump Sum Price” means an all-inclusive one price that applies to a single item, or specific Service as set out in the Form of Tender.
- s. “Owner” means the Board or the person or entity identified as such in the competitive process Contract, or Construction Contract. The term Owner means Owner or the Owner’s authorized agent or representative as designated by the Board, but does not include the Consultant.
- t. “Payment Certifier” is the architect, engineer or any person identified in the Contract or subcontract as being responsible for payment certification and may be the Consultant. If the Contract or subcontract is silent on the matter, the payment certifier will be either the Owner (in respect of amounts owing to the Contractor) or the Owner and the Contractor together (in respect of amounts owing to any Subcontractor).
- u. “Place of the Work” is the designated site or location of the Work in Ontario identified in the Contract Documents.
- v. “Project” means all the Work required to be completed by the Successful Bidder as contemplated by this competitive process.
- w. “Project Manager/Supervisor” means the person designated by the Owner to manage the delivery or performance of the Work to which the competitive process relates, or to oversee the Project

and/or the Owner's obligations under the Contract and when there is no such designate appointed by the Owner, the Owner shall be the Project Manager/Supervisor.

- x. "Proper Invoice" means a written bill or other request for payment for services or materials in respect of an improvement under a contract, if it contains the following information and meets any other requirements that the contract specifies:
 - i. all requirements as defined by the *Construction Act* and its regulations;
 - ii. School Name, Address and Capital Project Supervisors Name;
 - iii. Purchase Order number (i.e., PO:10000100);
 - iv. Tender number;
 - v. Address invoice to HWDSB, Accounts Payable.
- y. "Ready-for-Takeover" means when all conditions of ready-for-takeover, as set out in the Contract, have been attained and verified by the Consultant.
- z. "Request for Tender", "RFT" and "Tender Document" means all of the following documents, and in the event of a conflict between them, each shall enjoy priority against the others (subject to any express term or condition to the contrary) in accordance with the following successive order:
 - i. construction Contract between the Successful Bidder and Owner;
 - ii. any Addendum;
 - iii. any Specifications;
 - iv. any schedules;
 - v. any Drawings;
 - vi. these instructions to Bidders;
 - vii. the standard form text of the Form of Tender as prescribed by the Board;
 - viii. the Tender submission information;
 - ix. all bonds required by this competitive process, the Contract or the *Construction Act*, understanding that the requirements of the Contract shall prevail;
 - x. any other documents that form a part of the competitive process.
- aa. "Service(s)" means a service of any description required in order to complete the Work, whether commercial, industrial, trade, or otherwise and includes, without limitation:
 - i. all professional, technical and artistic services, and the transporting, acquiring, supplying, storing and otherwise dealing in a Good;
 - ii. all consulting services identified in the Contract and those not identified in the Contract but necessary and prudent, in accordance with industry standards for the Work, to properly and fully complete the Work and perform the undertakings contemplated in the Contract;
 - iii. all incidentals necessary for proper, diligent and satisfactory execution of a Service and the fulfillment of all other contractual obligations and undertakings of the Successful Bidder under the Contract.
- bb. "Specifications" means the portion of the Contract Documents, wherever located and whenever issued, consisting of the written requirements and standards for products, systems, workmanship, quality, and the Services necessary for the performance of the Work.
- cc. "Stipulated Price" has the same meaning as "Total Contract Price".

- dd. "Subcontractor" is a person or entity having a direct contract with the Contractor to perform a part or parts of the Services or to supply Goods and/or Services with respect to the Work, at the Place of the Work.
- ee. "Substantial Performance of Work" means substantial performance of the Contract as defined under the *Construction Act* (Ontario).
- ff. "Successful Bidder" means the Bidder to whom the Owner has awarded the Contract. The Successful Bidder is the person or entity engaged by the Owner and identified as such in the Contract. The Successful Bidder is licensed to operate in the province of Ontario.
- gg. "Tender" means a submission made by a Bidder in response to the competitive process.
- hh. "Tender Security" means the security submitted by a Bidder with its Tender which provides financial protection to the Board should the Successful Bidder not enter into the Contract or commence the Work following the issuance of a purchase order, and/or not provide the specified security required under the Contract.
- ii. "Total Contract Price" means the fully inclusive, all-in total contract price, constituting the aggregate sum of all costs quoted by a Bidder in its Tender with respect to providing all Work, including incidentals, contemplated under the Contract, and unless expressly and specifically agreed in writing by the Owner otherwise, shall be the maximum compensation and consideration receivable by the Successful Bidder under the Contract. Total Contract Price shall include, without limitation;
 - i. the purchase price for all professional fees, consulting fees, staff time, Subcontractor fees, disbursements, materials, labour costs, service costs, costs for temporary structures and facilities, utility costs, warranty costs, life cycle costs, operating and disposal costs, and all other items, costs, expenses, allowances, charges and incidentals whatsoever to be provided pursuant to the competitive process and anything properly included as a best practice; but
 - ii. excludes any options or alternatives requested in the Contract Documents that the Owner elects not to purchase; and
 - iii. excludes Value Added Taxes, imposed under the Laws of Ontario and the Laws of Canada applicable therein.
- jj. "Unit Price" means any component price as set out on the Form of Tender.
- kk. "Value Added Taxes" means such sum as shall be levied upon the Total Contract Price by the Federal or any Provincial or Territorial Government and is computed as a percentage of the Total Contract Price and includes the Goods and Services Tax, the Quebec Sales Tax, the Harmonized Sales Tax and any similar tax, the collection and payment of which have been imposed on Bidder by the tax legislation.
- ll. "Work" means the whole of the work, the supply, delivery and installation of a Good, the delivery and performance of any Services, the total construction and related services, material, matters and things required to be completed, supplied, mentioned or referred to in performing executing the work in full in accordance with the requirements set out in the Tender Documents.
- mm. "Working Day" means a day which is not a Saturday, Sunday, public holiday or day when the Board is not operational for any reason.

1.0 INTRODUCTION AND PROJECT DETAILS

1.1 PROJECT DESCRIPTION

- .1 The Board invites qualified Bidders to Tender for the supply of all labour, materials, equipment and services required for the outdoor playground alteration at Prince of Wales Elementary School in accordance with the Specifications and Drawings prepared by the Consultant, Hill Design Studio Inc.
- .2 Bidders are advised that it is the Board's expectation that the Contract, as tendered, would be performed without delay by the Successful Bidder at the Total Contract Price. The Board would not be responsible for any extra costs experienced by the Successful Bidder as a result of the federal and/or provincial emergency mandates.

1.2 PROJECT SCOPE OF WORK

- .1 Project Scope includes:
 - a. All Work as outlined in the Drawings and Specifications.
 - b. Removal and site preparation
 - c. Grading and drainage
 - d. Asphalt paving
 - e. Artificial turf installation
 - f. Play equipment installation
 - g. Concrete curbs
 - h. Site furnishings
 - i. Chain link gate installation
 - j. Planting and softscaping
 - k. Site restoration and final clean up.
- .2 Where the Board has undertaken a pre-qualification process for a category of subtrade listed on the List of Subcontractors form in the Bidding System, the Bidder shall name one of the Board's pre-qualified Subcontractors. Refer to Instructions to Bidders, Section 2.2 Pre-Qualifications for the pre-qualification lists.

1.3 PROJECT INSURANCE REQUIREMENTS

- .1 Successful Bidder shall obtain and maintain at its own expense, including the cost of any applicable deductible, the policies of insurance identified in GC 11.1 of the Supplementary Conditions attached herein.
- .2 Successful Bidder shall name Hamilton-Wentworth District School Board and City of Hamilton as Additional Insured per the requirements identified in GC 11.1 of the Supplementary Conditions attached herein.

1.4 WORKING HOURS

- .1 To comply to the requirements of the City of Hamilton by-law.
- .2 From June 26, 2026, to August 21, 2026, Work can be completed anytime, as long as it complies with the City of Hamilton by-law requirements.
- .3 It will be the Successful Bidder's responsibility to schedule shift Work (as required) to meet Project Schedule deadlines; this may mean daytime as well as after-hours Work. Extensions to timelines will not be accepted if there are not enough resources allocated by the Successful Bidder.
- .4 Prior to June 26, 2026, and after August 21, 2026, noisy Work or Work which would cause a disturbance or safety hazard (including Work that generates odours, any asbestos abatement or demolition, equipment and material removal, or deliveries) must be completed prior to 7:00 AM or after 6:00 PM Monday to Friday, or anytime on Saturday and Sunday.
- .5 Prior to June 26, 2026, and after August 21, 2026, all tools, equipment, and materials must be brought into or taken out of the construction space(s) prior to 8:30 AM and after 3:00 PM.
- .6 All Board occupied areas impacted by after-hours and weekend Work, must be made safe and cleaned at the end of daily construction/Work activities so occupants may continue their regular daily duties the next business day.

1.5 PROJECT SCHEDULE

- .1 The Successful Bidder will adhere to section GC 3.4 in regard to milestone dates set below.
- .2 The following are Project milestone dates:

a. Tender Issued	Monday, March 30, 2026
b. Site Walkthrough at 3:30 PM	Wednesday, April 8, 2026
c. Closing for Questions	Monday, April 13, 2026
d. Tender Closing at 2:00:00 PM	Wednesday, April 22, 2026
e. Anticipated Construction Commencement	Friday, June 26, 2026
f. Substantial Performance of the Work	Friday, August 21, 2026
g. Ready-for-Takeover	Monday, August 31, 2026
- .3 Any Work remaining after the Substantial Performance of the Work date will need to be made safe for student use and work to be completed after school hours and weekends. Work cannot be disruptive to the school and operations of the school in any way and all areas are to be made safe, with no debris and usable at the end of each work period.

1.6 SITE WALKTHROUGH

- .1 There is a site walkthrough scheduled for Wednesday, April 8, 2026 at 3:30 PM sharp located at 77 Melrose Avenue North, Hamilton ON, L8L 6X4. Individuals are prohibited from accessing the school/facility outside of the scheduled site walkthrough. Attendees are requested to meet at the main entrance of the school.
- .2 Potential Bidders are encouraged to extend an invitation, if deemed necessary, to potential subtrades (ie. demolition, mechanical, electrical, etc.).

- .3 Although the Board will not be obligated to accommodate any additional requests for a hosted walkthrough, the Board reserves the right to schedule an additional walkthrough if extenuating circumstances apply. The Board shall be the sole judge of such circumstances.
- .4 The Board has the right to cancel or reschedule the scheduled site walkthrough without obligation to Bidders. Any costs incurred are the responsibility of the Bidders.
- .5 Regardless of attendance, all Bidders are expected to understand the scope of Work and the site conditions and to have thoroughly familiarized themselves with all pertinent conditions before delivery of their Tender.

2.0 INSTRUCTIONS TO BIDDERS

2.1 TENDER DOCUMENTS

- .1 The following documents form the basis of this Tender and shall be considered by Bidders:
 - a. Instructions to Bidders
 - b. Form of Tender and any attached reference
 - c. Supplementary Conditions
 - d. Specifications
 - e. Schedules
 - f. Drawings
 - g. Appendices and Tender specific documentation
 - h. all Addenda
- .2 Upon receipt of Tender Documents, verify the documents are complete; notify the individual identified on the communication notice page should the documents be incomplete. Owner takes no responsibility for, and Bidders hereby release Owner from any costs, losses or damages sustained by any Bidder arising from any incomplete documents.
- .3 The Tender Documents for this Project are available hwdsb.bidsandtenders.ca

2.2 PRE-QUALIFICATIONS

- .1 The Board has undertaken the pre-qualification process listed below. Only bids received from these successful, pre-qualified Contractors will be considered.
 - a. Intentionally left blank.
- .2 The Board has undertaken the pre-qualification process listed below for a category of Subcontractor. The Contractor shall carry one of the following pre-qualified Subcontractors for this competitive process:
 - a. Intentionally left blank.

2.3 SUBMISSION REQUIREMENTS

- .1 Bidders shall have a supplier account with “bidsandtenders” (hwdsb.bidsandtenders.ca) and must be registered as a supplier for this competitive process. If a Bidder has obtained the RFT documents(s) from a third party, the onus is on the Bidder to create a supplier account and register as a supplier for the bid opportunity. Failure to comply will result in the submission being rejected.
- .2 The Board shall only accept electronic Tender submissions received by the Bidding System. Tenders submitted and/or received by any other method shall be rejected, unless the Board has instructed otherwise by Addendum.
- .3 To be considered in the RFT process, a Bidder’s Tender submission must be received on or before the tender closing date and time as identified in the Project Schedule or as may be otherwise provided by Addendum. Late Tenders shall not be accepted and will be rejected immediately.

- .4 Bidders are cautioned that the timing of their Tender submission is based on when the Tender is received by the Bidding System, not when a Tender is submitted by a Bidder, as Tender transmissions can be delayed in an 'internet traffic jam' due to file transfer size, transmission speed, etc.

For the reasons above, the Board recommends that Bidders allow sufficient time when submitting their Tender, including attachment(s), to resolve unanticipated issues that may arise. The closing time shall be determined by the Bidding System web clock.

- .5 The Bidding System will send a confirmation email to the Bidder advising that their Tender was submitted successfully. If an email confirmation is not received, contact the Bidding System's support email identified in the Communications Notice.
- .6 The Tender must not be restricted by any conditions or qualifications added to the Tender in the form of a covering letter or alterations to the Form of Tender and/or appendices provided; any such conditions or qualifications will render the Tender non-compliant and ineligible for acceptance.
- .7 Prior to the submission of the Total Contract Price, all Bidders shall carefully examine the Tender Documents or the Contract Documents and fully inform themselves of the existing conditions and limitations of the Work. If there exists doubt in the Bidder's mind as to the intent of any information shown on the Tender Documents or Contract Documents, the Bidder must request clarification from the Owner representative through the process identified on the Communications Notice prior to submission of the Tender.
- .8 It is the sole responsibility of each Bidder to submit a complete Tender in accordance with these instructions, the Form of Tender, appendices, the Specifications and the special provisions.
- .9 Any costs incurred in the preparation and submission of a Tender are solely the responsibility of the Bidder.
- .10 Upon the closing date and time of this Tender, all Tenders submitted will be irrevocable by the Bidder and will remain open for acceptance for a minimum period of 90 (ninety) calendar days.
- .11 Failure to comply with the requirements of these instructions to bidders may cause a Tender to be declared invalid and such Tender may be rejected, at the sole and unfettered discretion of the Board.
- .12 In the event that Board operations are suspended, for any reason, on the closing date of this competitive process, the closing date will be changed to the next Working Day. The closing time will remain the same.

2.4 CONTRACT SECURITY

.1 TENDER SECURITY

- a. Each Bidder shall submit with its Tender a Tender Security in the form of a digital bid bond in an electronically verifiable and enforceable (e-Bond) format naming Hamilton-Wentworth District School Board as obligee, in the amount of ten percent (10%) of the Total Contract Price.
- b. For additional information regarding e-Bonds, Bidders should contact their surety company or visit Surety Associate of Canada.

<https://www.suretycanada.com/en/ebonding/index.html>

- c. A scanned PDF copy of bonds, original certified cheque, bank draft, money order or any other format other than a digital bid bond is not acceptable and shall be rejected.
- d. Bidders shall upload their Tender Security to the Bidding System, in the bid submission file labelled "Bonding". All instructions and details for assessing authentication shall be included with the digital bond uploaded in the Bidding System. In the event the uploaded Tender Security cannot be electronically verified by the Board, the Tender shall be rejected.
- e. A Tender Security shall, include such terms, be in a form, be executed appropriately and be provided by an issuer authorized to do business in the Province of Ontario, satisfactory to the Board in its reasonable discretion.
- f. The term of the Tender Security shall be for a minimum period of ninety (90) calendar days after the closing date of the Request for Tender. Any Tender Security submitted with less than the ninety (90) calendar days term shall be rejected.
- g. A Tender submitted without the required Tender Security in the appropriate amount identified above shall be rejected.
- h. The digital Tender Security will not be returned to the Bidder.
- i. In the event of a failure or refusal on the part of the Successful Bidder to enter into the Contract, to commence the Work following the issuance of a purchase order(s) or notice to proceed, and/or give the specified security required under the Request for Tender and the Contract, the Board shall declare the Tender Security forfeited and the Successful Bidder may be held responsible at the Board's discretion for any increased cost or damages incurred by the Board over and above the amount of the Tender Security.

.2 PERFORMANCE BOND

- a. Each Bidder shall obtain a digital Performance Bond as approved by the Canadian Construction Association from a licensed Canadian Surety Company authorized to do business in the Province of Ontario in the amount of fifty percent (50%) of the Contract Price, according to the terms and conditions acceptable to the Board and the Consultant and in the form required under the *Construction Act* R.S.O. 1990, c. C.30, as amended.
- b. The Performance Bond shall be in the form of a digital bond in an electronically verifiable and enforceable (e-Bond) format naming Hamilton-Wentworth District School Board as obligee.
- c. The Bidder shall include the cost of such Performance Bond in the Tender Submission.
- d. The Successful Bidder shall furnish the Performance Bond to the Board, prior to the execution of the Contract, within ten (10) business days of being notified that its Tender has been accepted.
- e. The Successful Bidder shall provide to the Board such digital bond with the submission of the signed Contract and shall be in accordance with the prescribed form for bonds under the Construction Act and, where not inconsistent therewith, the CCDC approved bond forms.

.3 LABOUR AND MATERIAL PAYMENT BOND

- a. Each Bidder shall obtain a digital Labour and Material Payment Bond from a licensed Canadian Surety Company authorized to do business in the Province of Ontario in the amount of fifty percent (50%) of the Contract Price, stating that the Board will not be held

responsible if payment to Subcontractors, as certified due by the Consultant, is not made by the Contractor when due and in the form required under the *Construction Act* R.S.O. 1990, c. C.30, as amended.

- b. The Labour and Material Payment Bond shall be in the form of a digital bond in an electronically verifiable and enforceable (e-Bond) format naming Hamilton-Wentworth District School Board as obligee.
- c. The Bidder shall include the cost of such bond in the Tender Submission.
- d. The Successful Bidder shall furnish the Labour and Material Payment Bond to the Board, prior to the execution of the Contract, within ten (10) business days of being notified that its Tender has been accepted.
- e. The Successful Bidder shall provide to the Board such digital bond with the submission of the signed Contract and shall be in accordance with the prescribed form for bonds under the *Construction Act* and, where not inconsistent therewith, the CCDC approved bond forms.

2.5 ADDENDA

- .1 The Board reserves the right at any time prior to the award of the Contract, to make changes and/or revisions that are considered altering the intent of this Tender. Any changes and/or revisions will be issued as an Addendum.
- .2 The Board, in consultation with the Consultant, will review all questions and issue written instructions in the form of an Addendum, which will become part of the Contract Documents. The closing date of the competitive process may be extended as deemed appropriate by the Board.
- .3 Bidders shall acknowledge receipt of all Addenda through the Bidding System when submitting their Tender. Bidders shall check a box for all Addenda and any applicable attachments that have been issued before a Bidder can submit their Tender.
- .4 Where a Bidder submits their Tender prior to the closing date and time and an Addendum has been issued by the Board, the Bidding System automatically withdraws the Bidder's Tender submission and changes the Tender submission to an "incomplete status" (not accepted by the Board). The withdrawn Tender can be viewed by the Bidder in the "My Bids" section of the Bidding System. It is the Bidder's sole responsibility to:
 - a. make any required adjustments to their Tender;
 - b. acknowledge all Addenda that have been issued for this competitive process; and
 - c. ensure the re-submitted Tender is received by the Bidding System before the closing date and time.
- .5 The Board shall not be liable for any expense, cost, loss or damage incurred or suffered by any Bidder as a result of the publication of an Addendum or other notice.

2.6 WITHDRAWAL/EDITS OF TENDER

- .1 A Bidder may withdraw a Tender at any time prior to the closing date and time for the competitive process.

- .2 Tenders withdrawn may be edited and re-submitted prior to the closing date and time. It is the Bidder's sole responsibility to:
 - a. make any required adjustments to their Tender;
 - b. acknowledge all Addenda that have been issued for this competitive process; and
 - c. ensure the re-submitted Tender is received by the Bidding System prior to the closing date and time.
- .3 Requests to withdraw Tenders after the closing date and time of the competitive process will be disregarded.
- .4 Adjustments requested, by any means, to a Tender already submitted, will not be considered.

