

The Standard Construction Document CCDC 2 - 2008 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 12 inclusive, governing same is hereby made part of the *Contract Documents*, with the following amendments, additions and modifications:

AGREEMENT BETWEEN OWNER AND CONTRACTOR

ARTICLE A-2 AGREEMENTS AND AMENDMENTS

2.2 Delete paragraph 2.2 in its entirety and replace with the following:

Except for the process for *Change Orders* and *Change Directives*, the *Contract* may be amended by the signed written agreement of the parties.

ARTICLE A-3 – CONTRACT DOCUMENTS

3.1 Include in the list of *Contract Documents* in paragraph 3.1:

- Amendments to CCDC 2 - 2008 including
 - o *Owner’s Corporate Policy and Procedure No. 01-03-02, “Conflict of Interest”*
- *Health and Safety Acknowledgement Form*
- *Drawings* as listed in the table of contents of the *Specifications*
- *Specifications*
- Performance Bond
- Labour and Material Payment Bond
- *Price Schedules* and any other of the *Owner’s* standard forms
- Invoice/Progress Payment Cover Sheet

ARTICLE A-5 – PAYMENT

5.1 Delete the first sentence in Article 5.1, and substitute the following:

Subject to the *Contractor* performing its obligations under the *Contract Documents* and in accordance with the construction lien legislation and statutory regulations respecting holdback percentages and subject to the *Warranty Reserve* the *Owner* shall:

5.1.1 Delete the words “in the amount certified by the *Consultant*” in the first and second line.

5.1.3 Amend Article 5.1.3 by deleting the words “upon the issuance of the final certificate for payment” in the first line.

5.3.1 Delete paragraph 5.3.1 in its entirety and replace with the following:

Should either party fail to make payments as they become due under the terms of the *Contract* or in an award by arbitration or Court, or under a determination in an adjudication conducted pursuant to the Part II.1 of the *Act* and Part 13 - ADJUDICATION, interest on such amounts shall also become due and payable until payment is made at

the prejudgment interest rate determined under subsection 127 (2) of the *Courts of Justice Act*.

5.3.2 Delete paragraph 5.3.2 in its entirety.

ARTICLE A-9 – CONFLICT OF INTEREST

Add new Article A-9 – Conflict of Interest:

- 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* and within the meaning of the *Owner's* Corporate Policy 01-03-02 Conflict of Interest <https://www.mississauga.ca/wp-content/uploads/2022/04/19151948/Conflict-of-Interest-City-of-Mississauga-Corporate-Policy.pdf>, as amended, replaced or superseded from time to time during the performance of all *Work*, and which Conflict of Interest Policy shall be deemed to be incorporated into and form part of this 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* shall disclose to the *Owner*, in writing, without delay, any actual or potential situation that may be reasonably interpreted as either a conflict of interest or a potential conflict of interest, including the retention of any *Subcontractor* or *Supplier* that is directly or indirectly affiliated with or related to the *Contractor*.
- 9.3 The *Contractor* covenants and agrees that it will not hire or retain the services of any employee or previous employee of the *Owner* where to do so constitutes a breach by such employee or previous employee of the *Owner's* conflict of interest policy, as it may be amended from time to time, until after completion of the *Work* under the *Contract*.
- 9.4 It is of the essence of the *Contract* that the *Owner* shall not have direct or indirect liability to any *Subcontractor* or *Supplier*, and that the *Owner* relies on the maintenance of an arm's-length relationship between the *Contractor* and its *Subcontractors* and *Suppliers*. Consistent with this fundamental term of the *Contract*, the *Contractor* will not enter into any agreement or understanding with any *Subcontractor* or *Supplier*, whether as part of any contract or any written or oral collateral agreement, pursuant to which the parties thereto agree to cooperate in the presentation of a claim for payment against the *Owner*, directly or through the *Contractor*, where such claim is, in whole or in part, in respect of a disputed claim by the *Subcontractor* or *Supplier* against the *Contractor*, where the payment to the *Subcontractor* or *Supplier* by the *Contractor* is agreed to be conditional or contingent on the ability to recover those amounts or a portion thereof from the *Owner*, failing which the *Contractor* shall be saved harmless from all or a portion of those claims. The *Contractor* acknowledges that any such agreement would undermine the required arm's-length relationship and constitute a

conflict of interest. The *Contractor* further acknowledges that it will be impossible to properly assess damages arising from such a breach and agrees that the appropriate remedy is to bar any claims for amounts to which the offending agreement pertains. 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.

- 9.5 Notwithstanding paragraph 7.1.2 of GC 7.1 - OWNER'S RIGHT TO PERFORM THE WORK, TERMINATE THE CONTRACTOR'S RIGHT TO CONTINUE WITH THE WORK, SUSPEND THE WORK OR TERMINATE THE CONTRACT, 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.

ARTICLE A-10 – CONFIDENTIALITY

Add new Article A-10 – Confidentiality:

- 10.1 The *Contractor* agrees to ensure that it shall, both during or following the term of the *Contract*, maintain the confidentiality and security of all *Confidential Information* and *Personal Information*, and that it shall not directly or indirectly disclose, destroy, exploit, or use any *Confidential Information* or *Personal Information*, except where required by law, without first obtaining the written consent of the *Owner*. The *Contractor* acknowledges that it will comply with all requirements of the *Personal Information Protection and Electronic Documents Act*. The *Contractor* acknowledges that the *Owner* is bound by the provisions of the *Municipal Freedom of Information and Protection of Privacy Act* (“*MFIPPA*”). The *Contractor* further acknowledges that the *Owner* may be required to disclose any or all of the *Confidential Information* and *Personal Information* in the event that it is compelled to do so by law, through a request under *MFIPPA*, or by the rules of any applicable regulatory authority, and in such event, the *Owner* will promptly notify the *Contractor* so that the *Contractor* may take such action as it deems appropriate.

DEFINITIONS

4. Amend Definition 4. **Consultant** by adding the following to the end of the Definition:

For the purposes of the *Contract*, the terms “*Consultant*”, “*Architect*” and “*Engineer*” shall be considered synonymous.

15. Amend Definition 15. **Project** by adding the following at the end of the Definition:

, which shall include, but not be limited to, and be subject to the requirements of the *Excess Soil Legislation* and *Excess Soil Regulation*, if applicable, any project that involves

the excavation of soil, and includes: (i.) any form of development or site alteration; (ii.) the construction, reconstruction or placing of a building or structure of any kind; (iii.) the establishment, replacement, alteration or extension of infrastructure; or (iv.) any removal of *Liquid Soil* or sediment from a surface water body or generated as part of hydro evacuation activities.

16. Amend Definition 16. **Provide** by adding the following to the end of the Definition:

Provide has this meaning whether or not the first letter is capitalized.

Add the following new definitions:

1a. Act

Act means the *Construction Act*, R.S.O. 1990 c. C.30, and all regulations thereunder, as amended, replaced or superseded from time to time.

1b. Annual Anniversary Date

Annual Anniversary Date means the date of each annual anniversary of the *