3.0 GENERAL INFORMATION

3.1 ACCEPTANCE OR REJECTION

- .1 Tenders shall remain open to acceptance for a period of ninety (90) calendar days commencing on and including the date set for receipt of Tenders, and the Board may at any time within this period accept any of the Tenders received.
- .2 The Board reserves the right to accept or reject any and all Tenders and to accept any part of any one Tender. The Board may request further clarification of a Tender from the Bidder. While the Board is not obligated to consider Tenders which do not strictly comply with its requirements, it nevertheless reserves the right to do so, and specifically reserves the right to waive formalities and accept Tenders that the Board deems to be substantially or substantively compliant.
- .3 Notwithstanding anything herein to the contrary, if any Tender contains technical errors or omissions which the Board, in its sole and unfettered discretion deems to be minor, the said Bidder may be asked by the Board to acknowledge and/or clarify those minor technical errors or omissions prior to the award of the Contract.
- .4 If more than one substantially or substantively compliant Tender is received where the Total Contract Price are identical, the Bidder with the lowest overall separate prices that are accepted by the Owner will be selected. If no separate prices exist or are accepted, the Owner, in the presence of the identical Bidders, will flip a coin to determine the award.
- .5 No Tender shall be deemed to be accepted by the Board until the Successful Bidder receives a notice, in writing, of the acceptance and has produced the original bonding, insurance and requirements of the Tender Documents. Upon issuance of Contract and subsequent purchase order(s), the Tender Documents shall serve as a binding Contract between the Successful Bidder and the Board.
- .6 The Bidders agree that in submitting a Tender, in reply to this document, that they recognize the Board as the sole arbitrator in the selection or rejection of a Bidder, and that they waive any and all rights to challenge the Board's decision in any manner before any organization or court.
- .7 The Board and the Consultant shall not be responsible for any liabilities, costs, expenses, loss or damage incurred, sustained or suffered by any Bidder, prior or subsequent to, or by reason of the acceptance or the non-acceptance by the Board of any Tender or by reason of any delay in the acceptance of a Tender. Tenders are subject to a formal Contract being prepared and executed.

3.2 ACCESSIBILITY FOR ONTARIANS WITH DISABILITIES ACT

- .1 Pursuant to Section 6 of Ontario Regulation 429/07 ("Regulation"), Accessibility Standards for Customer Service made under the *Accessibility for Ontarians with Disabilities Act, 2005* ("AODA"), the Successful Bidder shall ensure that all of its employees, agents, volunteers, or others for whom it is at law responsible, receive training about the provision of the goods and services contemplated herein to persons with disabilities. Such training shall be provided in accordance with Section 6 of the Regulation and shall include, without limitation, a review of the purposes of the AODA and the requirements of the Regulation, as well as instruction regarding all matters set out in Section 6 of the Regulation. Where requested by the Board, the Successful Bidder shall

provide written proof that all employees have been trained as required under the AODA as well as any documentation regarding training policies, practices and procedures.

3.3 COMPETITIVE PROCESS PROTEST PROCEDURE

- .1 In the event that a Bidder wishes to review the decision of the Board in respect of any material aspect of the Request for Tender process, the Bidder shall submit a protest in writing to the Board to the attention of the Manager of Procurement and Risk Management Services within ten (10) calendars days of the closing date of the Tender.
- .2 Any protest in writing shall include the following:
 - a. a specific identification of the provision and/or procurement procedure that is alleged to have been breached;
 - b. a specific description of each act alleged to have breached the procurement process;
 - c. a precise statement of the relevant facts;
 - d. an identification of the issues to be resolved;
 - e. the Bidder's arguments and supporting documentation;
 - f. the Bidder's requested remedy.

3.4 CONFIDENTIALITY

- .1 All information provided by or obtained from the Board in any form in connection with this Request for Tender either before or after the issuance of this Request for Tender:
 - a. is the sole property of the Board and must be treated as confidential;
 - b. is not to be used for any purpose other than replying to this Request for Tender and the performance of the Contract;
 - c. must not be disclosed without prior written authorization from the Board; and
 - d. shall be returned by the Bidders to the Board immediately upon the request of the Board.

3.5 DISPUTE RESOLUTION

- .1 The parties to any contract agree that Ontario is the appropriate and sole jurisdiction with respect to the adjudication of any disputes between the parties.
- .2 Any dispute between the parties arising out of, or relevant to, this competitive process or Contract which cannot be resolved by the parties, shall be referred to mediation for mandatory alternative dispute resolution, and a mediator shall be selected by the parties with requisite skill or experience in the subject matter related to the dispute. Such mediation is to take place within thirty (30) days of such referral. Any dispute between parties which cannot be resolved by such mediation shall be settled and determined by a Court of competent jurisdiction, provided however, that the Board reserves the right to submit such dispute for settlement and determination by arbitration with reference to the Arbitration Act, 1991 as same may be amended from time to time, in which case the following provisions shall apply. Either party may at any time give written notice to the other of its desire to submit such dispute to arbitration stating, with reasonable particularity, the subject matter of such dispute. In the case of the Bidder giving notice to the Board, if the Board does not consent to submitting such matter to arbitration, the Bidder may refer such matter to a court of competent justice. If the Board

generates the notice, or if the notice is generated by the Bidder and consented to by the Board, then the following provisions shall apply;

- a. Within five (5) business days after receipt of such notice, the parties shall appoint a single arbitrator with appropriate experience to determine such dispute.
- b. If the parties fail to appoint an arbitrator, either party may apply to a Judge of the Superior Court of Justice to appoint an arbitrator to determine such dispute.
- c. The costs of arbitration shall be paid by the party as determined by the arbitrator, which jurisdiction shall include the determination of the costs to be paid by the unsuccessful party.
- d. The award of the arbitrator shall be final and binding upon the parties.
- e. Judgment upon the award rendered by the arbitrator may be entered in any court having jurisdiction and enforced in the normal course.
- f. Any such mediation or arbitration shall take place in the City of Hamilton, unless mutually agreed by the parties to hold it in another jurisdiction or virtually.

3.6 ENTITLEMENT TO A DEBRIEFING

- .1 In accordance with the Broader Public Sector Procurement Directive, Bidders are entitled to a debriefing, during which they will be provided with feedback regarding their submission. In order to be debriefed, Bidders must contact the Procurement representative identified on the Communications Notice page, in writing, to request a debriefing within sixty (60) calendar days from the date of the notification of award.

3.7 EXECUTION OF A CONTRACT AND BOARD'S PURCHASE ORDER

- .1 The Successful Bidder shall execute a CCDC 2 2020 Stipulated Price Contract, together with all required supplemental conditions as set out in this RFT, in writing with the Board within ten (10) calendar days of being notified, in writing, by the Board, of the acceptance of the Tender. In the event that the Successful Bidder fails to execute a Contract within the said period, the Board, at its sole and unfettered discretion, may rescind the selection of that Bidder and make an offer to next lowest compliant Bidder or reject all Tenders. If a Tender Security was requested as part of the Tender and the Successful Bidder fails to execute a Contract, the Bidder may be required to forfeit their Tender Security to the Board and thereafter the Contract between such Bidder and the Board shall be forthwith terminated, forfeited and ended.
- .2 A purchase order accepting a Tender will be issued by the Board to the Successful Bidder following the execution of the Contract.

3.8 GOVERNANCE

- .1 The performance and interpretation of this competitive process and Contract shall be governed according to applicable federal, provincial and municipal laws, regulations and standards.
- .2 During the term of the Contract, the Successful Bidder shall comply with all applicable Board policies and procedures, including the Board's Code of Conduct and Records and Information Management Procedure. Please visit the Board's website <http://www.hwdsb.on.ca/about/policies/> for additional information.

3.9 HEALTH AND SAFETY REQUIREMENTS

- .1 Employees of the Successful Bidder shall ensure that they comply with the *Occupational Health & Safety Act* and Regulations for Industrial Establishments.
- .2 The Ministry of Education and Training and the Ministry of Health provide regulations specifying which substances/products are not acceptable. If applicable, the Successful Bidder shall supply Material Safety Data Sheets providing the Board with the breakdown of components for any products used in Board facilities with every shipment.

3.10 INVOICING

- .1 The Successful Bidder shall comply to the following invoicing instructions;
 - a. All taxes are extra and shall be shown separately on each invoice in accordance with Canadian and Provincial Government regulations.
 - b. All invoices must meet the requirements of a Proper Invoice (see definition).
 - c. Complete an Application for Payment (see definition).
 - d. A complete original hard copy Application for Payment is to be couriered to:

Hamilton-Wentworth District School Board
Attention Accounts Payable
20 Education Court, Hamilton, ON L9A 0B9
- .2 The Board intends to pay all invoices via electronic funds transfer (EFT) and the payment terms of an approved complete Application for Payment is payable in accordance with the Construction Act based on receipt of a Proper Invoice by the Owner containing the Contractors issued invoice to the Payment Certifier and HWDSB Capital Project Supervisor.
- .3 If not already set up to receive EFT payments from the Board, contact Procurement and Risk Management Services at purchasing@hwdsb.on.ca requesting EFT setup documentation.

3.11 MUNICIPAL FREEDOM OF INFORMATION AND PROTECTION OF PRIVACY ACT

- .1 Hamilton-Wentworth District School Board is governed by the *Municipal Freedom of Information and Protection of Privacy Act*, R.S.O. 1990, c. M.56 ("MFIPPA"). By submitting a Tender, including any personal information requested in the RFT, Bidders agree to the use of that information by HWDSB for the evaluation process, for any audit of this procurement process, and for contract management purposes.
- .2 Once submitted to the Board, information you provide in your Tender is subject to MFIPPA and, in the event of a Freedom of Information (FOI) access request, must be disclosed. Bidders are permitted to specifically identify any protected confidential information in their Tender. Pursuant to Section 10 of MFIPPA, Third Party Information, protected confidential information consists of information that reveals a trade secret or scientific, technical, commercial, financial, proprietary or similar confidential information that, if disclosed, could reasonably be expected to cause the Bidder harm. Complete Tenders are not to be identified as confidential. In the event that HWDSB receives a request for access to all or part of a Tender, HWDSB will deliver the relevant notice to the affected Bidder pursuant to MFIPPA Section 21.
- .3 If Bidders have any questions in this regard, please consult HWDSB's Privacy Officer at 905-527-5092 x2259

3.12 OWNER NOTICE ON NON-PAYMENT

- .1 When payment disputes arise, whether in whole or in part, the Board will issue a notice of non-payment by completing *Construction Act*, Form 1.1 Owner Notice of Non-Payment (subsection 6.4(2) of the Act). The email address provided on the Form of Tender shall be deemed as the proper party to serve such notices.

3.13 RECORD AND REPUTATION

- .1 Without limiting or restricting any other right or privilege of the Board, and regardless of whether or not a Tender or Bidder otherwise satisfies the requirements of a competitive process, the Board may reject summarily a Tender from any person where:
 - a. the commercial relationship between the Board and the Bidder has been demonstrably impaired by the prior and/or current act(s), or omission(s) of such Bidder;
 - b. the Bidder is or has been engaged, either directly or indirectly, in a legal action against the Board, within the last 10 years, its elected or appointed officials and/or employees in relation to
 - i. any contract or service; or
 - ii. any matter arising from the Board's exercise of its powers, duties or functions.
- .2 The Bidder who has breached any applicable laws or who has engaged in conduct prohibited by this Request for Tender, including where there is any evidence that the Bidder or any of its employees or agents colluded with any other Bidder, its employees or agents in the preparation of the Tender;
- .3 The Bidder has, or the principals of a Bidder have, previously breached a contract with the Board, or has otherwise failed to perform such Contract to the reasonable satisfaction of the Board, the Bidder has been charged or convicted of an offence in respect of a contract with the Board, or the Bidder reveals a conflict of interest or unfair advantage in its Tender or a conflict of interest or evidence of any unfair advantage is brought to the attention of the Board;
- .4 In determining whether or not to reject;
 - a. a Tender under this section, the Board may consider whether the litigation is likely to affect the Bidder's ability to work with the Board, and/or whether the Board's experience with the Bidder indicates that the Board is likely to incur increased staff and legal costs in the administration of the Contract if it is awarded to the Bidder.
 - b. For the purposes of subsection (1), the prior acts or omissions of a Bidder shall also include the prior acts or omissions of: an officer, a director, a majority or controlling shareholder, or a member of the Bidder, if a corporation; a partner of the Bidder, if a partnership; any corporation to which the Bidder is an affiliate of or successor to, or an officer, a director or a majority or controlling shareholder of such corporation; and any person with whom that the Bidder is not at arm's length within the meaning of the *Income Tax Act* (Canada).

3.14 RESERVED RIGHTS OF THE BOARD

- .1 The Board shall have the following reserved rights and privileges, which may be exercised or waived in its absolute discretion:
 - a. Make public the names of any or all Bidders;

- b. Request written clarification or the submission of supplementary written information from any Bidder and incorporate such clarification or supplementary written information into the Bidder's Tender, at the Board's discretion, provided that clarification or submission of supplementary written information shall not be an opportunity for the Bidder to correct errors in its Tender or to change or enhance the Bidder's Tender in any material manner;
 - c. Disqualify any Bidder whose Tender contains misrepresentations or any other inaccurate or misleading information, or whose Tender is determined to be non-compliant with the requirements of the Request for Tender;
 - d. The Board may reject any Tender, the lowest priced Tender or all Tenders, or may cancel the Tender and require the submission of new Tenders for any reason within its absolute discretion.
- .2 The Board reserves the right to accept any Tender that best meets the overall needs of the Board and is not obligated to accept a Tender with the lowest price.
- .3 The Board may reject any Tender submitted by a Bidder or cancel the Contract awarded to that Bidder without penalty, where any information provided by the Bidder in its Tender or as part of any competitive process is determined to be false or otherwise misleading in any material respect.
- .4 The Board reserves the right not to proceed with a Tender in its entirety or to proceed with only part of it without any obligation or liability to any Bidder.
- .5 The Board reserves the right to cancel this Request for Tender process at any stage and issue a new Request For Tender for the same or similar requirements, including where:
 - a. the Board determines it would be in the best interest of the Board not to award a Contract;
 - b. the Tender prices exceed the Tender prices received by the Board for previously supplied similar Work;
 - c. the Tender prices exceed the funds available for the Work; or
 - d. the funding for Work has been revoked, modified, or has not been approved;
 - e. and where the Board cancels this Tender, the Board may do so without providing reasons, and the Board may thereafter issue a new Request for Tender, request for qualifications, sole source or do nothing; make changes, including substantial changes, to this Request For Tender provided that those changes are issued by way of addenda in the manner set out in this Request For Tender;
 - f. accept or reject a Tender if only one Tender is submitted; or
 - g. select any Bidder other than the Bidder whose Tender reflects the lowest cost to the Board.

3.15 SEVERABILITY

- .1 The Successful Bidder hereby acknowledges and agrees if any term or condition of the Contract, or the application thereof to the parties or circumstances, is to any extent invalid or unenforceable, the remainder of the Contract, and the application of such term or condition to the parties, persons or circumstances, other than those to which it is held invalid or unenforceable, shall not be affected thereby.

3.16 SUBCONTRACTORS

- .1 Unless otherwise stipulated in this competitive process, or any addenda thereto, the Bidder shall indicate the names and addresses of all nominated Subcontractors that it proposes to use in the provision of services and/or Work contemplated by this competitive process.
- .2 The Board reserves the right to reject any Subcontractor so nominated, without penalty or liability to the Board of any kind whatsoever.
- .3 No change shall be made to the list of nominated Subcontractors after the closing time of the competitive process, without the prior written approval of the Board, and only on such terms and conditions as the Board, in the exercise of an absolute discretion, may require.
- .4 Any Bidder requesting the Board's consideration of a change of Subcontractor shall be responsible for all costs of the Board to review, investigate and approve, if acceptable, such change, including but not limited to, all of the Board's internal staff costs and all legal, financial and Consultant costs. These costs are payable even where the request is denied.
- .5 Once final approval of Subcontractors is obtained, no change will be permitted by the Successful Bidder without prior written approval by the Board and Consultant.

3.17 SUBSTITUTIONS

- .1 Requests for substitution relating to this RFT must be set out, in writing, through the Bidding System by clicking on the "Submit a Question" button for the specified RFT.
- .2 Bidders who request substitutions shall also email the requests, with complete details about the substitution, including specifications, modifications, and revisions to other work for each substitution, to the Procurement representative identified in the Communications Notice, to enable the Board and the Consultant to determine the acceptability of such substitution.
- .3 The Board, at its sole and unfettered discretion, reserves the right to accept or reject substitution.

3.18 VENDOR PERFORMANCE EVALUATION

- .1 By submitting a Tender in respect of these Contracts, the Bidder understands that the Board may use a vendor performance evaluation method and that their performance will be documented, held on file, and updated as appropriate. This evaluation will be available for review with the Contractor, and recommendations will be put forward as to the Contractor's overall suitability of future Board Projects. Bidders submitting a Tender are deemed to accept the possibility of such evaluation.

3.19 WORKPLACE SAFETY AND INSURANCE ACT

- .1 At the time of entering into the Contract, the Successful Bidder shall provide to the Board a current Clearance Certificate from the Ontario Workplace Safety and Insurance Board ("WSIB"). For the duration of the Contract, the Successful Bidder shall provide, upon each terms expiry, a renewed Clearance Certificate to the Board, by way of uploading to the Bidding System, to ensure continued good standing with the WSIB.
- .2 The Successful Bidder shall indemnify the Board against the payment of any sum required to be paid pursuant to the Workplace Safety and Insurance Act ("WSIA"). If required, the Board may deduct any such fees from any payment due to the Successful Bidder. The Board shall not be

considered to be the employer of the Successful Bidder or its personnel under any circumstances whatsoever.

- .3 Where the Successful Bidder is exempt from WSIB coverage, the Successful Bidder shall provide evidence of such exemption satisfactory to the Manager of Procurement and Risk Management Services or designate. Should the Successful Bidder's status change during the term of the Contract so that coverage is required, the Successful Bidder shall immediately provide the Board with the Clearance Certificate and subsequent renewal certificates required under item 1 above.

SUPPLEMENTARY CONDITIONS

The Standard Construction Document CCDC 2 2020 for a Stipulated Price Contract, English version, consisting of the Agreement Between *Owner* and *Contractor*, Definitions and General Conditions of the Stipulated Price Contract, Parts 1 to 14 inclusive, governing same is hereby made part of these *Contract Documents*, with the following amendments, additions and modifications.

AGREEMENT BETWEEN OWNER AND CONTRACTOR

ARTICLE A-1 THE WORK

Add the following words at the end of paragraph 1.3 “and attain *Completion* of the *Work* as soon as reasonably possible thereafter and in any event by the date which is sixty (60) calendar days following *Substantial Performance of the Work*.”

ARTICLE A-3 CONTRACT DOCUMENTS

Add the following to the list:

- “- The Supplemental Conditions
- The *Procurement Documents*
- The *Contractor’s* proposal in response to the *Procurement Documents*”

ARTICLE A-5 PAYMENT

Delete paragraph 5.2 in its entirety.

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

Add the following words “, including email,” after the words “electronic communication” in paragraph 6.2.

Add new paragraph 6.6 as follows:

- “6.6 For the purposes of the prompt payment and adjudication provisions of the *Construction Act* and Part 5 – Payment, delivery of documents to be given may be provided by electronic mail, to the email address for the *Owner* and *Contractor* set out below.”

ARTICLE A-7 LANGUAGE OF THE CONTRACT

Strikethrough the second instance of the word “French” in the second line of paragraph 7.1

ARTICLE A-9 CONFLICT OF INTEREST

Add new Article A-9 – **Conflict of Interest** as follows:

- “9.1 The *Contractor*, all of the *Subcontractors* and *Suppliers* 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* acknowledges and agrees that a Conflict of Interest, as described

in this Article A-9, includes, but is not limited to, the use of *Confidential Information* where the *Owner* has not specifically authorized such use.

- 9.2 The *Contractor* covenants and agrees that it will not hire or retain the services of any employee or previous employee of the *Owner* to complete the *Work* where to do so constitutes a breach by such employee or previous employee of the *Owner's* conflict of interest policy (in the sole opinion of the *Owner*), as it may be amended from time to time, until after the *Completion* of the *Work* under the *Contract*.
- 9.3 It is of the essence of the *Contract* that the *Owner* shall not have direct or indirect liability to any *Subcontractor* or *Supplier* and that the *Owner* relies on the maintenance of an arm's-length relationship between the *Contractor* and its *Subcontractors* and *Suppliers*. Consistent with this fundamental term of the *Contract*, the *Contractor* will not enter into any agreement or understanding with any *Subcontractor* or *Supplier*, whether as part of any contract or any written or oral collateral agreement, pursuant to which the parties thereto agree to cooperate in the presentation of a claim for payment against the *Owner*, directly or through the *Contractor*, where such claim is, in whole or in part, in respect of a disputed claim by the *Subcontractor* or *Supplier* against the *Contractor*, where the payment to the *Subcontractor* or *Supplier* by the *Contractor* is agreed to be conditional or contingent on the ability to recover those amounts or a portion thereof from the *Owner*, failing which the *Contractor* shall be saved harmless from all or a portion of those claims. The *Contractor* acknowledges that any such agreement would undermine the required arm's-length relationship and constitute a Conflict of Interest. For greater certainty, the *Contractor* shall only be entitled to advance claims against the *Owner* for amounts pertaining to *Subcontractor* or *Supplier* claims where the *Contractor* has actually paid or unconditionally acknowledged liability for those claims or where those claims are the subject of litigation or binding arbitration between the *Subcontractor* or *Supplier* and the *Contractor* has been found liable for those claims.
- 9.4 Notwithstanding paragraph 7.1.2 of GC 7.1 - OWNER'S RIGHT TO PERFORM THE WORK, TERMINATE THE CONTRACTOR'S RIGHT TO CONTINUE WITH THE WORK, SUSPEND THE WORK OR TERMINATE THE CONTRACT, a breach of this Article by the *Contractor*, any of the *Subcontractors*, or any of their respective advisors, partners, directors, officers, employees, agents, and volunteers shall entitle the *Owner* to terminate the *Contract*, in addition to any other rights and remedies that the *Owner* has in the *Contract*, in law, or in equity."

DEFINITIONS

Definitions of the *Stipulated Price Contract* of the Standard Construction Document, CCDC 2-2020, *Stipulated Price Contract* for the above-named *Project* are amended as follows:

Amend definitions as follows:

- **Consultant** – Add the following sentence to the definition of *Consultant*. “For the purposes of the *Contract*, the terms “*Consultant*”, “*Architect*” and “*Engineer*” shall be considered synonymous.”
- **Contract Documents** – Add the words “in writing” in the last line after the words “agreed upon”
- **Contractor** – Add the following sentence to the definition of *Contractor*. “The *Contractor* is the CONSTRUCTOR for the purpose of the OHSA.”
- **Notice in Writing** – Add the following sentence to the definition of *Notice in Writing*. “The *Consultant* will distribute a *Notice in Writing* to any and all sub-consultants as deemed necessary.”

Add new definitions as follows, which shall apply to terms used in the *Contract Documents* whether or not such terms are capitalized therein:

COMPLETION

“*Completion* means when:

- *Substantial Performance of the Work* has been achieved; and
- the *Consultant* has certified that the *Contract* is deemed to have been fully completed within the meaning of the *Construction Act*.”

CONFIDENTIAL INFORMATION

“*Confidential Information* means all the information or material of the *Owner* that is of a proprietary or confidential nature, whether it is identified as proprietary or confidential or not, including but not limited to information and material of every kind and description (such as drawings and move-lists) which is communicated to or comes into the possession or control of the *Contractor* at any time, but *Confidential Information* does 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*."

CONSTRUCTION ACT

"*Construction Act* means the *Construction Act*, R.S.O. 1990, c.C.30 and Regulations enacted thereunder, all as amended from time to time and subject to the application of the transition provisions in s. 87.3 of the *Construction Act*. *Payment Legislation* shall be deemed a reference to the *Construction Act*."

CONSTRUCTION SCHEDULE

"*Construction Schedule* means the schedule for the performance of the *Work* provided by the *Contractor*, in accordance with the *Owner's* requirements pursuant to GC 3.4 – CONSTRUCTION SCHEDULE, including any amendments to the *Construction Schedule* made pursuant to the *Contract Documents* and as revised and/or updated pursuant to the *Owner's* written approval."

EXCUSABLE DELAY

"*Excusable Delay* means any bona fide delay or state of affairs reasonably beyond the control of a party (other than as a result of financial incapacity of such party) which shall cause any party to be unable to fulfil or to be delayed or restricted in the fulfilment of such party's obligations arising as a result of:

- a) *Labour Disputes*, fire, unusual delay by common carriers or unavoidable casualties;
- b) enemy or hostile actions, sabotage, war, blockades, insurrections, riots, washouts, nuclear and radiation activity or fall-out, civil disturbances, explosions, fire or other casualty, and acts of God (provided specifically that adverse weather conditions shall not be considered acts of God, even if such conditions are unusually adverse);
- c) any injunction ordered by a court of competent jurisdiction other than if such occurrence is caused by the *Owner* or the *Contractor* failing to adhere to this *Contract*;
- d) power shortages or outages; or
- e) inability to obtain any required material, goods, equipment, service or labour, as a direct result of the circumstances described in (a)-(d) above, unless they are/were readily available, or reasonable substitutes were readily available (including at a greater cost), or could have been previously acquired by the party had it completed reasonable efforts to anticipate the requirements of the *Work* or foreseeable labour or supply related circumstances.

Notwithstanding the forgoing, the following potential causes for delay are not considered to be an *Excusable Delay*:

- a) failure of a *Supplier* to deliver *Products* in accordance with the *Construction Schedule*, if such *Products* were readily available, or reasonable substitutes were readily available (including at a greater cost), or could have been previously

acquired by the party had it completed reasonable efforts to anticipate the requirements of the *Work* or foreseeable labour or supply related circumstances;

- b) delays caused by economic conditions, including without limitation supply chain shortages or delays, labour shortages, price increases, or changes in tariffs;
- c) weather and climate related delays;
- d) delays caused by the failure of the *Contractor* to take customary precautions and protections of the *Work* and the *Construction Schedule* in accordance with *Contract*; and
- e) public orders, guidelines, directives and laws in existence prior to the date the *Contract* was signed.”

INSTALL

“*Install* or *Installation* means completion of the following activities, including the associated labour, services, plant, construction machinery and equipment required to:

- a) Position and adjust *Products* to final placement;
- b) Affix and anchor *Products* in final placement, in accordance with manufacturers’ instructions and *Contract Documents*;
- c) Commission and adjust *Products* for proper operation.”

LABOUR DISPUTE

“*Labour Dispute* means any lawful or unlawful work stoppage, labour disruption, strike, job action, lock-outs, picketing, or other labour controversy which does affect the *Work* but does not include market difficulties or slow-downs in retaining workers/employees (whether due to wage demands or otherwise) or a general refusal to work or supply materials.”

OHSA

“The *OHSA* is the *Occupational Health and Safety Act* (Ontario), and all other applicable health and safety acts or regulations.”

OVERHEAD

“*Overhead* means all indirect costs and expenses incurred by the *Contractor* in the performance of the *Work* or any change in the *Work*, whether incurred at the *Place of the Work*, at any site or field office, or at the *Contractor’s* head office. *Overhead* includes all site and head office operations, facilities, administration, and supervision, including project manager costs, and includes, without limitation:

- a) management, supervision, administration, coordination, estimating, scheduling, drafting, and related support personnel and services;
- b) preparation, review, revision, and coordination of shop drawings, as-built drawings, schedules, takeoffs, pricing, change documentation, submittals, warranties, and other requirements of Division 1 of the *Specifications*;
- c) head office, site office, and field office expenses of any kind;

- d) tools, small tools, expendables, trucks, equipment, temporary works, and temporary facilities;
- e) mobilization, demobilization, transportation, travel, accommodations, meals, and movement of personnel, equipment, materials, and supplies to, from, or within the *Place of the Work*;
- f) safety, security, quality assurance, quality control, calculations, inspections, testing, and deficiency management;
- g) communications, document reproduction, courier services, and similar project support costs;
- h) insurance and bonding, including all adjustments, notices, and compliance requirements arising from changes in the *Work*;
- i) cleanup, waste handling, and disposal; and
- j) compliance with all requirements of authorities having jurisdiction, including permits, licenses, duties, and non-*Value Added Taxes*, and all other costs of a similar indirect or overhead nature not otherwise included as a direct cost of the *Work*."

PROCUREMENT DOCUMENTS

"Procurement Documents means the tender documents issued by the *Owner* with respect to the *Work*, including all documents incorporated by reference, appendices, attachments, addenda, and forms."

PROPER INVOICE

"Proper Invoice as defined in the *Construction Act* and as supplemented by all requirements of paragraph 5.2.2."

PROPOSED CHANGE

"Proposed Change, Contemplated Change Order or Contemplated Change Notice is a written instruction by the *Consultant* directing the *Contractor* to provide the following:

- a) Amount of an adjustment in the *Contract Price* or Cash Allowance; and/or
- b) The extent of the adjustment in the *Contract Time* if any."

PROVIDE

"Provide means to supply and install. *Provide* has this meaning whether or not the first letter is capitalized."

SUBMITTALS

"Submittals are documents or items required by the *Contract Documents* to be provided by the *Contractor*, such as:

- a) *Shop Drawings*, samples, models, mock-ups to indicate details or characteristics, before the portion of the *Work* that they represent can be incorporated into the *Work*; and

- b) Record drawings, as-built drawings, and manuals to provide instructions for the operation and maintenance of the *Work*.”

GENERAL CONDITIONS

Where a General Condition or paragraph of the General Conditions of the *Contract* is deleted by these amendments, the numbering of the remaining General Conditions or paragraphs shall remain unchanged, unless stated otherwise herein, and the numbering of the deleted item will be retained, unused.

PART 1 GENERAL PROVISIONS

GC 1.1 CONTRACT DOCUMENTS

1. Delete the words “required on to the extent” in the second line of paragraph 1.1.2.

2. Delete paragraph 1.1.4 in its entirety and replace with the following:

“1.1.4 The *Contractor* is not responsible for errors, omissions or inconsistencies in the *Contract Documents* which the *Contractor* could not have reasonably discovered applying the standard of care required pursuant to paragraph 3.10 and conducting all inspections and investigations required in the *Contract*, including those pursuant to paragraph 1.6. If there are perceived errors, omissions, or inconsistencies discovered by or made known to the *Contractor*, including where the *Contract Documents* are inconsistent with the design intention or functionality, the *Contractor* shall promptly report to the *Consultant* and shall not proceed with the work affected until the *Contractor* has received corrected or additional information from the *Consultant*.”

3. Delete paragraph 1.1.5.1 in its entirety and replace with the following:

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

- Any amendment to the Agreement between the *Owner* and the *Contractor* made in accordance with the General Conditions, including without limitation, warranties and fully executed *Change Orders*, with the most recent amendment having higher priority than older amendments,
- the Supplementary Conditions,
- the Agreement between the *Owner* and the *Contractor*,
- the Definitions,
- the General Conditions,
- Division 01 of the *Specifications*,
- technical *Specifications*,
- material and finishing schedules,
- the *Drawings*,
- addenda to the *Procurement Documents*
- the *Procurement Documents*
- the *Contractor’s* proposal in response to the *Procurement Documents*.”

4. Add the following to the end of paragraph 1.1.9:

“1.1.9 The *Specifications* are divided into divisions and sections for convenience but shall be read as a whole and neither such division nor anything else contained in the *Contract Documents* will be construed to place responsibility on the *Owner* or the *Consultant* to settle disputes among the *Subcontractors* and *Suppliers* with respect to such divisions. The *Drawings* are, in part, diagrammatic and are intended to convey the scope of the *Work* and indicate general and appropriate locations, arrangements and sizes of fixtures, equipment and outlets. The *Contractor* shall obtain more accurate information about the locations, arrangements and sizes from study and coordination of the *Drawings*, including *Shop Drawings* and shall become familiar with conditions and spaces affecting those matters before proceedings with the *Work*. Where site conditions require reasonable minor changes in indicated locations and arrangements, the *Contractor* shall make such changes at no additional cost to the *Owner*. Similarly, where known conditions or existing conditions interfere with new installation and require relocation, the *Contractor* shall include such relocation in the *Work*. The *Contractor* shall arrange and install fixtures and equipment in such a way as to conserve as much headroom and space as possible. The schedules are those portions of the *Contact Documents*, wherever located and whenever issued, which compile information of similar content and may consist of drawings, tables and/or lists.”

5. Add new subparagraph 1.1.9.1 as follows:

“.1 The *Contractor* is the sole coordinator of the *Work* and neither the organization of the *Specifications* into the divisions, sections and parts, nor the arrangement of the drawings shall oblige the *Consultant* or the *Owner* to act as arbiter to establish limits or responsibility between the *Contractor* and its *Subcontractors*.”

6. Add new paragraphs 1.1.12, 1.1.13, 1.1.14, 1.1.15 and 1.1.16 as follows:

“1.1.12 Syntax:

- .1 Where the words ‘accepted’, ‘reviewed’, ‘designated’, ‘directed’, ‘inspected’, ‘instructed’, ‘permitted’, ‘required’, and ‘selected’ are used in the *Contract Documents*, they are deemed to be followed by the words ‘by the *Consultant*’, unless the context provides otherwise.
- .2 Where the words ‘acceptable’, ‘submit’ and ‘satisfactory’ are used in the *Contract Documents*, they are deemed to be followed by the words ‘to the *Consultant*’, unless the context provides otherwise.”

1.1.13 The *Consultant*, on behalf of the *Owner* shall provide the *Contractor* without charge, an electronic PDF/CAD drawings and version of the

Contract Documents, exclusive of those required by jurisdictional authorities and the *Contractor* is responsible to print as many copies as it requires at no cost to the *Owner*. The *Consultant* shall issue Issued for Construction set of *Contract Documents* in an electronic format to the *Contractor*. Additional copies can be purchased by the *Contractor* at the *Consultant's* cost of reproduction, handling and sales tax. Unless the *Contract Documents* otherwise provide for, allow, require or the parties consent to the use of electronic signatures, the *Contract Documents* shall be signed in triplicate (3) by the *Owner* and the *Contractor*, and each of the *Contractor*, the *Owner* and the *Consultant* shall retain one set of signed and sealed (if required by the governing law of the *Contract*) *Contract Documents*."

- 1.1.14 If, at any time, the *Contractor* finds errors, inconsistencies, or omissions in the *Contract Documents* or has any doubt as to the meaning or intent of any part thereof, including laying out of the *Work*, the *Contractor* shall immediately notify the *Consultant*, and request instructions, a *Supplemental Instruction*, *Change Order*, or *Change Directive*, as the case may require, and the *Contractor* shall not proceed with the work affected until the *Contractor* has received such instructions, a *Supplemental Instruction*, *Change Order* or *Change Directive*. Neither the *Owner* nor the *Consultant* will be responsible for the consequences of any action of the *Contractor* based on oral instructions. Errors, inconsistencies and/or omissions in the *Drawings* and/or *Specifications* which do not allow *Completion* of the *Work* of the *Contract* shall be brought to the *Consultant's* attention prior to the execution of the *Contract* by means of a request for information. Notwithstanding the foregoing, errors, inconsistencies, discrepancies and/or omissions shall not include lack of reference on the *Drawings* or in the *Specifications* to labour and/or *Products* that are required or normally recognized within respective trade practices as being necessary for the complete execution of the *Work*. The *Contractor* shall not use subsequent requests for information, issued during execution of the *Work* to establish a change and/or changes in the *Work* pursuant to Part 6 – CHANGES IN THE WORK.
- 1.1.15 The *Owner* and the *Contractor* agree that no provision of the *Contract Documents* shall be interpreted or construed against the *Owner* or the *Contractor* the basis that such person, or its representatives, drafted, prepared, or proposed such provision. The *Owner* and the *Contractor* acknowledge and agree that the *Contract Documents* shall be construed as if jointly drafted by both the *Owner* and the *Contractor*. Accordingly, the rule of interpretation known as *contra proferentem* shall not apply to the *Contract Documents*. For greater certainty, the inclusion of the Supplementary Conditions in the *Procurement Documents* and the execution of the *Contract* by the *Contractor* shall each constitute an acknowledgment that the *Contractor* has had a full and fair opportunity to review, consider, and seek independent legal advice with respect to all terms and conditions contained in the *Contract Documents*."

- 1.1.16 If any provision of this *Contract* is found by a court of competent jurisdiction, adjudicator, or arbitrator to be invalid, illegal, or unenforceable, such finding shall not affect the validity, legality, or enforceability of the remaining provisions, which shall continue in full force and effect. To the extent permitted by applicable law, any such invalid, illegal, or unenforceable provision shall be modified to the minimum extent necessary to render it valid and enforceable while preserving the original intent of the parties, or if such modification is not possible, shall be severed from this *Contract*.”

ADDITIONAL GENERAL CONDITION – GC 1.5

1. Add the following words to the beginning of paragraph 1.3.2: “Except with respect to all *Notice in Writing* requirements of the *Contractor* and as otherwise specified in this *Contract*, no”
2. Add new GC 1.5 as follows:

“GC 1.5 PROJECT REQUIREMENTS

1.5.1 The *Contractor* represents covenants and warrants to the *Owner* that:

- .1 It has the necessary high degree of expertise and experience to enable it to perform the services required by the *Contract Documents*;
- .2 The personnel it assigns to the *Project* are highly experienced;
- .3 It has a sufficient staff of qualified and competent personnel to replace its designated supervisor and project manager, subject to the *Owner’s* approval, in the event of death, incapacity or resignation;
- .4 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*;
- .5 If the *Contractor* is not maintaining the *Construction Schedule*, consistent with its obligations under the *Contract*, then at the request of the *Owner*, or the *Consultant*, it shall increase its efforts to the *Project* including the addition of more personnel to the *Project* during regular times and during periods of time for which overtime may be required, all of which is to be done promptly at the *Contractor’s* own cost and expense; and
- .6 In tendering for the *Work* and in entering into this *Contract*, other than any survey or geotechnical report furnished by the *Owner*, the *Contractor* did not and does not rely upon information furnished by the *Owner* or any of its agents or servants respecting the nature or confirmation of the ground at the site of the *Work*, or the location, character, quality or quantity of the materials to be removed or to be employed in the construction of *Work*, or the character of the

construction machinery and equipment or facilities needed to perform the *Work*, or the general and local performance of the work under the *Contract* and expressly waives and releases the *Owner* from all claims with respect to the said information with respect to the *Work*.”

3. Add new GC 1.6 as follows:

“GC 1.6 EXAMINATION OF DOCUMENTS AND SITE

- 1.6.1 The *Contractor* declares and represents that in tendering for the *Work*, and in entering into a *Contract* with the *Owner* for the performance of the *Work*, it has either investigated for itself the character of the *Work* to be done and all local conditions, including the location of any utility which can be determined from the records or other information available at the offices of any person, partnership, corporation, including a municipal corporation and any board or commission thereof having jurisdiction or control over the utility that might affect its tender or its acceptance of the *Work*, or that, not having so investigated, the *Contractor* has assumed and does hereby assume all risk of conditions now existing or arising in the course of the *Work* which might or could make the *Work*, or any items thereof more expensive in character, or more onerous to fulfil, than was contemplated or known when the tender was made or the *Contract* signed.
- 1.6.2 The *Contractor* also declares that in tendering for the *Work* and in entering into this *Contract*, the *Contractor* did not and does not rely upon information furnished by the *Owner* or any of its agents or servants respecting the nature or confirmation of the ground at the site of the *Work*, or the location, character, quality or quantity of the materials to be removed or to be employed in the construction of *Work*, or the character of the construction machinery and equipment or facilities needed to perform the *Work*, or the general and local performance of the work under the *Contract* and expressly waives and releases the *Owner* from all claims with respect to the said information with respect to the *Work*.”

4. Add new GC 1.7 as follows:

“GC 1.7 TIME IS OF THE ESSENCE OF THE CONTRACT

- 1.7.1 All time limits stated in the *Contract Documents* are of the essence of the *Contract*.
- 1.7.2 In the event that the *Contractor* fails to maintain the pace of *Work* required to meet the *Contract* performance deadlines, the *Owner* may require, by *Notice in Writing*, that the *Contractor* submit for approval a remedial plan under which it will accelerate the pace of *Work* to meet the *Contract* performance deadlines. Once approved by the *Owner*, the remedial plan must be incorporated into the *Construction Schedule*. If the

Contractor fails to perform the *Work* at the rate established in the remedial plan or fails to submit a remedial plan, the *Owner* may, by *Notice in Writing*, and without prejudice to its other rights and remedies under the *Contract*, order the *Contractor* to take all reasonable and necessary measures to achieve the rate of *Work* required by the *Contract* and the *Construction Schedule* or remedial plan. Such measures include, but are not limited to, the performance of overtime work or the use of additional construction equipment, all at the *Contractor's* expense. Failure of the *Contractor* to comply with this section shall be considered a material breach of the *Contract*."

PART 2 ADMINISTRATION OF THE CONTRACT

GC 2.2 ROLE OF THE CONSULTANT

1. Add new subparagraphs 2.2.7.1 and 2.2.7.2 as follows:

"1. Questions shall be submitted by the *Contractor* in the form of a "Request for Information" in relation to a "*Proposed Change*" or "*Change Directive*" or "*Contemplated Change Order*"."

.2 Where, in the opinion of the *Consultant*, the *Contractor* (including its *Subcontractors* and *Suppliers*) has made an extensive or unreasonable number or size of claims or Requests for Information, the *Consultant's* costs in relation to the evaluation of such extensive or unreasonable number or size of claims or Requests for Information is the responsibility of the *Contractor*."

2. Add new subparagraph 2.2.11.1

"1. Where, in the opinion of the *Consultant*, the *Consultant* has incurred costs made necessary by the default of the *Contractor* (including its *Subcontractors* and *Suppliers*), by defects or deficiencies in the *Work* of the *Contractor*, or by failure of performance by the *Contractor*, such costs are the responsibility of the *Contractor*."

3. Amend paragraph 2.2.12 by the addition of the following to the end of that paragraph:

"2.2.12 If, in the opinion of the *Contractor*, the *Supplemental Instruction* involves an adjustment in the *Contract Price* or in the *Contract Time*, it shall, within ten (10) *Working Days* of receipt of a *Supplemental Instruction*, provide the *Consultant* with a *Notice in Writing* to that effect. Failure to provide written notification within the time stipulated in this paragraph 2.2.12 shall be deemed an acceptance of the *Supplemental Instruction* by the *Contractor*, without any adjustment in the *Contract Price* or *Contract Time*, *Supplemental Instructions* and responses to the Requests for Information do not entitle the *Contractor* to any increase in *Contract Price* or extension of *Contract Time*."

4. Add at the end of paragraph 2.2.15 the words "as well as a review to determine the date of *Completion* of the *Work* as provided herein."

5. In paragraph 2.2.18 delete the words “against whom the *Contractor* makes no reasonable objection and”.

6. Add new paragraph 2.2.19 as follows:

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

GC 2.3 REVIEW AND INSPECTION OF THE WORK

1. Add new paragraph 2.3.8 as follows:

“2.3.8 The *Contractor* shall arrange for inspections by all applicable authorities, if and when required, and shall give the *Consultant* and the *Owner* timely notice of the date and time.”

GC 2.4 DEFECTIVE WORK

1. Add new subparagraphs 2.4.1.1 and 2.4.1.2 as follows:

“.1 The *Contractor* shall rectify in an acceptable manner all other defective *Work* and like deficiencies throughout the *Work* whether or not they are specifically identified by the *Consultant*.”

.2 The *Contractor* shall prioritize the correction of any defective *Work*, which, in the sole discretion of the *Owner*, adversely affects the day-to-day operations of the *Owner* or which, in the sole discretion of the *Consultant*, adversely affects the progress of the *Work*.”

2. Delete 2.4.2 in its entirety and replace with the following:

“The *Contractor* shall promptly pay the *Owner* for costs incurred by the *Owner*, the *Owner*’s own forces or the *Owner*’s other *Contractors*, for work destroyed or damaged or any alterations necessitated by the *Contractor*’s removal, replacement or re-execution of defective *Work*. The *Owner* may appoint the *Contractor* to rectify any such deficiencies to other contractors’ work, at the *Contractor*’s expense.”

3. Delete 2.4.3 in its entirety and replace with the following:

“If in the opinion of the *Consultant* it is not expedient to correct defective *Work* or *Work* not performed as provided in the *Contract Documents*, the *Owner* may deduct from the amount otherwise due to the *Contractor* the lesser of (i) the difference in value between the *Work* as performed and that called for by the *Contract Documents* and (ii) the cost to rectify the defective or substandard *Work*. If the *Owner* and the *Contractor* do not agree on the difference in value or the cost to rectify the *Work*, they shall refer the matter to the *Consultant* for determination.”

PART 3 EXECUTION OF THE WORK

GC 3.1 CONTROL OF THE WORK

1. Add new paragraphs 3.1.3, 3.1.4 and 3.1.5 as follows:

“3.1.3 Prior to commencing procurement, fabrication and construction activities, the *Contractor* shall verify, at the *Place of the Work*, all relevant measurements and levels necessary for proper and complete fabrication, assembly and installation of the *Work* and shall further carefully compare such field measurements and conditions with the requirements of the *Contract Documents*. Where dimensions are not included or exact locations are not apparent, the *Contractor* shall immediately notify the *Consultant* in writing and obtain written instructions from the *Consultant* before proceeding with any part of the *Work* affected thereby.

3.1.4 The *Contractor* shall perform the *Work* in accordance with the *Contract Documents* and all laws, code and industry standards, and shall employ only good workmanship subject to specific requirements of the *Contract Documents*, and in accordance with applicable laws, ordinances, rules, regulations, or codes relating to the performance of the *Work*. In performing its services and obligations under the *Contract*, the *Contractor* shall exercise the standard of care, skill and diligence that would normally be provided by an experienced and prudent contractor supplying similar services for similar projects. The *Contractor* acknowledges and agrees that throughout the *Contract*, the performance of the *Contractor's* obligations, duties and responsibilities shall be judged against this standard. The *Contractor* shall exercise the same standard of care, skill and diligence in respect of any *Products*, personnel or procedures which it may recommend to the *Owner*.

Without limiting the generality of the foregoing, the *Contractor* is responsible for the intermeshing of the various parts of the *Work* so that no part shall be left in an unfinished or incomplete condition owing to any disagreement between the various *Subcontractors* and *Suppliers*, or between any of the *Subcontractors* and *Suppliers* and the *Contractor* as to where the *Work* of one begins or ends with relation to the *Work* of the other.

3.1.5 The *Owner* shall have the right to enter or, if compliant with the Ontario Building Code and notwithstanding 3.1.1, 3.1.2., 3.1.3 and 3.1.4, occupy the *Work* in whole or in part for the purpose of placing fittings and equipment, or for other use before *Substantial Performance of the Work*, if, in the opinion of the *Consultant*, such entry and occupation does not prevent or substantially interfere with the *Contractor* in the performance of the *Contract* within the *Contract Time*. Such entry or occupation shall neither be considered as acceptance of the *Work*, nor in any way relieve the *Contractor* from its responsibility to complete the *Contract*. Both the *Owner* and the *Contractor* shall cooperate with the

other, so as to permit the *Contractor* to complete the *Work* and the *Owner* to place fittings and equipment in the most efficient manner possible.”

GC 3.2 CONSTRUCTION BY OWNER OR OTHER CONTRACTORS

1. Add new paragraphs 3.2.7, 3.2.8 and 3.2.9 as follows:

“3.2.7 Placing, installing, application and connection of the *Work* by the *Owner’s* own forces or by *Other Contractors*, on and to the *Contractor’s* *Work*, will not relieve the *Contractor’s* responsibility to provide and maintain the specified warranties.”

3.2.8 Entry by the *Owner’s* own forces and by *Other Contractors* does not indicate acceptance of the *Work* and does not relieve the *Contractor* of any responsibility under the *Contract* including the responsibility to complete the *Work*.”

3.2.9 The *Contractor* shall act as “prime contractor” and “constructor” under the *OHSA* for all *Other Contractors*. The *Owner* shall ensure that its own forces and *Other Contractors* comply with all health and safety precautions and programs established by the *Contractor* as constructor at the *Place of the Work*.”

GC 3.4 CONSTRUCTION SCHEDULE

1. Delete paragraph 3.4.1 in its entirety and replace with the following:

“The *Contractor* shall:

- .1 within ten (10) calendar days of receiving written confirmation of the award of the *Contract*, prepare and submit to the *Owner* and the *Consultant* for their review and acceptance, a *Construction Schedule* in the format indicated below that indicates the timing of the activities of the *Work* and provides sufficient detail of the critical events and their inter-relationship to demonstrate the *Work* will be performed in conformity with the *Contract Time* and in accordance with the *Contract Documents*. Such *Construction Schedule* is to include a delivery schedule for *Products* whose delivery is critical to the schedule for the *Work* or are required by the *Contract* to be included in a *Products* delivery schedule. The *Contractor* shall employ construction scheduling software, being the latest version of “Microsoft Project” or other software as approved by the *Owner* in writing, that permits the progress of the *Work* to be monitored in relation to the critical path established in the *Construction Schedule*. The *Contractor* shall provide the *Construction Schedule* and any successor or revised *Construction Schedules* in both electronic format and hard copy. Once accepted by the *Owner* and the *Consultant*, the *Construction Schedule* submitted by the *Contractor* shall become the baseline *Construction Schedule*;
- .2 provide the expertise and resources, such resources including manpower and equipment, as are necessary to maintain progress under the accepted baseline *Construction Schedule* or revised *Construction Schedule* accepted by the *Owner* pursuant to GC 3.4 CONSTRUCTION SCHEDULE;

- .3 monitor the progress of the *Work* on a weekly basis relative to the baseline *Construction Schedule*, or any revised schedule accepted by the *Owner* pursuant to GC 3.4 CONSTRUCTION SCHEDULE, update and submit to the *Consultant* and *Owner* the electronic and hard copy schedule every two weeks, at a minimum, or as required by the *Consultant* and advise the *Consultant* and the *Owner* weekly in writing of any variation from the baseline or slippage in the *Construction Schedule*;
 - .4 subject to the provisions of GC 6.5 DELAYS, provide overtime work without change to the *Contract Price* if such work is deemed necessary to meet the *Construction Schedule*; and,
 - .5 ensure that the *Contract Price* shall include all costs required to phase or stage the *Work*."
2. Add new paragraphs 3.4.2 and 3.4.3 as follows:
- "3.4.2 If, at any time, it should appear to the *Owner* or the *Consultant* that the actual progress of the *Work* is behind schedule or is likely to become behind schedule, or if the *Contractor* has advised the *Owner* or the *Consultant* pursuant to paragraph 3.4.1.3, the *Contractor* shall, either at the request of the *Owner* or the *Consultant*, or following advising the *Consultant* and the *Owner* in writing of any variation from the baseline or slippage in the *Construction Schedule* pursuant to paragraph 3.4.1.3, take appropriate steps to cause the actual progress of the *Work* to conform to the *Construction Schedule* or minimize the resulting delay. Within five (5) calendar days of the request by the *Owner* or the *Consultant* or the advice being given pursuant to paragraph 3.4.1.3, the *Contractor* shall produce and present to the *Owner* and the *Consultant* a plan demonstrating how the *Contractor* will achieve the recovery of the last accepted *Construction Schedule*.
- 3.4.3 The *Contractor* is responsible for performing the *Work* within the *Contract Time*. Any schedule submissions revised from the accepted baseline *Construction Schedule* or revised *Construction Schedule* accepted by the *Owner* pursuant to GC 3.4 CONSTRUCTION SCHEDULE, during construction are not deemed to be approved extensions to the *Contract Time*. All extensions to the *Contract Time* must be made in accordance with the *Contract Documents*."

GC 3.5 SUPERVISION

1. Delete paragraph 3.5.1 in its entirety and replace with the following:

"The *Contractor* shall employ a competent full-time superintendent, acceptable to the *Owner* and *Consultant*, who shall be in full time attendance at the *Place of Work* while the *Work* is being performed. The superintendent shall not be changed by the *Contractor* without valid reason which shall be provided in writing to the *Owner* and the *Consultant*. The *Contractor* shall replace the superintendent within 7 *Working Days* of the *Owner's* written notification, if the superintendent's performance is not acceptable to the *Owner*.

2. Delete paragraph 3.5.2 in its entirety and replace with the following:

“The superintendent, and any project manager appointed by the *Contractor*, shall have full authority to act on written instructions given by the *Consultant* and/or the *Owner*, which Instructions shall be deemed to have been given to the *Contractor*.”

GC 3.6 SUBCONTRACTORS AND SUPPLIERS

1. Add the following words to the end of paragraph 3.6.1.1 “including any warranties and service agreements which extend beyond the term of the *Contract*, and”
2. Amend paragraph 3.6.1.2 by inserting the words “including any required surety bonding” after the words “the *Contract Documents*”
3. Delete paragraph 3.6.2 in its entirety and replace with the following:

“Substitution of any *Subcontractor* and/or *Suppliers* after submission of the *Contractor’s* bid will not be accepted unless a valid reason is given in writing to and approved by the *Owner*, whose approval may be arbitrarily withheld. The reason for substitution must be provided to the *Owner* and to the original *Subcontractor* and/or *Supplier* and the *Subcontractor* and/or *Supplier* shall be given the opportunity to reply to the *Contractor* and *Owner*. The *Contractor* shall be fully aware of the capability of each *Subcontractor* and/or *Supplier* included in its bid, including but not limited to technical ability, financial stability and ability to maintain the proposed *Construction Schedule*.”

4. Add new paragraphs 3.6.7, 3.6.8 and 3.6.9 as follows:

“3.6.7 The *Contractor* shall, in the case of its *Subcontractors*, be held responsible for and shall ensure that they obtain all necessary permits, fees, licenses, certification of inspections and all insurance in connection with the *Work* as may be required by the laws, ordinances, rules, regulations and codes relating to the *Work* and as may be required by this *Contract*.

3.6.8 Subcontracting by the *Contractor*, including where specifically approved by the *Owner*, shall not be construed as relieving the *Contractor* from any obligations under the *Contract* or imposing any liability upon the *Owner*.

3.6.9 Where provided in the *Contract*, the *Owner* may assign to the *Contractor*, and the *Contractor* agrees to accept, any contract procured by the *Owner* for *Work* or services required on the *Project* that has been pre-tendered or pre-negotiated by the *Owner*, and upon such assignment, the *Owner* shall have no further liability to any party for such contract.”

GC 3.7 LABOUR AND PRODUCTS

1. Amend paragraph 3.7.3 by adding the words, “..., agents, *Subcontractors* and *Suppliers*...” after the word “employees” in the first (1st) line.

2. Add new paragraphs 3.7.4, 3.7.5, 3.7.6, 3.7.7, 3.7.8, and 3.7.9 as follows:

“3.7.4 The *Contractor* shall use and *Install* all manufactured materials, equipment, appliances and *Products* strictly in accordance with the manufacturer’s specifications unless otherwise indicated in the *Contract Documents*.

3.7.5 The *Contractor* shall not substitute any materials, equipment or products for those specified or use any method other than the specified without first obtaining the prior consent in writing of the *Consultant*. Each application for consent to use a substituted material, equipment, product or method shall be made in writing to the *Owner*, and shall:

- .1 Identify the material, equipment, product or method to be substituted;
- .2 Identify the substitute;
- .3 Provide the name of the manufacturer of the substitute and his address;
- .4 Provide the name of the *Supplier* or the substitute and his address;
- .5 Provide a reason for proposing the substitute;
- .6 Provide details and description of alternatives.

The *Contractor* shall assume responsibility to determine that the substituted material, equipment or product meets the space requirements shown in the drawings and described in the specifications. The *Contractor* shall also be responsible for any additional costs incurred in the connection with the *Install* of any such substituted material, equipment or product.

3.7.6 The *Contractor* shall cooperate with the *Owner* and its representatives and shall take all reasonable and necessary actions to maintain stable and harmonious labour relations with respect to the *Work* at the *Place of the Work*, including cooperation to attempt to avoid *Work* stoppages, trade union jurisdictional disputes and other *Labour Disputes*. Any costs arising from *Labour Disputes* shall be at the sole expense of the *Contractor*.

3.7.7 All *Products* and materials paid for by the *Owner* as part of the *Contract Price* are deemed to be the property of the *Owner*; however, the *Owner* shall be under no liability for loss thereof or damage thereto arising from any cause whatsoever. The *Contractor* is responsible for the safe on-site storage of *Products* and for their protection (including *Products* which may be supplied by the *Owner*). Such storage shall be managed so as to avoid dangerous conditions or contamination to the *Products* or endanger persons or property. The *Contractor* shall ensure that the price agreed to with a *Subcontractor* or *Supplier* includes the cost of

delivery and storage of all *Products*.” The *Contractor* shall remove all surplus or rejected materials as its property when notified in writing to do so by the *Consultant*. Notwithstanding that ownership of the *Work* and *Products* may vest in the *Owner*, the risk of all *Work* and *Products* shall remain with the *Contractor* until the *Work* and *Products* are accepted and assumed by the *Owner* as otherwise set out in the *Contract*.

- 3.7.8 Unless otherwise specified in the *Contract Documents*, *Products* provided shall be new. *Products* which are not specified shall be of a quality consistent with those specified and their use acceptable to the *Consultant*. *Products* provided shall conform to all current applicable specifications of the Canadian Standards Association, Canadian Standards Board or General Standards Board, ASTM, Ontario Building Code, Ontario Fire Code, fire safety standards, and all governmental authorities and regulatory agencies having jurisdiction at the *Place of the Work*, unless otherwise specified. *Products* which are not specified shall be of a quality consistent with those specified and their use acceptable to the *Consultant*. Workmanship shall be, in every respect, first class and the *Work* shall be performed in accordance with the best modern industry practice.
- 3.7.9 The *Contractor* shall procure all *Products* with sufficient lead time and in the full scope provided for in the *Contract Documents*. The *Contractor* shall be responsible for all additional costs, including price escalation for any reason, and delay, should it fail to do so.”

GC 3.8 SHOP DRAWINGS

1. Add “and” at the end of subparagraph 3.8.3.2 and then add a new paragraph 3.8.3.3 that says: “.3 affixes the *Contractor’s* stamp and date on all such *Shop Drawings*.”
2. Delete paragraph 3.8.7 in its entirety and replace with the following:

“The *Consultant* is permitted ten (10) *Workings Days* to review *Shop Drawings* from date of receipt, to the date of issuance, for return by post, courier, etc.

Should the *Consultant* review and require the resubmission of *Shop Drawings*, ten (10) *Working Days* is again permitted for review.

Should the *Contractor* submit a large number of *Shop Drawings*, the *Consultant* will notify the *Contractor* within three (3) *Working Days* of receipt, an estimated time for processing.”
3. Add new paragraphs 3.8.8, 3.8.9, 3.8.10, 3.8.11 and 3.8.12 as follows:

“3.8.8 The review of *Shop Drawings* by the *Consultant* does not authorize a change in quantity, *Contract Price* and/or the *Contract Time*.

3.8.9 The *Contractor* shall maintain a copy of all *Construction Documents* on site and red line all changes or modifications, with revised dimensions,

that will serve as the basis for the preparation of as-built drawings, including for all construction trades.

- 3.8.10 The *Contractor* shall prepare a *Shop Drawings* schedule acceptable to the *Owner* and the *Consultant* prior to the first application for payment. A draft of the proposed *Shop Drawings* schedule shall be submitted by the *Contractor* to the *Consultant* and the *Owner* for approval. The draft *Shop Drawings* schedule shall clearly indicate the phasing of *Shop Drawings* submissions. The *Contractor* shall periodically re-submit the *Shop Drawings* schedule to correspond to changes in the *Construction Schedule*.
- 3.8.11 Certain *Specifications* sections require the *Shop Drawings* to bear the seal and signature of a professional engineer. Such professional engineer must be registered in the jurisdiction of the *Place of the Work* and shall have expertise in the area of practice reflected in the *Shop Drawings*.
- 3.8.12 The *Contractor* shall cause all temporary structures at the *Place of the Work* to adhere to all requirements and mandates of authorities having jurisdiction thereover, including, without limitation provision of stamped and engineered *Shop Drawings* of scaffolds to the municipality or Ministry of Labour."

ADDITIONAL GENERAL CONDITIONS - GC 3.9 AND GC 3.10

1. Add new GC 3.9 as follows:

"GC 3.9 CONSTRUCTION SAFETY

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 OHSA and shall be responsible for initiating, maintaining, and supervising all safety precautions and programs in connection with the performance of the *Work*. The *Contractor* shall be the 'Constructor' for all occupational health and safety requirements of the *Project*."

2. Add new GC 3.10 as follows:

"GC 3.10 CONTRACTOR STANDARD OF CARE

3.10.1 In performing its services and obligations under the *Contract*, the *Contractor* shall exercise the standard of care, skill and diligence that would normally be provided by an experienced and prudent contractor supplying similar services for similar projects. The *Contractor* acknowledges and agrees that throughout the *Contract*, the performance of the *Contractor's* obligations, duties and responsibilities shall be judged against this standard. The *Contractor* shall exercise the same standard of care, skill and diligence in respect of any *Products*, personnel or procedures which it may recommend to the *Owner*.

3.10.2 The *Contractor* further represents, covenants and warrants to the *Owner* that:

- .1 the personnel it assigns to the *Project* are appropriately experienced;
- .2 it has a sufficient staff of qualified and competent personnel to replace any of its appointed representatives, subject to the *Owner's* approval, in the event of death, incapacity, removal or resignation; and
- .3 there are no pending, threatened or anticipated claims, liabilities or contingent liabilities that would have a material effect on the financial ability of the *Contractor* to perform its work under the *Contract*."

3. Add new GC 3.11 as follows:

"GC 3.11 NON-INTERFERENCE

3.11.1 The *Contractor* acknowledges that the *Place of the Work* may be occupied by staff and students and that the *Owner* may continue to carry out its normal operations at the *Place of the Work*. The *Contractor* agrees to perform the *Work* in the least intrusive manner possible. Without limiting the generality of the foregoing, the *Contractor* acknowledges and agrees that it shall carry out its duties, responsibilities, and obligations under the *Contract* in such a manner so as not to disrupt or interfere with any of the existing facilities, ongoing operations, activities, or other operations located in the area adjacent to, in the vicinity of, or proximate to the *Place of the Work*, and that its compliance with this obligations will be at no additional cost to the *Owner*."

PART 4 ALLOWANCES

GC 4.1 CASH ALLOWANCES

1. Add new paragraph 4.1.3.1 as follows:

"The *Consultant* will issue a Cash Allowance Disbursement Authorization (CADA) signed by the *Owner*, *Contractor* and *Consultant*."

2. Add new paragraphs 4.1.8 and 4.1.9 as follows:

"4.1.8 The *Owner* reserves the right to call, or to have the *Contractor* call, for competitive tenders for portions of the *Work*, to be paid for, out of cash allowances, pursuant to GC 6.2 CHANGE ORDER.

4.1.9 Cash allowances cover the net cost to the *Contractor* of services, *Products*, *Construction Equipment*, freight, unloading, handling, storage, installation, provincial sales tax, and other authorized expenses incurred in performing any *Work* stipulated under the cash allowances but does

not include any *Value Added Taxes* payable by the *Owner* and the *Contractor*.”

GC 4.2 CONTINGENCY ALLOWANCE

1. Delete GC 4.2 in its entirety.

PART 5 PAYMENT

ADDITIONAL GENERAL CONDITION – GC 5.0

1. Add new GC 5.0 as follows:

“GC 5.0 DRAFT APPLICATION FOR PAYMENT

- 5.0.1 On the 25th day of each month during the *Contract* Time, the *Contractor* will deliver to the *Consultant* a draft invoice of the *Contractor*’s proposed application for payment for all of the *Work* performed by the *Contractor* in that month, including an estimate of the *Work* to be performed and *Products* to be delivered at the date of such application for payment but before the end of that month, in order to facilitate and expedite payments under GC 5.2 – APPLICATIONS FOR PAYMENT, GC 5.3 – PAYMENT and GC 5.5 – FINAL PAYMENT.
- 5.0.2 The *Contractor* shall review with the *Consultant* and the *Owner*, at a scheduled time, the draft invoice and application for payment and the percentage of the *Work* completed for each item indicated in the schedule of values. This procedure shall be complied with for each draft invoice and application for payment.
- 5.0.3 Nothing in paragraphs 5.0.1 or 5.0.2 is intended to condition, pre-condition, prevent or delay the *Contractor*’s right to submit its applications for payment in accordance with this *Contract* and the *Construction Act*.”

GC 5.1 FINANCING INFORMATION REQUIRED OF THE OWNER

1. Revise the heading “GC 5.1 FINANCING INFORMATION REQUIRED OF THE OWNER” to read “GC 5.1 FINANCING INFORMATION REQUIRED”
2. In paragraph 5.1.1, delete from line one (1), “before signing the *Contract*”
3. In paragraph 5.1.1, delete from line one (1), “thereafter”
4. In paragraph 5.1.1, add a new sentence to the end the paragraph as follows:

“The *Contractor* shall, at the request of the *Owner*, promptly from time to time furnish to the *Owner* reasonable evidence that the financial arrangements have been made to fulfill the *Contractor*’s obligations under the *Contract*. “
5. Delete paragraph 5.1.2 in its entirety and replace with the following:

“The *Owner* and *Contractor* shall notify each other in writing of any material change in its financial arrangements during the performance of the *Contract*.”

GC 5.2 APPLICATIONS FOR PAYMENT

1. Delete paragraphs 5.2.2 and 5.2.3 in their entirety and replace with the following:

“5.2.2 Applications for payment shall be dated as of the last day of each payment period, which is the last day of the month or an alternative day of the month agreed in writing by the parties, provided at all times the parties are compliant with the prompt payment provisions of the *Construction Act*. The amount claimed shall be for the value, proportionate to the amount of the *Contract*, or work performed and *Products* delivered and incorporated into the *Work* at that date. No amount claimed shall include products delivered and not incorporated into the *Work*.

Applications for payment shall include all the requirements of a Proper Invoice, which are:

- .1 all of the information specified to be included in a *Proper Invoice* as set out in the *Construction Act*, including:
 - the *Contractor's* name and address;
 - the date of the application for payment and the period during which the *Work* was performed;
 - information identifying the authority, whether in the *Contract* or otherwise, under which the *Work* was performed;
 - a description, including quantity where appropriate, of the *Work* performed and *Products* supplied;
 - the amount payable for the *Work* performed, and the payment terms; and
 - the name, title, telephone number and mailing address of the person to whom payment is to be sent;
- .2 for each application for payment, after the first unqualified statutory declaration in the most current form of the CCDC 9A from the *Contractor* certifying the distributions made from the amounts previously received and that all accounts of the *Contractor* have been paid in full, less only amounts of holdback due, that all liabilities incurred by the *Contractor* in carrying out the *Contract* have been discharged and that all liens under the *Contract* have expired or have been satisfied, discharged or provided for by payment;
- .3 all documents required under paragraph 10.4, including a certificate, issued by the Workplace Safety and Insurance Board, or its successor, verifying that coverage is in force at the time of making the application for payment, and that coverage will remain in force for at least sixty (60) calendar days thereafter;

- .4 a declaration by the *Contractor*, in a form approved by the *Consultant*, verifying that the performance of the *Work* is in compliance with all applicable regulatory requirements respecting environmental protection, fire safety, public safety and occupational health and safety;
- .5 a pre-approved schedule of values, supplied by the *Contractor*, for Divisions 1 through 14 and 31 through 33 inclusive of the *Work*, aggregating the total amount of the *Contract Price*;
- .6 a separate pre-approved schedule of values, supplied by each *Subcontractor*, for Divisions 21 to 28 inclusive of the *Work*, aggregating the total amount of the *Contract Price*;
- .7 Invoices to support all claims against the cash allowance;
- .8 an acceptable *Construction Schedule* pursuant to GC 3.4;
- .9 current insurance certificate; and
- .10 Such additional documents as the *Owner* or the *Consultant* may reasonably require.”

- 2. Delete paragraph 5.2.7 in its entirety and replace with the following:

“The *Contractor* shall prepare and maintain current as-built drawings which shall consist of the *Drawings* and *Specifications* revised by the *Contractor* during the *Work*, showing changes to the *Drawings* and *Specifications*, which current as-built drawings shall be maintained by the *Contractor* and made available to the *Consultant* for review with each application for progress payment. The *Consultant* shall retain a reasonable amount for the value of the as-built drawings not presented for review. For clarity, as-built drawings prepared by the *Contractor* record the location of buried and concealed *Work* and record drawings are prepared by the *Consultant* if engaged by *Owner* to do so, to record all changes.”

- 3. Delete 5.2.8 in its entirety.

- 4. Add new paragraphs 5.2.9 and 5.2.10 as follows:

“5.2.9 Prior to each application for payment, the *Contractor* and the *Consultant* shall jointly check the progress of the *Work*.

5.2.10 The *Owner* may, in its discretion, reject any application for payment that does not comply with this *Contract* and the *Payment Legislation*,

GC 5.3 PAYMENT

- 1. Delete from subparagraph 5.3.1.1 the word “calendar” and replace with “*Working Days*”.
- 2. Add new paragraph 5.3.2 as follows:

“5.3.2 The *Owner* shall be entitled to deduct from or set off against any payment of the *Contract Price* and any other amounts payable by the *Owner* to the *Contractor* under this *Contract*:

- .1 any amount expended by the *Owner* in exercising the *Owner's* rights under this *Contract* to perform any of the *Contractor's* obligations that the *Contractor* has failed to perform;
- .2 any amount paid by the *Owner* directly to *Subcontractors* in respect of *Work* for which the *Owner* previously paid the *Contractor*;
- .3 any damages, costs or expenses (including, without limitation, all legal fees and expenses on a full indemnity basis) incurred by the *Owner* as a result of the failure of the *Contractor* to perform any of its obligations under this *Contract*;
- .4 a reasonable amount on account of any outstanding *Work* or any outstanding deficiencies; and
- .5 any other amount owing from the *Contractor* to the *Owner* under this *Contract*.”

GC 5.4 SUBSTANTIAL PERFORMANCE OF THE WORK AND PAYMENT OF HOLDBACK

1. Revise the heading “SUBSTANTIAL PERFORMANCE OF THE WORK AND PAYMENT OF HOLDBACK” to read “SUBSTANTIAL PERFORMANCE OF THE WORK AND PAYMENT OF ANNUAL LIEN HOLDBACK AND FINAL LIEN HOLDBACK”

2. Delete paragraph 5.4.1 in its entirety and replace with the following:

“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, no later than twenty (20) calendar days after receipt of the *Contractor's* complete deficiency list and application, the *Consultant* shall:

- .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. 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 5.4.1.2.

Having completed 5.4.1.1, the *Consultant* shall advise the *Contractor* in writing that the *Work* or the designated portion of the *Work* is not substantially performed and give reasons why, or 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*.”

3. Delete paragraph 5.4.2 in its entirety and replace with the following:

“The *Contractor* shall submit, with the application for *Substantial Performance of the Work*, all guarantees, warranties, certificates, testing and balancing reports, distribution system diagrams, as-built drawings, and specifications, spare parts, operations and maintenance manuals, training manuals and video recordings for

the *Owner's* operations staff, and any other materials or documentation required to be submitted under the *Contract*, together with written proof, acceptable to the *Owner* and the *Consultant*, that the *Work* has been substantially performed in conformance with the requirements of municipal, governmental and utility authorities having jurisdiction. Failure to submit all of the foregoing materials and documentation in conformance with the *Contract Documents* shall be grounds for the *Consultant* to reject the *Contractor's* application for *Substantial Performance of the Work*."

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

"Following the issuance of the certificate of *Substantial Performance of the Work*, the following shall apply to completing the *Work*:

- .1 the *Contractor* is to achieve *Completion* the *Work* within sixty (60) calendar days.
- .2 no payments will be processed between *Substantial Performance of the Work* and the *Completion* of the *Work*.
- .3 the *Owner* reserves the right to contract out any or all unfinished *Work* if it has not been completed within sixty (60) calendar days of *Substantial Performance of the Work* without prejudice to any other right or remedy in has in this *Contract* and otherwise at law without affecting the warranty period. The cost of completing the *Work* shall be deducted from the *Contract Price*."

5. Delete paragraph 5.4.4 in its entirety and replace with the following:

"The *Contractor* shall submit application for payment of the annual lien holdback amount and the final lien holdback amount in accordance with the *Construction Act* and GC 5.3 – PAYMENT."

6. Delete paragraph 5.4.5 in its entirety and replace with the following:

"Applications for progressive release of holdback will not be considered."

7. Delete paragraph 5.4.6 in its entirety.

8. Add new paragraphs 5.4.6 and 5.4.7 as follows:

"5.4.6 Immediately following the issuance by the *Consultant* of a certificate in accordance with paragraph 5.4.1.2, the *Contractor* shall, as applicable to the *Place of the Work*:

- .1 submit written request for release of the final lien holdback;
- .2 submit a *Worker's* Compensation Board Certificate of Clearance;
- .3 submit a written confirmation from the bonding company that it has been notified of the intent to claim release of holdback money;

- .4 publish a copy of the certificate of *Substantial Performance of the Work* in a construction trade newspaper prescribed by the *Construction Act in the Province of the Place of the Work* in accordance with the *Construction Act*. Upon publication, the *Contractor* shall immediately provide the *Consultant* and the *Owner* with the certificate of publication from the construction trade newspaper;
- .5 submit full and complete digital as-built drawings to the *Consultant* within forty-five (45) calendar days of the issuance of the certificate of *Substantial Performance of the Work* and the *Owner* shall be at liberty to withhold, from amounts otherwise payable to the *Contractor*, an amount not to exceed one (1) percent of the *Contract Price* as security for the obligation of the *Contractor* to deliver such digital as built drawings;
- .6 do such other acts as are required by the *Construction Act* to initiate the requisite time period prior to the expiration of the holdback period; and
- .7 achieve Completion of the *Work* within sixty (60) calendar days. No payments will be processed between *Substantial Performance of the Work* and the *Completion of the Work*

5.4.7 The publication by the *Contractor* of the Certificate of *Substantial Performance of the Work* shall constitute a waiver by the *Contractor* of all claims whatsoever against the *Owner* under this *Contract*, including without limitation, for delay changes in the *Contract Price*, extension of *Contract Time*, or otherwise, except those made in writing prior to the *Contractor's* application for payment upon *Substantial Performance of the Work* which remain unsettled at the time of publication."

GC 5.5 FINAL PAYMENT

- 1. In paragraph 5.5.2, delete the words "10 calendar days after the issuance of a final certificate for payment" and replace with "the earlier of 20 calendar days after the issuance of a final certificate for payment and 28 calendar days after the receipt by the *Owner* of the *Contractor's* application for final payment that includes all of the documents and information required for a proper invoice and by this *Contract*."
- 2. In paragraph 5.5.4, delete from line 2, "5" and replace with "28"

GC 5.6 DEFERRED WORK

- 1. In paragraph 5.6.1, add the word "severe" before the word "climatic" in the first line.

PART 6 CHANGES IN THE WORK

GC 6.1 OWNER'S RIGHT TO MAKE CHANGES

- 1. Delete paragraphs 6.1.1 and 6.1.2 in their entirety.

2. Add new paragraphs 6.1.1 through 6.1.14 as follows:

“6.1.1 The *Owner*, through the *Consultant*, without invalidating the *Contract*, may make changes in the *Work* consisting of additions, deletions or other revisions to the *Work* by *Change Order* or *Change Directive*, and changes to the *Contract Time* for the *Work*, or any part thereof, by *Change Order* or *Change Directive*.

i. The *Contractor* shall not perform a change in the *Work* without a *Change Order* or a *Change Directive*.

ii. Where work is added, the *Contract Price* shall be increased only by the net actual value of the work added including taxes, but excluding *Value Added Taxes*, plus the following, identified separately:

- .1 *Contractor's* mark-up on its own work:
- ten percent 10% for *Overhead* and profit
- .2 *Contractor's* mark-up on *Subcontractor's* work:
- ten percent (10%) for *Overhead* and profit
- .3 *Subcontractor's* mark-up on its own work
- ten percent (10%) for *Overhead* and profit
- .4 *Subcontractor's* mark-up on *Subcontractor's* work:
- five percent (5%) for *Overhead* and profit.

iii. When both additions and deletions covering related work or substitutions are involved in a change in the *Work*, the net value of the actual work added shall be calculated on the basis of the net difference, if any, with respect to that change in the *Work*.

iv. The percentage fees set out in paragraph 6.1.3 shall be the *Contractor's* sole and exclusive compensation for all *Overhead*, profit, and all other costs and expenses of any kind whatsoever associated with such *Change Order* or *Change Directive*.

v. Unit prices included in the *Contract*, or prices pro rata thereto, will be used in the first instance in pricing changes.

6.1.7 Labour costs shall be the actual, prevailing rates at the Place of *Work* paid to the workers, plus statutory charges on labour including *Workers' Compensation*, *Unemployment Insurance*, *Canada Pension*, *Vacation Pay*, *Hospitalisation* and *Medical Insurance*.

6.1.8 Quotations for changes to the *Work* shall be accompanied by itemized breakdowns together with detailed, substantiating quotations or cost vouchers from *Subcontractors* and *Suppliers*, submitted in a format acceptable to the *Consultant* and including the following:

- .1 hours and hourly rates of labour, with labour categories clearly identified;
- .2 itemized costs of materials, with quantities clearly identified;

- .3 itemized costs of *Products*, with quantities clearly identified;
 - .4 itemized costs of equipment, with quantities and duration of use clearly identified;
 - .5 invoices or quotations from *Subcontractors* and *Suppliers*, to the extent available;
 - .6 the percentage fees set out in paragraph 6.1.3, shown as separate line items; and
 - .7 all other costs to perform the change in the *Work*, separately itemized.
- 6.1.9 Unit and Alternative Prices included in the *Contract* include supply, *Installation*, *Products*, equipment, services, materials, labour, *Overhead*, profit and taxes, but exclude *Value Added Taxes*.
- 6.1.10 The *Owner*, through the *Consultant*, reserves the right to authorize payment for changes in the *Work* by means of Cash Allowance Disbursement Authorizations.
- 6.1.11 Where a change in the *Work* is contemplated but not yet authorized by *Change Order* or *Change Directive*, the *Contractor* shall use best efforts to determine whether the contemplated change in the *Work* would be adversely affected by the continuation of existing *Work*, and shall take all reasonable steps to ensure that the contemplated change in the *Work* does not become more difficult, more expensive, or otherwise adversely affected as a result of the continuation of existing *Work*. The *Contractor* shall not be entitled to any extension of the *Contract Time*, increase in the *Contract Price* or any other compensation for any additional costs arising from the *Contractor's* failure to comply with this paragraph 6.1.11.
- 6.1.12 The *Contractor* shall not be entitled to any claim for delay, any extension of the *Contract Time*, or any additional compensation of any kind as a result of:
- .1 the time required to negotiate, finalize, or execute any *Change Order* or *Change Directive*, regardless of the duration of such negotiations;
 - .2 the volume or frequency of *Change Orders* or *Change Directives* issued under the *Contract*;
 - .3 the volume or frequency of Supplemental Instructions issued under the *Contract*;
 - .4 the volume or frequency of Requests for Information made by the *Contractor*;
 - .5 any delay in the *Owner's* approval of a *Change Order* or *Change Directive*;

- .6 any delay in the *Owner's* acceptance of the *Contractor's* quotation, estimate, or pricing for a change in the *Work*;
 - .7 any revisions to quotations, estimates, or pricing requested by the *Owner* or the *Consultant*; or
 - .8 any other matter relating to the process of implementing changes in the *Work* under this paragraph 6.1, paragraph 6.2, or paragraph 6.3.
- 6.1.13 The *Contractor* agrees that changes resulting from construction coordination, including but not limited to site surface conditions, site coordination, and *Subcontractor* and *Supplier* coordination, are included in the *Contract Price*, and the *Contractor* shall be precluded from making any claim for a change in the *Contract Price* or the *Contract Time* as a result of such changes.
- 6.1.14 It will be the *Contractor's* responsibility to notify each applicable bonding company of all changes in the *Work* so that the any applicable performance bond will not be invalidated. Any change to the *Contract Price* or construction cost by more than 10% (or such lesser threshold if a bonding company's terms require it) shall obligate the *Contractor* to update all bonds with the change in value and the cost of the same shall be included in the *Contractor's* cost for *Overhead*. The *Contractor* shall provide evidence of any such amended bonds to reflect this change in value from time to time and upon the request of the *Consultant* or the *Owner*."

GC 6.2 CHANGE ORDER

1. Delete paragraphs 6.2.1 and 6.2.2 in their entirety.
2. Add new paragraphs 6.2.1 through 6.2.3 as follows:
 - " 6.2.1 When a change in the *Work* is proposed or required, the *Consultant* will provide the *Contractor* with a written description of the proposed change in the *Work* in the form of a *Contemplated Change Order*. The *Contractor* shall, within ten (10) calendar days, submit to the *Consultant*, in a form that includes, at a minimum, all items in paragraph 6.1.8, and that is acceptable to the *Consultant*, an amount of adjustment to the *Contract Price*, if any, calculated in accordance with paragraph 6.1, and to the *Contract Time*, if any, for the proposed change in the *Work*.
 - 6.2.2 The *Contractor* shall require its *Subcontractors* and *Suppliers* to supply the same itemized breakdowns and substantiating documentation required by paragraph 6.1.8 to the *Consultant* and shall include such breakdowns and documentation with the *Contractor's* quotation. Quotations that do not include sufficient detail to permit evaluation by the *Consultant* shall not be accepted.
 - 6.2.3 When the *Owner* and *Contractor* agree to the adjustment in the *Contract Price* and *Contract Time*, such agreement shall be effective immediately

and shall be recorded in a *Change Order*. The value of the *Work* performed as the result of a *Change Order* shall be included in the application for progress payment.

GC 6.3 CHANGE DIRECTIVE

1. Delete paragraph 6.3.1 in its entirety and replace with the following:

“If the *Owner* requires the *Contractor* to proceed with a change in the *Work* prior to or in the absence of the *Owner* and the *Contractor* agreeing upon the corresponding adjustment in the *Contract Price* or *Contract Time*, the *Owner*, through the *Consultant*, may issue a *Change Directive*.”

2. Delete paragraph 6.3.2 in its entirety and replace with the following:

“The issuance of a *Change Directive* by the *Owner* shall not constitute an acknowledgment or admission by the *Owner* that there has been any change in the scope of the *Work* or any entitlement on the part of the *Contractor* to any adjustment in the *Contract Price* or *Contract Time*. A *Change Directive* is a mechanism to permit *Work* to proceed while the appropriate adjustment to the *Contract Price* or *Contract Time*, if any, is determined, and shall not be construed as evidence of a change in scope, change in *Contract Time*, or an entitlement to additional compensation.

3. Delete paragraph 6.3.3 in its entirety.

4. Delete paragraph 6.3.5 in its entirety.

5. Delete paragraph 6.3.6 in its entirety.

6. Delete paragraph 6.3.7 in its entirety and replace with the following:

“The adjustment in the *Contract Price* and *Contract Time* for a change carried out by way of a *Change Directive* shall be determined in accordance with GC 6.1 – OWNER’S RIGHT TO MAKE CHANGES, and specifically paragraph 6.1.3, paragraph 6.1.4, and paragraph 6.1.5.”

7. Delete paragraph 6.3.8 in its entirety.

8. Add new subparagraph 6.3.10.1 as follows:

“.1 The requirements of paragraph 6.1.8 with respect to itemized breakdowns and substantiating documentation shall apply to *Change Directives* in the same manner as they apply to *Change Orders*.”

9. Delete paragraph 6.3.11 in its entirety and replace with the following:

“Where the *Owner* and the *Contractor* do not agree on the adjustment in the *Contract Price* or *Contract Time* attributable to the *Change Directive*, the *Consultant* shall make a determination of the appropriate adjustment, and such determination shall be binding on the parties.”

10. Delete paragraph 6.3.12 in its entirety and replace with the following:

“The *Contractor* shall only be entitled to include in applications for progress payment the value of the *Work* performed as the result of the *Change Directive* as determined by the *Owner*. Where the *Consultant* has made a determination pursuant to paragraph 6.3.11, the *Contractor* shall only be entitled to include in applications for progress payment the value of the *Work* performed as the result of the *Change Directive* as determined by the *Consultant*. The *Contractor* shall not be entitled to include in any application for progress payment any amount in excess of the value determined by the *Owner* or the *Consultant*, pending resolution of any dispute.”

11. Add new paragraph 6.3.14 as follows:

“Any overpayment or underpayment upon execution of the *Change Order* resulting from a *Change Directive* shall be adjusted on the next or another progress draw or on the final payment for the *Work*.”

GC 6.4 CONCEALED OR UNKNOWN CONDITIONS

1. Delete paragraph 6.4.1 in its entirety and replace with the following:

“Prior to the submission of the bid on which the *Contract* was awarded, the *Contractor* confirms that it carefully investigated the *Place of the Work* and, in doing so, applied to that investigation the degree of care and skill required by paragraph 3.1.4. and 3.10. The *Contractor* is deemed to assume all risk of conditions or circumstances now existing or arising in the course of the *Work* which could make the *Work* more expensive or more difficult to perform than was contemplated at the time the *Contract* was executed. Notwithstanding any other term of the *Contract Documents*, no claim or change request by the *Contractor* will be valid or considered by the *Owner* or the *Consultant* in connection with conditions which could reasonably have been ascertained by an investigation or other due diligence undertaken prior to the execution of the *Contract*.”

2. Amend paragraph 6.4.2 by adding a new first sentence as follows:

“Having regard to paragraph 6.4.1, if the *Contractor* believes that the conditions of the *Place of the Work* differ materially from those reasonably anticipated, differ materially from those indicated in the *Contract Documents* or were concealed from discovery notwithstanding the conduct of the investigation described in paragraph 6.4.1, it shall provide the *Owner* and the *Consultant* with *Notice in Writing* no later than five (5) *Working Days* after the first observation of such conditions.”

3. Add new paragraph 6.4.5 as follows:

“No claims for additional compensation or for an extension of *Contract Time* shall be allowed if the *Contractor* fails to give *Notice in Writing* to the *Owner* or *Consultant*, as required by paragraph 6.4.2.”

GC 6.5 DELAYS

1. Delete paragraphs 6.5.1 through 6.5.5 in their entirety and replace with the following:

“6.5.1 If the *Contractor* is delayed in the performance of the *Work* by the *Owner*, the *Consultant* or anyone employed or engaged by them directly or indirectly, contrary to the provisions of the *Contract Documents*, then the *Contract Time* shall be extended for such reasonable time as the *Consultant* may recommend in consultation with the *Contractor* and as agreed to by the *Owner*. Subject to agreement by the *Owner*, the *Contract Price* shall be adjusted by only the amount of reasonable direct costs directly flowing from the delay which have an actual cost impact on the *Contract Price*, but excluding any consequential, indirect, or special damages, including without limitation:

- .1 loss of profits or anticipated profits;
- .2 loss of opportunity or loss of use;
- .3 loss of productivity, including any claims based on measured mile, total cost, modified total cost, or similar methodologies;
- .4 home office overhead, including any claims calculated using the Eichleay, Hudson, Emden, or similar formulae;
- .5 increased financing or carrying costs;
- .6 loss of bonding capacity;
- .7 damage to reputation or business relationships;
- .8 extended general conditions beyond the reasonable direct costs of site personnel and equipment directly attributable to the delay period; and
- .9 any other indirect, consequential, or special damages of any kind.

6.5.2 The *Owner* shall not be liable for any delay or any part thereof that occurs concurrently with an independent cause of delay for which the *Contractor* is responsible. In the event of concurrent delay, the *Contractor* shall not be entitled to any extension of the *Contract Time*, any adjustment to the *Contract Price*, or any other compensation of any kind for the period of concurrent delay.

6.5.3 In addition, in the event the *Owner* is responsible for two or more separate causes of delay that run in whole or in part parallel to each other, those two or more events shall be considered as one for the purpose of determining the duration of the extension of the *Contract Time* to be provided to the *Contractor* and any adjustment to the *Contract Price*. For clarity, if one delay caused by the *Owner* concludes while a second continues, only the second one shall be considered for the purpose of determining the duration of the extension of the *Contract Time* or adjustment in the *Contract Price*, as applicable, from the point at which the first delay concluded.

6.5.4 Notwithstanding paragraph 6.5.1, the *Contractor* shall not be entitled to any extension of the *Contract Time* or any adjustment to the *Contract*

Price or any other compensation of any kind for any delay arising from or related to any of the following, none of which shall constitute an act or omission of the *Owner* or the *Consultant* contrary to the *Contract Documents*:

- .1 the time required to negotiate, finalize, or execute any *Change Order* or *Change Directive*, regardless of the duration of such negotiations;
- .2 the volume or frequency of *Change Orders*, *Change Directives*, *Supplemental Instructions*, or responses to Requests for Information issued under the *Contract*;
- .3 any delay in the *Owner's* approval of a *Change Order* or *Change Directive*, or the *Owner's* acceptance of the *Contractor's* quotation, estimate, or pricing for a change in the *Work*;
- .4 any delay in the *Owner's* approval of the budget or any value engineering or cost reduction exercise;
- .5 any delay in the *Owner's* approval of shop drawings, samples, or submittals, unless such delay exceeds the time periods expressly set out in the *Contract Documents* for such approvals;
- .6 any delay in the *Consultant's* or *Owner's* issuance of *Supplemental Instructions* or responses to Requests for Information;
- .7 the presence of the *Owner*, its employees, students, invitees, or *Other Contractors* on the *Place of the Work* or adjacent thereto;
- .8 the *Owner's* exercise of any right or remedy in this *Contract Documents* and otherwise at law;
- .9 any matter arising from the acts, omissions, default, insolvency, abandonment, or termination of any *Subcontractor* or *Supplier*; or
- .10 any matter within the *Contractor's* control or the control of anyone employed or engaged by the *Contractor* directly or indirectly, including its *Subcontractors* and *Suppliers*.

6.5.5 If the *Contractor* is delayed in the performance of the *Work* by a stop work order issued by a court or other public authority, and provided that such order was not issued as the result of an act or fault of the *Contractor* or any person employed or engaged by the *Contractor* directly or indirectly, including its *Subcontractors* and *Suppliers*, then the *Contract Time* shall be extended for such reasonable time as the *Consultant* may recommend in consultation with the *Contractor* and as agreed to by the *Owner*. The *Contractor* shall not be entitled to any change in the *Contract Price* or any other compensation in connection with such delays.

6.5.6 If the *Contractor* is delayed in the performance of the *Work* by *Excusable Delay*, then the *Contract Time* shall be extended, and the *Construction Schedule* adjusted, for such reasonable time as the *Consultant* may recommend in consultation with the *Contractor* and as agreed to by the *Owner*. The extension of time shall not be less than the time lost as a result of the event causing the delay, unless the *Contractor* agrees to a

shorter extension. The *Contractor* shall not be entitled to any change in the *Contract Price* or any other compensation in connection with such delays.

- 6.5.7 Without limiting the obligations of the *Contractor* described in GC 3.2 - CONSTRUCTION BY OWNER OR OTHER CONTRACTORS or GC 9.4 - CONSTRUCTION SAFETY, the *Owner* or *Consultant* may, by *Notice in Writing*, direct the *Contractor* to stop the *Work* where the *Owner* or *Consultant* determines that there is an imminent risk to the safety of 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 site. The *Contractor* shall not be entitled to an extension of the *Contract Time* or to an increase in the *Contract Price* or any other compensation in connection with GC 6.5.7.
- 6.5.8 If the *Contractor* is delayed in the performance of the *Work* by unusually or abnormally adverse weather conditions which has the effect or the possible effect of delaying the *Contract Time*, the *Contractor* shall immediately notify the *Consultant* and immediately implement measures to attempt to mitigate any delays to the *Contract Time* as a result of such unusually or abnormally adverse weather conditions. There shall only be an extension of *Contract Time* for unusually or abnormally adverse weather conditions if the *Contractor* is delayed in the performance of the *Work* by weather conditions at the *Place of the Work* which are materially different from those normally and customarily experienced at the *Place of the Work* (as documented by weather data from Environment Canada) over the past fifteen 15 years, taking into consideration severity, duration, and time of year conditions, in which case the *Contract Time* shall be extended for such reasonable time as the *Consultant* may recommend in consultation with the *Contractor* and as agreed to by the *Owner*. The *Contractor* shall not be entitled to any change in the *Contract Price* or any other compensation in connection with delay resulting from unusually or abnormally adverse weather conditions.
- 6.5.9 If the *Contractor* fails to achieve *Ready-for-Takeover* within the *Contract Time* as a result of an act or omission of the *Contractor* or anyone directly or indirectly employed or engaged by the *Contractor*, including its *Subcontractors* and *Suppliers*, or by any cause within the *Contractor's* control (collectively, "*Contractor Delay*"), then the *Contract Time* may be extended for such reasonable time as the *Owner* may decide in consultation with the *Consultant* and the *Contractor*.
- 6.5.10 The *Owner* and the *Contractor* agree that with respect to *Contractor Delay*, the *Owner* shall be entitled to recover any and all actual costs and damages suffered or incurred by the *Owner* as a result of *Contractor Delay*, including without limitation:

- .1 all additional costs of the *Consultant* and any other consultants, professionals, or advisors retained by the *Owner* in connection with the Project;
- .2 all additional costs of *Owner* personnel, including project managers, administrators, and other staff, whether internal or contracted;
- .3 all additional insurance costs, including premiums, deductibles, and self-insured retentions;
- .4 all additional financing and carrying costs, including interest, commitment fees, and opportunity costs;
- .5 all costs of alternative or temporary facilities, accommodations, or arrangements required as a result of the delay;
- .6 all costs of relocating, rescheduling, or extending the occupancy of existing facilities;
- .7 all revenue, income, tuition, grants, or other amounts lost or foregone as a result of the delay;
- .8 all costs of disruption to the *Owner's* operations, programs, research, or activities;
- .9 all costs of storing, securing, or protecting *Owner* equipment, furniture, fixtures, or other property;
- .10 all costs of expediting or accelerating *Work* to mitigate the effects of the delay;
- .11 all damages or other amounts payable to third parties as a result of the delay;
- .12 all legal, administrative, and other professional fees incurred in connection with the delay;
- .13 all reputational harm and damage to the *Owner's* relationships with stakeholders, donors, government, or the public; and
- .14 any and all other direct, indirect, consequential, or special damages of any kind suffered or incurred by the *Owner* as a result of *Contractor Delay*.

6.5.11 The *Owner* may deduct any amount due under paragraph 6.5.10 from any monies that may be due or payable to the *Contractor*. The remedies available to the *Owner* under this paragraph 6.5 are cumulative and in addition to and without prejudice to any other remedy, action, or alternative that may be available to the *Owner* at law or in equity or under any other provision of the *Contract Documents*.

6.5.12 The *Contractor* shall not be entitled to any extension of the *Contract Time*, any adjustment to the *Contract Price*, or any other compensation for delay whatsoever it may be entitled to pursuant to this *Contract* or otherwise at law unless *Notice in Writing* of the cause of the delay with sufficient detail and context is given to the *Consultant* not later than 10 *Working Days* after the commencement of the delay. In the case of a continuing cause of delay, only one *Notice in Writing* shall be necessary. Failure to provide such notice within the time required shall constitute

a complete waiver and release of any claim for extension of the *Contract Time* or adjustment to the *Contract Price* or any other compensation arising from such delay.

- 6.5.13 In light of the *Owner's* limited ability to learn of and determine the cause of any delay, including *Contractor Delay*, the *Owner* is not obligated to provide *Notice in Writing* as a condition to its entitlement to delay damages, or any other remedy under this paragraph 6.5 or otherwise. The *Owner* may assert its entitlement to delay damages, or any other remedy at any time and from time to time.
- 6.5.14 If no schedule is made under GC 2.2.13 of GC 2.3 - ROLE OF THE CONSULTANT, then no request for extension shall be made because of failure of the *Consultant* to furnish instructions until 10 *Working Days* after demand for such instructions has been made by the *Contractor* to the *Owner* and the *Consultant*.
- 6.5.15 Consistent with the fundamental terms of the *Contract* as set out in Article A-9.3, the *Contractor* shall not enter into any agreement or understanding with any *Subcontractor* or *Supplier*, whether as part of any subcontract or any written or oral collateral agreement, pursuant to which the parties thereto agree to cooperate in the presentation of a claim for delay damages or extension of the *Contract Time* against the *Owner*, directly or through the *Contractor*, where such claim is, in whole or in part, in respect of a disputed claim by the *Subcontractor* or *Supplier* against the *Contractor*, where the payment to the *Subcontractor* or *Supplier* by the *Contractor* is agreed to be conditional or contingent on the ability to recover those amounts or a portion thereof from the *Owner*, failing which the *Contractor* shall be saved harmless from all or a portion of those claims. The *Contractor* acknowledges that any such agreement would undermine the required arm's-length relationship and constitute a conflict of interest.
- 6.5.16 For greater certainty, the *Contractor* shall only be entitled to advance claims against the *Owner* for delay damages or extension of the *Contract Time* pertaining to *Subcontractor* or *Supplier* claims where:
 - .1 the *Contractor* has actually paid those claims to the *Subcontractor* or *Supplier*; or
 - .2 the *Contractor* has unconditionally acknowledged liability for those claims to the *Subcontractor* or *Supplier* in writing, without any reservation of rights or condition relating to recovery from the *Owner*; or
 - .3 those claims are the subject of litigation or binding arbitration between the *Subcontractor* or *Supplier* and the *Contractor*, and the *Contractor* has been found liable for those claims by a court of competent jurisdiction or arbitrator.

- 6.5.17 Any claim for delay damages or extension of the *Contract Time* advanced by the *Contractor* that is, in whole or in part, contingent upon or related to a disputed or unpaid claim by a *Subcontractor* or *Supplier*, contrary to paragraph 6.5.15 and paragraph 6.5.16, shall be void and unenforceable against the *Owner*, and the *Contractor* shall indemnify and save harmless the *Owner* from and against any and all costs, damages, and expenses arising from any such claim.

GC 6.6 CLAIMS FOR A CHANGE IN THE CONTRACT PRICE

1. Add the following to the end of paragraph 6.6.1: “, save and except for claims by the *Owner* for *Contractor Delay* pursuant to paragraphs 6.5.9 and 6.5.10.
2. Delete GC 6.6 in its entirety.

PART 7 DEFAULT NOTICE

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

1. Revise the heading so it reads as follows “OWNER’S RIGHT TO PERFORM THE WORK, TERMINATE THE CONTRACTOR’S RIGHT TO CONTINUE WITH THE WORK, SUSPEND THE WORK OR TERMINATE THE CONTRACT”
2. In paragraph 7.1.2, after “substantial degree” in the second line, add the following words “... , or the *Contractor* fails to conform to any relevant federal, provincial, or municipal law, regulation, by-law or other requirement, including, without limitation, any applicable health and safety act or regulation.” and delete the words “and if the *Consultant* have given a written statement to the *Owner* and the *Contractor* which provides the detail of such neglect to perform the work properly or such failure to comply with the requirements of the *Contract* to a substantial degree.”
3. Add the following at the end of paragraph 7.1.3.2:

“,wherein the default can be corrected within the balance of the *Contract Time* and shall not cause delay to any other aspect of the *Work* or the work of *Other Contractors*, and in no event shall it be deemed to give a right to extend the *Contract Time*.”
4. In paragraph 7.1.5, after the words “and 7.1.4” in the first line, add the words “the *Contractor* shall not be entitled to any damages whatsoever, including any loss of profit, and shall only be entitled to the unpaid balance of the *Contract Price* after deducting for the set-off claims of the *Owner* below, and”
5. In paragraph 7.1.5.3 delete the words: “however, if such cost of finishing the *Work* is less than the unpaid balance of the *Contract Price*, the *Owner* shall pay the *Contractor* the difference;”
6. Add at the end of paragraph 7.1.6 “or suspension of the *Work*.”
7. Add new paragraphs 7.1.7 through 7.1.15 as follows:

“7.1.7 The *Consultant* shall determine all amounts in paragraph 7.1.5. With respect to any part of the *Contract* terminated, the *Contractor* shall:

- .1 execute and deliver such documents and take such action, including consenting to the legal assignment of the *Contractor's* contractual rights, as the *Owner* may require for the purpose of fully vesting in the *Owner* the rights and benefits of the *Contractor* related to the *Work*;
- .2 cooperate with the *Owner* during the transition period;
- .3 stop all *Work* on the date and to the extent specified in the notice of termination;
- .4 place no further orders or subcontracts for materials, services, or facilities except as necessary to complete any portion of the *Work* not terminated, and then only with the *Owner's* prior written approval;
- .5 advise the *Owner* of all orders and subcontracts to the extent that they relate to the performance of *Work* under the *Contract*;
- .6 promptly remove from the *Place of the Work* all construction equipment, tools, and temporary facilities, except such as the *Owner* may wish to purchase or retain;
- .7 take such action as may be necessary, or as the *Owner* may direct, for the protection and preservation of the property related to the *Contract* which is in the possession of the *Contractor*; and
- .8 secure the *Place of the Work* in a safe state before leaving, providing any necessary safety measures, shoring, or other protective devices.

7.1.8 The *Owner* may, at any time, at its sole discretion, without cause, and without prejudice to any other rights or remedies of the *Owner* under this *Contract* or otherwise at law or in equity, terminate the *Contract*, in whole or in part, for convenience, by giving the *Contractor* fifteen (15) *Working Days Notice in Writing*. Such suspension or termination shall not constitute a breach of the *Contract* by the *Owner*.

7.1.9 Upon receipt of such *Notice in Writing* of termination for convenience, the *Contractor* shall comply with all requirements set out in paragraph 7.1.7 above.

7.1.10 Upon termination of the *Contract* for convenience, subject to the *Owner's* right to set-off any amounts owing by the *Contractor*, the *Contractor* shall only be entitled to the following Termination Costs:

- .1 the value of the unpaid balance of the *Contract Price* performed in accordance with the *Contract* up to the date of termination for convenience;
- .2 actual, reasonable, and documented demobilization costs; and

- .3 actual, reasonable, and documented costs incurred in connection with paragraph 7.1.7.8 and paragraph 7.1.7.9.
- 7.1.11 Without limitation, Termination Costs specifically do not include, and the *Contractor* expressly waives any claim for:
 - .1 anticipated profit on the uncompleted *Work*;
 - .2 any costs or lost profit for any other business of the *Contractor* alleged to be affected by the termination for convenience;
 - .3 legal, accounting, or other professional fees incurred by the *Contractor* in connection with the termination for convenience;
 - .4 any consequential, indirect, or special damages; or
 - .5 any other costs, expenses, or losses not expressly set out in paragraph 7.1.10.
- 7.1.12 The *Contractor* shall, within thirty (30) calendar days of receipt of the *Owner's* written notice of termination for convenience, submit to the *Consultant* and *Owner* its termination claim, together with all supporting documentation reasonably required by the *Consultant* and *Owner* to verify the Termination Costs, which termination claim clearly provides that it does not constitute a *Proper Invoice* as defined in the *Contract* or in the *Payment Legislation*. If the *Contractor* to submit its termination claim within 30 calendar days, the *Consultant* shall determine, on the basis of available information, the amount, if any, due to the *Contractor* as a result of the termination for convenience.
- 7.1.13 The *Consultant* shall review the *Contractor's* termination claim and, within sixty (60) calendar days of receipt of a complete termination claim, notify the *Owner* and the *Contractor* of the amount the *Consultant* determines to be payable. Payment of the determined amount shall be made within twenty-eight (28) calendar days of such notification, subject to the *Owner's* rights of set-off in this *Contract*.
- 7.1.14 The *Contractor* acknowledges and agrees that the Termination Costs set out in paragraph 7.1.10, subject to the exclusions in paragraph 7.1.11, represent the *Contractor's* sole and exclusive remedy for termination for convenience, and the *Contractor* hereby waives any and all other claims, demands, or causes of action arising from or related to termination for convenience
- 7.1.15 Upon a termination of the *Contract*, the *Owner* shall publish a notice of termination in the form and manner prescribed in the *Construction Act*, if applicable. For greater certainty, a termination in accordance with this GC 7.1 will be effective whether or not a notice of termination is published."

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

1. Delete "20 Working Days" in paragraph 7.2.2 and replace with "sixty (60) calendar days"
2. Delete paragraph 7.2.3.1 in its entirety.
3. Delete paragraph 7.2.3.2 in its entirety.
4. Delete paragraph 7.2.5 in its entirety and replace with the following:

"If the default cannot be corrected within the five (5) *Working Days* specified in paragraph 7.2.4, the *Owner* shall be deemed to have cured the default if it:

 - .1 commences correction of the default within the specified time;
 - .2 provides the *Contractor* with an acceptable schedule for such correction; and,
 - .3 completes the correction in accordance with such schedule."
 5. Add new paragraph 7.2.6 as follows:

"7.2.6 If the *Contractor* terminates the *Contract* under the conditions described in GC 7.2 – CONTRACTOR'S RIGHT TO SUSPEND THE WORK OR TERMINATE THE CONTRACT, the *Contractor* shall be entitled to be paid for all *Work* performed to the date of termination, as determined by the *Consultant*. The *Contractor* shall also be entitled to recover the direct costs associated with termination, including the costs of demobilization and losses sustained on *Products* and *Construction Equipment*. The *Contractor* shall not be entitled to any recovery for any special, indirect or consequential losses, including loss of profit."

PART 8 DISPUTE RESOLUTION

GC 8.1 AUTHORITY OF THE CONSULTANT

1. In paragraph 8.1.1, add prior to "findings" in the third line, the words "interpretation and".
2. Delete paragraph 8.1.2 in its entirety and replace with the following:

"If the matter in dispute is not resolved promptly, the *Consultant* will give such instructions as, in its opinion, are necessary for the proper performance of the *Work* and to minimize delays pending settlement of the dispute. The parties shall act immediately according to such instruction; it being understood that by so doing neither party will jeopardize any claim it may have. If it is subsequently determined that such instructions were in error or at variance with the *Contract Documents*, the *Owner* (or the *Contractor* as the case may be) shall pay the other party reasonable costs incurred by the party in carrying out such instructions which it was required to do beyond those which the *Contract Documents* correctly understood and interpreted would have required it to do, including costs resulting from interruption of the *Work*."

3. Delete paragraph 8.1.3 in its entirety.

GC 8.2 ADJUDICATION

1. Add new paragraph 8.2.2 as follows:

“8.2.2 The commencement of an adjudication under applicable *Payment Legislation* will not be deemed to be a stay, suspension, termination or bar of any other dispute resolution process.”

GC 8.3 NEGOTIATION, MEDIATION AND ARBITRATION

1. Delete paragraph 8.3.1 in its entirety.
2. Amend paragraph 8.3.4 by changing part of the second line from “the parties shall request the *Project Mediator*” to “and subject to paragraph 8.3.1, the parties may request the *Project Mediator*”
3. Delete paragraphs 8.3.4 through 8.3.8 in their entirety.
4. Add new paragraphs 8.3.4 through 8.3.8 as follows:

“8.3.4 Following receipt of all *Notices in Writing* of dispute and *Notices in Writing* of reply with respect to the same subject matter, the *Consultant* shall commence an investigation into the dispute and may ask of either party, any questions or for any further documents or information it may require to make findings and determinations with respect to the dispute. Neither party is obliged to answer any questions or provide any further information or documents; however, the *Consultant* may make any inference or finding it deems appropriate based on the responses, documentation, or information further provided, or refused to be provided, as the case may be.

8.3.5 The *Consultant* shall, no later than thirty (30) *Working Days* of receipt of the last related *Notice in Writing* of reply, provide its findings to the *Owner* and the *Contractor* (the “*Consultant’s Dispute Determination*”). The *Consultant’s Dispute Determination* shall be binding on the parties to the extent permitted by the *Construction Act*.

8.3.6 If the parties both agree, they may at any time prior to the delivery of the *Consultant’s Dispute Determination* jointly instruct the *Consultant* to hold its investigation into the dispute in abeyance, and:

- .1 enter into or continue negotiations with one another;
- .2 enter into mediated negotiations on such terms as are agreed to by the parties;
- .3 refer the dispute to adjudication pursuant to the *Construction Act* on such terms and consolidated with any other matters as the parties may agree and as permitted by the *Construction Act*; or

.4 refer the dispute to binding arbitration on such terms and consolidated with any other matters as the parties may agree.

8.3.7 With respect to paragraph 8.3.6.1 and paragraph 8.3.6.2, either party may, upon giving five (5) *Working Days' Notice in Writing* to the other and the *Consultant*, terminate their agreement to have the *Consultant's* investigation be held in abeyance and their participation in negotiations or mediated negotiations, as applicable. Upon such termination, the *Consultant's* investigation shall resume, and the *Consultant* shall deliver its *Consultant's Dispute Determination* within the balance of the 30 *Working Days* period remaining at the time its investigation into the dispute was held in abeyance.

8.3.8 The parties may agree, prior to delivery of any adjudication determination further to an adjudication that may have been commenced by either party pursuant to the *Construction Act*, that such adjudication determination shall not be interim, but shall be final and binding on the parties, and not the subject matter of any further juristic determination.

GC 8.4 RETENTION OF RIGHTS

1. In paragraph 8.4.1, delete the numbers "8.1.3" in the last line and replace with "8.1.2"
2. In paragraph 8.4.2, delete all words after the phrase "*Place of the Work*"

PART 9 PROTECTION OF PERSONS AND PROPERTY

GC 9.1 PROTECTION OF WORK AND PROPERTY

1. In paragraph 9.1.1 delete the words "except damage which occurs as the result of:
 - .1 errors in the *Contract Documents*;
 - .2 acts or omissions by the *Owner*, the *Consultant*, *Other Contractors*, their agents and employees."
2. Add new paragraphs 9.1.5, 9.1.6 and 9.1.7 as follows:
 - "9.1.5 The *Contractor* shall not undertake to repair and/or replace any damage whatsoever to adjoining property, or acknowledge the same was caused by the *Contractor*, without first consulting the *Owner* and receiving written instructions as to the course of action to be followed.
 - 9.1.6 Notwithstanding paragraph 9.1.5, where there is danger to the life or property, the *Contractor* may take such emergency action as is necessary to remove the danger and shall indemnify and hold harmless the *Owner* and the *Consultant*, their agents and employees from and against claims, demands, losses, costs, damages, actions, suits or proceedings by third parties that arise out of, or are attributable to such action.

9.1.7 Notwithstanding paragraph 9.1.5, where the damage to third party property was caused by the *Contractor*, its *Subcontractors* or those for whom the *Contractor* is responsible at law, the *Contractor* shall deal directly with the owner of the damaged third party property and repair same at the *Contractor's* sole cost and expense."

GC 9.2 TOXIC AND HAZARDOUS SUBSTANCES

1. Add new paragraph 9.2.5.5 as follows:

"in addition to the steps described in paragraph 9.2.5.3, take any further steps it deems necessary to mitigate or stabilize any conditions resulting from encountering toxic or hazardous substances or materials."

2. Add the following to paragraph 9.2.6, after the word "responsible" in the second line:

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

3. Add the following to paragraph 9.2.8, after the word "responsible" in the second line:

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

4. Add new paragraph 9.2.10 as follows:

"The *Contractor*, *Subcontractors* and *Suppliers* shall not bring on to the *Place of the Work* any toxic or hazardous substances and materials except as required in order to perform the *Work*. If such toxic or hazardous substances or materials are required, storage in quantities sufficient to allow work to proceed to the end of any current work week only shall be permitted. All such toxic and hazardous materials and substances shall be handled and disposed of only in accordance with all laws and regulations that are applicable at the *Place of the Work*."

5. Add new paragraph 9.2.11 as follows:

"The *Contractor* shall indemnify and hold harmless the *Owner*, its parent, subsidiaries and affiliates, the *Consultant* and their respective partners, officers, directors, agents and employees from and against any and all liabilities, costs,

expenses, and claims resulting from bodily injury, including death, and damage to property of any person, corporation or other body politic, that arises from the use by the *Contractor, Subcontractors and Suppliers* of any toxic or hazardous substances or materials at the *Place of the Work*.”

GC 9.4 CONSTRUCTION SAFETY

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

“9.4.1 The *Contractor* shall, at its sole cost, be solely responsible for:

- .1 construction safety at the *Place of the Work* and for compliance with the rules, Regulations, and practices required by the applicable construction health and safety legislation and shall be responsible for initiating, maintaining and supervising all safety precautions and programs in connection with the performance of the *Work*;
- .2 registering the notice of project for the *Project* under the *OHSA*; and
- .3 acting as, and carrying out the responsibilities of, “constructor” under the *OHSA*.”

2. Delete paragraph 9.4.4 in its entirety and replace as follows:

“9.4.4 The *Owner* shall support the *Contractor* in seeking compliance by the *Consultant, Other Contractors* (except those under the control or contract with the *Contractor*) and the *Owner’s* own forces with all health and safety precautions and programs established by the *Contractor* at the *Place of the Work*.”

3. Add new paragraphs 9.4.6, 9.4.7 and 9.4.8 as follows:

“9.4.6 The *Contractor* acknowledges and is aware of the *Contractor's* responsibilities under the *OHSA* having jurisdiction in the *Place of the Work* and that such responsibilities have been brought to the *Contractor's* attention by the *Owner*, and the *Contractor* shall indemnify and save harmless the *Owner*, its agents, trustees, officers, directors, employees, *Consultants*, successors, appointees, and assigns from and against the consequences of any and all safety infractions committed by the *Contractor* under the occupational health and safety legislation in force at the *Place of the Work* including the payment of legal fees and disbursements on a substantial indemnity basis.”

9.4.7 The *Contractor* shall arrange regular safety meetings, and shall supply and maintain, at its own expense, at its office or other well-known place at the job site, safety equipment necessary to protect the workers and general public against accident or injury as prescribed by the authorities having jurisdiction at the *Place of the Work*, including, without limitation, articles necessary for administering first-aid to any person and an

emergency procedure for the immediate removal of any injured person to a hospital or a doctor's care.

- 9.4.8 The *Contractor* shall promptly report in writing to the *Owner* and the *Consultant* all accidents of any sort arising out of or in connection with the performance of the *Work*, whether on or adjacent to the job site, giving full details and statement of witnesses. If death or serious injuries or damages are caused, the accident shall be promptly reported by the *Contractor* to the *Owner* and the *Consultant* by telephone or messenger in addition to any reporting required under the applicable safety regulations."

PART 10 GOVERNING REGULATIONS

GC 10.2 LAWS, NOTICES, PERMITS, AND FEES

1. In paragraph 10.2.2, add the following second sentence:

"The *Contractor* shall pay for, post, deliver and provide all required security deposits, development charges or similar levies required by the municipality, school boards or other public authorities having jurisdiction that are required to be paid at the same time as the issuance of any required permit, consent, approval or similar authorization to proceed with the *Work*."

2. Amend paragraph 10.2.5 by adding the words "Subject to paragraph 1.1.14 and paragraph 3.1.4" at the beginning of the paragraph. Add the following sentence to the end "The *Contractor* shall pay for, post, deliver and provide all required security deposits, development charges or similar levies required by the municipality, school boards or other public authorities having jurisdiction that are required to be paid at the same time as the issuance of any required permit, consent, approval or similar authorization to proceed with the *Work*."

3. Amend paragraph 10.2.6 by adding the following sentence to the end of the paragraph:

"In the event the *Owner* suffers loss or damage as a result of the *Contractor's* failure to comply with paragraph 10.2.5, the *Contractor* agrees to indemnify and to hold harmless the *Owner* and the *Consultant* from and against any claims, demands, losses, costs, damages, actions suits or proceedings resulting from such failure by the *Contractor*."

4. Add new paragraph 10.2.8 as follows:

"The *Contractor* shall furnish all certificates that are required or given by the appropriate governmental authorities as evidence that the *Work* as installed conforms with the laws and regulations of authorities having jurisdiction, including certificates of compliance for the *Owner's* occupancy or partial occupancy. The certificates are to be final certificates giving complete clearance of the *Work*, in the event that such governmental authorities furnish such certificates."

PART 11 INSURANCE

GC 11.1 INSURANCE

1. Delete GC 11.1 in its entirety and replace with the following:

“11.1.1 Without restricting the generality of PART 13 – INDEMNIFICATION AND WAIVER, or the responsibility of the *Contractor* under the *Contract*, the *Contractor* shall obtain and maintain at its own expense, including the cost of any applicable deductible, the following policies of insurance.

- .1 Commercial General Liability Insurance, written on IBC Form 2100 or its equivalent, including but not limited to bodily and personal injury liability, property damage, products liability, completed operations liability, owners & contractors protective coverage liability, blanket contractual liability, premises liability, and contingent employer’s liability coverage, having an inclusive limit of not less than five million dollars (\$5,000,000) per occurrence and five million dollars (\$5,000,000) in the Aggregate. To achieve the desired limit, Umbrella or Excess liability insurance may be used as a follow form policy. Coverage shall be subject to the following:

- (1) where the *Work* involves one or more of the following activities:

- (i) the use of explosives for blasting;
- (ii) vibration from pile driving or caisson work;
- (iii) the removal or weakening of support of any property, building or land whether such support be natural or otherwise,

explosion, collapse and underground (“XCU”) coverages shall be added by endorsement to the policy and noted on the certificate of insurance;

- (2) where the *Work* provides for or contemplates the handling of asbestos, coverage shall not contain an asbestos exclusion and same shall be noted on the certificate of insurance. Alternatively, coverage may be provided under Contractor’s Pollution Liability Insurance as described in paragraph 11.1.1.8;

- (3) where the *Work* provides for or contemplates the process of hot tarring and or welding, the Commercial General Liability policy must be endorsed to include the hot tarring and or welding services provided by the *Contractor* and same shall be noted on the certificate of insurance;

- (4) the policy shall include coverage for pollution from “hostile fires”;

- (5) unless otherwise approved by the *Owner*, the *Contractor's* deductible on the Commercial General Liability policy and, if applicable, Contractors Pollution Liability Insurance shall not be more than ten thousand dollars (\$10,000); and
 - (6) the insurance coverage shall remain in effect throughout the time that the *Contract* is in effect, including the warranty period.
- .2 Standard Form Automobile Liability Insurance that complies with all requirements of the current legislation of the Province of Ontario, having an inclusive limit of not less than two million dollars (\$2,000,000) per occurrence for third party liability, in respect of the use or operation of vehicles owned, operated or leased by the *Contractor* for the performance of the *Work* under the *Contract*. The insurance coverage shall remain in effect throughout the time that the *Contract* is in effect, including the warranty period. To achieve the desired limit, Umbrella or Excess liability insurance may be used;
- .3 Non-Owned Automobile Liability Insurance in standard form having an inclusive limit of not less than two million dollars (\$2,000,000) per occurrence, in respect of the use or operation of vehicles not owned by the *Contractor*, that are used or operated on its behalf for the performance of the *Work* under the *Contract*. The insurance coverage shall remain in effect throughout the time that the *Contract* is in effect, including the warranty period. To achieve the desired limit, Umbrella or Excess liability insurance may be used;
- .4 Aircraft and Watercraft Liability Insurance I Intentionally removed.
- .5 Builders Risk Insurance – Intentionally removed.
- .6 All Risks Contractor's Equipment Insurance with respect to loss or damage (including fire, theft, burglary, etc.) of the *Contractor's* own property and property in its care, custody and control, including its equipment, tools and stock, used in connection with the *Contract*.
- .7 Wrap-up Liability Insurance -Intentionally removed.
- .8 Contractor's Pollution Liability Insurance – Intentionally removed.
- .9 Boiler and Machinery Insurance - Intentionally removed.
- 11.1.2 All policies of insurance required under paragraph 11.1.1 shall,
 - .1 be in a form and issued by an insurance company satisfactory to the *Owner*, that is licensed to carry on business in Ontario;
 - .2 include the *Owner*, and such other persons which the *Owner* may reasonably require to be added, as additional named insureds, as may be applicable;

- .3 be recorded as being a primary policy and not as excess or call into contribution to any other insurance available to the *Owner*;
 - .4 be maintained continuously during the course of carrying out the *Work*, or for such period of time as may be required after completion of the *Work* as deemed necessary by the *Owner*;
 - .5 provide coverage for any business interruption, loss of use and/or economic losses incurred by the *Owner*;
 - .6 except in the case of standard form automobile liability insurance and non-owned automobile liability insurance, include the *Owner* named as an additional named insured, to the extent of the *Contractor's* obligations to the *Owner* under the *Contract Documents*;
 - .7 contain cross liability and severability of interest provisions, as may be applicable;
 - .8 preclude subrogation claims against the *Owner* and any other person insured under the policy; and
 - .9 provide that at least thirty (30) calendar days prior written notice (fifteen days in the case of standard form automobile liability insurance and ten days in the event of non-payment of premiums) shall be given to the *Owner* by the insurer before the insurer or *Contractor* takes any steps to cancel, termination, fail to renew, amend or otherwise change or modify the insurance or any part thereof.
- 11.1.3 The *Contractor* shall be responsible for deductible amounts under all of the policies of insurance required under paragraph 11.1.1.
- 11.1.4 The *Owner* reserves the right to require the *Contractor* to purchase such additional insurance coverage as the *Owner* may reasonably require. The *Owner* reserves the right to request such higher limits of insurance or otherwise alter the types of coverage requirements due to material or significant changes arising from such matters as the nature of the work, agreement value, industry standards, and availability of insurance, as the *Owner* may reasonably require from time to time. Where such a right is exercised by the *Owner*, the *Owner* will compensate the *Contractor* for any resulting increase in applicable insurance premiums only where the *Contractor* can establish to the satisfaction of the *Owner*, acting reasonably, that such increase in applicable insurance premiums for the insurance required pursuant to the *Contract* does not result from the actions or omissions, negligence, claims history or reassessment by the insurer of the insurance risk posed by the *Contractor*.
- 11.1.5 Any insurance coverage acquired under the *Contract* shall in no manner discharge, restrict or limit the liabilities assumed by the *Contractor*

under the *Contract*. The dollar limit of insurance coverage shall not be limited to the *Contract Price*.

- 11.1.6 The *Contractor* shall pay all premiums on the policies as they become due provided that the *Owner* may pay premiums as they become due and deduct the amount thereof from monies due from the *Owner* to the *Contractor* should the *Contractor* fail to do so.
- 11.1.7 The *Contractor* shall deposit with the *Owner* such evidence of its insurance policies required under paragraph 11.1.1 at the time of execution of the *Contract* and thereafter during the term of the *Contract*, by upload to the *Bidding System*, no later than twenty (20) *Working Days* prior to the renewal of each applicable policy, a certificate of insurance originally signed by an authorized insurance representative confirming thereon relevant coverage information including but not limited to the Policy name and description, name of insurer, name of insurance broker, name of insured, name of additional named insureds as may be applicable, commencement and expiry dates of coverage, dollar limits of coverage, deductible levels as may be applicable, cancellation/termination provisions; or at the *Owner's* election, a certified copy of the insurance policy or policies required under paragraph 11.1.1. The *Contractor* shall ensure that the certificate holder is identified on each certificate of insurance as the *Owner* at 20 Education Court, P.O. Box 2558, Hamilton, ON L8N 3L1, or at such other address as the *Owner* may advise in writing, and that all certificates, cancellation, non-renewal, or adverse notices are mailed to that address.
- 11.1.8 The *Contractor* shall not do or omit to do anything that would impair or invalidate the insurance policies.
- 11.1.9 Delivery to and examination or approval by the *Owner* of any certificates of insurance or other evidence of insurance does not relieve the *Contractor* of any of its indemnification or insurance obligations under the *Contract*. The *Owner* is not under a duty either to ascertain the existence of or to examine such certificates of insurance or policies of insurance, nor to advise the *Contractor* in the event such insurance coverage is not in compliance with the requirements set out on the *Contract*.
- 11.1.10 The *Contractor* shall promptly investigate claims reported to the *Contractor* by a third party or by the *Owner*. The *Contractor* shall make contact with the claimant within forty-eight (48) hours of the *Contractor's* receipt of notice of a claim. The *Contractor* shall initiate an investigation of the claim immediately upon notice, and advise the claimant by letter of its position regarding resolution of the claim within twenty (20) *Working Days* of the notice. The *Contractor* shall include in its letter of resolution the reasons for its position. Failing acceptance of the resolution by the claimant of the proposed resolution, the *Contractor* agrees to report the claim to its insurer for further review

and response to the claimant. Should the *Contractor* fail to follow this procedure, the *Owner* may investigate and resolve such claims, and offset the resultant costs against monies due to the *Contractor*, from time to time, under the *Contract*.

- 11.1.11 The *Contractor* hereby waives all rights of recourse against the *Owner* in respect of loss or damage to the *Contractor's* owned, leased or hired property. The *Contractor* shall also include a provision in its contracts requiring all *Subcontractors* to waive all rights of recourse against the *Owner* in respect of loss or damage to the owned, leased or hired property of the *Contractor* and *Subcontractors*.

ADDITIONAL GENERAL CONDITION - GC 11.2

1. Add new GC 11.2 as follows:

"GC 11.2 CONTRACT SECURITY

11.2.1 The *Contractor* shall, prior to commencement of the *Work* or within the specified time, provide to the *Owner* any *Contract* security specified in the *Contract Documents* or required by the *Construction Act*, including required bonds relating to public contracts, if applicable.

11.2.2 All required bonds shall be issued by a duly licensed surety company, which is permitted under the *Construction Act*, authorized to transact a business of suretyship in the Province of Ontario and shall be maintained in good standing until the fulfillment of the *Contract*. The form of the labour and material bond, and the performance bond, if required under this *Contract* or under the *Construction Act*, shall be in accordance with, and in the for set out in, the *Construction Act*."

PART 12 OWNER TAKEOVER

GC 12.1 READY-FOR-TAKEOVER

1. Add new subparagraphs 12.1.1.9 and 12.1.1.10 as follows:

“.9 the *Consultant* has provided a punchlist of deficiencies and incomplete items of the *Work*, and a plan for correcting or completing all punchlist item, to the *Consultant* and the *Owner*, and such list has been approved by the *Consultant* and the *Owner*, acting reasonably.

.10 the *Owner* has obtained a search of title to the relevant properties from a solicitor certifying that there are no liens registered relative to the *Work*."

2. Delete paragraph 12.1.2 in its entirety and replace as follows:

"12.1.2 If any prerequisites set forth in paragraphs 12.1.1.3 to 12.1.1.6 must be deferred because they are not capable of being done because of an *Excusable Delay*, or by agreement between the *Owner* and *Contractor* to do so, *Ready-for-Takeover* shall not be delayed."

3. Amend paragraph 12.1.3 by adding the following sentence between the first and second sentence "The comprehensive list must be reviewed and approved by the

Consultant and the *Owner* and shall include all trades involved and a detailed schedule for when the work will be performed and completed.”

4. Amend paragraph 12.1.5 by adding the following words at the end “in accordance with the comprehensive list required in paragraph 12.1.3”.

GC 12.2 EARLY OCCUPANCY BY THE OWNER

1. Delete paragraph 12.2.1 in its entirety and replace with the following:

“12.2.1 The *Owner* reserves the right to take possession of and use for any intended purpose any portion or all of the undelivered portion of the *Project* even though the *Work* may not be substantially performed, provided that such taking possession and use will not interfere, in any material way, with the progress of the *Work*. The taking of possession or use of any such portion of the *Project* shall not be deemed to be the *Owner's* acknowledgement or acceptance of the *Work* or the *Project*, nor shall it relieve the *Contractor* of any of its obligations under the *Contract*.”

2. Delete subparagraph 12.2.3.2 in its entirety and replace with the following:

“The *Contractor* shall cease to be responsible as constructor under the OHSA for such part as from this date, provided that: (1) the *Owner* shall not be considered or deemed to become constructor or employer for the remaining parts; (2) the *Contractor* remains responsible and liable to perform, complete, and if necessary correct all of the *Work* for such part, including all items identified in the punchlist of incomplete and deficient *Work* approved by the *Consultant*; and (3) the *Contractor* shall remain responsible for securing the perimeter of such part.”

3. Add new paragraphs 12.2.5 and 12.2.6 as follows:

“12.2.5 Whether the *Project* contemplates *Work* by way of renovations in buildings which will be in use or be occupied during the course of the *Work* or where the *Project* involves *Work* that is adjacent to a structure which is in use or is occupied, the *Contractor*, without in any way limiting its responsibilities under the *Contract*, shall take all reasonable steps to avoid interference with fire exits, building access and egress, continuity of electric power and all other utilities, to suppress dust and noise and to avoid conditions likely to propagate mould or fungus of any kind and all other steps reasonably necessary to promote and maintain the safety and comfort of the users and occupants of such structures or adjacent structures.

12.2.6 The *Owner* shall have the right to enter or, if compliant with the Ontario Building Code, occupy the *Work* in whole or in part for the purpose of placing fittings and equipment, or for other use before *Substantial Performance of the Work*, if, in the opinion of the *Consultant*, such entry and occupation does not prevent or substantially interfere with the *Contractor* in the performance of the *Contract* within the *Contract Time*. Such entry or occupation shall neither be considered as acceptance of

the *Work*, nor in any way relieve the *Contractor* from its responsibility to complete the *Contract*.”

GC 12.3 WARRANTY

1. Add new paragraphs 12.3.7 through 12.3.11 as follows:

“12.3.7 The *Contractor* shall provide fully and properly completed and signed copies of all warranties and guarantees required by the *Contract Documents*, containing:

- .1 the proper name of the *Owner*;
- .2 the proper name and address of the *Project*;
- .3 the date the warranty commences, which shall be at the “date of *Substantial Performance of the Work*” unless otherwise agreed upon by the *Consultant* in writing.
- .4 a clear definition of what is being warranted and/or guaranteed as required by the *Contract Documents*; and
- .5 the signature and seal (if required by the governing law of the *Contract*) of the company issuing the warranty, countersigned by the *Contractor*.

12.3.8 Should any *Work* be repaired or replaced during the time period for which it is covered by the specified warranty, a new warranty shall be provided under the same conditions and for the same period as specified herein before. The new warranty shall commence at the completion of the repair or replacement.

12.3.9 The *Contractor* shall ensure that its *Subcontractors* are bound to the requirements of GC 12.3 – WARRANTY for the *Subcontractor’s* portion of the *Work*.

12.3.10 The *Contractor* shall ensure that all warranties, guarantees or other obligations for *Work*, services or *Products* performed or supplied by any *Subcontractor*, *Supplier* or other person in connection with the *Work* and such assignment shall be with the consent of the assigning party, where required by law, or by the terms of that party’s contract. Such assignment shall be in addition to, and shall in no way limit, the warranty rights of the *Owner* under the *Contract Documents*.

12.3.11 The *Contractor* shall commence or correct any deficiency within two (2) *Working Days* after receiving a notice from the *Owner* or the *Consultant*, and shall complete the *Work* as expeditiously as possible, except in the case where the deficiency prevents maintaining security or where basic systems essential to the ongoing business of the *Owner* and/or its tenants cannot be maintained operational as designed. In those circumstances all necessary corrections and/or installations of temporary replacements shall be carried out immediately as an

emergency service. Should the *Contractor* fail to provide this emergency service within two (2) hours of a request being made during the normal business hours of the *Contractor*, the *Owner* is authorized, notwithstanding GC 3.1, to carry out all necessary repairs or replacements at the *Contractor's* expense."

PART 13 INDEMNIFICATION AND WAIVER

GC 13.1 INDEMNIFICATION

1. Delete GC 13.1 in its entirety and replace with the following:

"13.1.1 The *Contractor* shall indemnify and hold harmless the *Owner*, the *Consultant* and their respective partners, trustees, officers, directors, agents and employees from and against any and all claims, liabilities, expenses, demands, losses, damages, actions, costs, suits, or proceedings (hereinafter called "Claims"), whether in respect of Claims suffered by the *Owner* or in respect of Claims by third parties, that directly or indirectly arise out of, or are attributable to, the acts or omissions of the *Contractor*, its employees, agents, *Subcontractors*, *Suppliers* or any other persons for whom it is in law responsible (including, without limitation, claims that directly or indirectly arise out of, or are attributable to, loss to use or damage to the *Work*, the *Owner's* property adjacent to the *Place of the Work* or death or injury to the *Contractor's* personnel).

13.1.2 The provisions of GC 13.1 - INDEMNIFICATION shall survive the termination of the *Contract*, however caused and no payment or partial payment, no issuance of a final certificate of payment and no occupancy in whole or in part of the *Work* shall constitute a waiver or release of any of the provisions of GC 13.1."

GC 13.2 WAIVER OF CLAIMS

1. In the third line of paragraph 13.2.1, add the words "claims for delay pursuant to GC 6.5 DELAYS" after the word "limitation". Add the words "(collectively "Claims")" after "*Ready-for-Takeover*" in the fourth line.
2. In subparagraph 13.2.1.1, change the word "claims" to "Claims" and change the word "claim" to "Claim".
3. In subparagraph 13.2.1.2, change the word "claims" to "Claims".
4. Delete subparagraph 13.2.1.3 in its entirety.
5. In subparagraph 13.2.1.4, change the word "claims" to "Claims".
6. In paragraph 13.2.2, change the words "in subparagraphs 13.2.1.2 and 13.2.1.3" to "in subparagraph 13.2.1.2". Change the word "claims" to "Claims" in both instances and change the word "claim" to "Claim".
7. Delete paragraph 13.2.3 in its entirety.

8. Delete paragraph 13.2.4 in its entirety.
9. Delete paragraph 13.2.5 in its entirety.
10. In paragraph 13.2.6, change the word “claim” to “Claim” in all instances in the paragraph.
11. Delete paragraph 13.2.8 in its entirety and replace with the following:

“The *Contractor* giving *Notice in Writing* of Claim as provided for in GC 13.2 – Wavier of Claims, shall submit within a reasonable time a detailed account of the amount claimed.
12. Delete paragraph 13.2.9 in its entirety and replace with the following:

“Where the even or series of events giving rise to a claim made under paragraph 13.2.1 has a continuing effect, the detailed account submitted under paragraph 13.2.8 shall be considered to be an interim account, and the *Contractor* shall submit further interim accounts, at reasonable intervals, giving the accumulated amount of the Claim and any further grounds upon which it is based. The *Contractor* shall submit a final account after the end of the effects resulting from the event or series of events.”

ADDITIONAL PART – PART 14 OTHER PROVISIONS

1. Add new Part 14 as follows:

“PART 14 OTHER PROVISIONS

GC 14.1 LIENS

- 14.1 Notwithstanding any other provision in the *Contract*, the *Owner* shall not be obligated to make payment to the *Contractor* for the amount of all liens (references to liens in this *Contract* include all written notices of lien, claims for lien, given liens, or liens registered on title to any of the *Owner's* lands), plus 25% of their aggregate value as security for costs, if at the time a certificate or payment was otherwise due, any lien has not been vacated or discharged in accordance with this *Contract* and the *Construction Act*.
- 14.2 The *Contractor* shall, within 20 calendar days of being requested to do so by the *Consultant* or *Owner*, or upon learning of a lien's existence, whichever is earlier, at its sole expense, vacate or discharge the lien from title to the *Project* lands or any of the *Owner's* lands or third parties' lands if the lien is in relation to the *Project*, even if erroneously given or registered.
- 14.3 In the event that the *Contractor* fails or refuses to vacate or discharge a lien within the time prescribed above, the *Owner* may, at its option, be entitled to take all steps necessary to vacate and/or discharge the lien, and all costs and expenses incurred by the *Owner* in so doing (including, without limitation, all legal fees and disbursements and the cost and amount of the

security posted to vacate the lien) shall be on the account of the *Contractor* and the *Owner* may deduct such amounts from amounts otherwise owing to the *Contractor*. If the *Owner* vacates and/or discharges the lien, the *Owner* shall be entitled to retain all amounts the *Owner* would be permitted to retain in this *Contract* and pursuant to the *Construction Act*.

- 14.4 The *Contractor* shall, if requested, undertake the *Owner's* defence of any lawsuit commenced in respect of any liens at the *Contractor's* sole expense, and in any event, shall indemnify and save the *Owner* harmless from all legal fees, disbursements, professional fees, and expenses in relation to the *Owner's* defence of such lawsuits on a full indemnity basis.
- 14.5 Without limiting any of the foregoing, the *Contractor* shall indemnify the *Owner* for all legal fees, disbursements, professional fees, and expenses on a full indemnity basis, the *Owner* may incur in connection with any claim for lien or any subsequent lawsuit brought in connection with the lien, or in connection with any other claim or lawsuit brought against the *Owner* by any party that provided services or *Products* to the *Place of the Work*.
- 14.6 GC 15 does not apply to liens claimed by the *Contractor*."

END OF –SECTION 00800 – SUPPLEMENTARY ARTICLES AND CONDITIONS

BIDDING SYSTEM FORMS

****The following pages show the information the Bidder will be required to provide when completing their online submission in the Bidding System****

2026-132-P02234 - RFT Prince of Wales Elementary School Outdoor Playground Alteration

Opening Date: March 30, 2026 4:00 PM

Closing Date: April 22, 2026 2:00 PM

Schedule of Prices

* Denotes a "MANDATORY" field

Do not enter \$0.00 dollars unless you are providing the line item at zero dollars to the Owner.

If the line item and/or table is "NON-MANDATORY" and you are not bidding on it, leave the table and/or line item blank. Do not enter a \$0.00 dollar value.

FORM OF TENDER

We, the Bidder, having examined the Tender Documents for the above-named Project, including all Addenda, and having visited the Place of the Work, hereby offer to perform the Work in accordance with the Tender Documents, for the Stipulated Price hereinafter stated.

The Stipulated Price shall be:

- 1. in Canadian dollars,
- 2. excluding Value Added Taxes
 - i. includes all identified cash allowance(s) in the amount of \$ 15,000.00
 - a. Asphalt Compaction Testing
 - b. Concrete testing for concrete curbs
 - c. CSA Inspection and Report
 - d. QP Reporting for soil removal

Total Contract Price *	
Subtotal:	

ITEMIZED PRICING - General and Site Preparation

Itemized prices are a breakdown of items of Work included in the Total Contract Price. It is understood that these itemized prices are provided for information purposes.

Line Item	Description	Unit	Quantity	Cost Price	Total
1	General Mobilization and costs unrelated to line items	LS	1		
2	Removals as noted (existing artifical turf, asphalt, chain link fence, soil for beds)	LS	1		
Subtotal:					

ITEMIZED PRICING - Planting

Itemized prices are a breakdown of items of Work included in the Total Contract Price. It is understood that these itemized prices are provided for information purposes.

Line Item	Description	Unit	Quantity	Cost Price	Total
1	Acer rubrum 'Armstrong' @60mm cal.	ea	6		
2	Acer saccharum Autumn Fest @60mm cal.	ea	2		
3	Magnolia x 'Cameo' @15 gal.	ea	3		
4	Clethra alnifolia 'Sixteen Candles' @3gal pot	ea	21		
5	Juniperuis sabina @3gal pot	ea	23		
6	Potentilla fruticosa 'Primrose Beauty' @3gal pot	ea	17		
7	Calamagrostis acutiflora 'Kara! Forester' @1gal pot	ea	33		
8	Hemerocallis 'Little Wine Cup' @1gal pot	ea	85		
9	Rudbeckia hirta @1gal pot	ea	66		
10	Deschampsia cepitosa @1gal pot	ea	9		
Subtotal:					

ITEMIZED PRICING - Landscape Works

Itemized prices are a breakdown of items of Work included in the Total Contract Price. It is understood that these itemized prices are provided for information purposes.

Line Item	Description	Unit	Quantity	Cost Price	Total
1	Adjust existing artificial turf to match proposed grades. Reinstate nailer edge for artificial turf against planter curb, see L2 for location.	LS	1		
2	Supply & install amourestone seating.	ton	25		
3	Supply & install new artificial turf and subdrain areas.	m2	66		
4	Supply & install new asphalt on existing granular base. Asphalt to slope at uniform grading to match existing grades at edges.	m2	340		
5	Supply, install and layout paint lines for sundial as per details on L5.	LS	1		
6	Supply & install PIP concrete planter curb as per drawing L2	lin.m	234		
7	Supply & install Henderson Playground Cubist Climber 4.	LS	1		
8	Supply & install Ed's precast concrete seat wall.	ea.	23		
9	Supply & install outdoor chalkboard.	ea.	1		
10	Supply, install and layout paint lines for labyrinth see layout on L3.	LS	1		
11	Supply & install 1.2m wide 1.8m high galvanized chain link gate connection to the community garden.	LS	1		
12	Supply & install 100mm of bark mulch in designated areas and planting beds.	m3	44		
13	Supply & install 600mm of triple mix topsoil to all new in planting beds.	LS	1		
14	Relocate existing concrete bunker on site. See existing and new location on L1 Landscape Plan.	LS	1		
Subtotal:					

Summary Table

Bid Form	Amount
FORM OF TENDER	
Subtotal Contract Amount:	

* Denotes a "MANDATORY" field

LIST OF SUBCONTRACTORS

The Bidder shall make an entry against each possible sub-trade listed by entering the name of the proposed Subcontractor or "by own forces", as applicable. No blank spaces are to be left.

The Bidder shall state only one (1) proposed Subcontractor for each sub-trade listed.

Where the Board has undertaken a prequalification process for a category of subtrade listed below, the Bidder shall name one of the Board's pre-qualified Subcontractors. Refer to RFT Document, Instructions to Bidders, Section 2 Pre-Qualifications for the pre-qualification lists.

Line Item	Sub-trade	Proposed Subcontractor *
1	Artificial Turf	
2	Asphalt Paving	
3	Concrete	
4	Fencing	
5	Geo technical	
6	Landscape	
7	Playground	

Documents

* Denotes a "MANDATORY" field

It is the Bidder's responsibility to make sure the uploaded file(s) is/are not defective or corrupted and are able to be opened, viewed and electronically verifiable by the Board.

If the attached file(s) cannot be opened, viewed or electronically verified by the Board, your Tender submission shall be rejected.

All instructions and details for assessing authentication shall be included with the digital bond uploaded in the Bidding System.

- Bid Bond * (mandatory)

Addenda, Terms and Conditions

I/WE DECLARE that this Tender is made without collusion, knowledge, and comparison of figures or arrangement with any other company, firm or person submitting a Tender for the same Work.

I/WE DECLARE that to our knowledge no member of the Board will be or has become financially interested, directly or indirectly, in any aspect of the Contract other than in the appropriate discharge of his/her obligations as an employee/officer of the Board.

I/WE HAVE READ, understood and agree to abide by all the terms and conditions contained in this Request for Tender document and we are authorized by the Bidder firm to bind the firm.

I/WE HAVE READ, understand and agree that submitting our Tender does not pose a conflict of interest or any situation that may be reasonably perceived as a conflict of interest that exists now or may exist in the future.

I/WE ACKNOWLEDGE and agree that all Form of Tender supplements called for by the Tender Documents form an integral part of this competitive process.

I/WE ACKNOWLEDGE and agree that any issued Addendum/Addenda form part of the Tender Documents.

I/WE CONFIRM all prices provided for this Request for Tender are in Canadian Dollars and exclude Value Added Taxes.



I/WE agree to be bound by the terms and conditions of this Competitive Process and have authority to submit this Bid on behalf of the Bidder.

The bidder shall declare any potential conflict of interest that could arise from bidding on this bid. Do you have a potential conflict of interest? ☒ Yes ☐ No

Please check the box in the column "I have reviewed this Addendum" below to acknowledge each of the Addenda.

File Name	I have reviewed the below addendum and attachments (if applicable)	Pages
There have not been any addenda issued for this bid.		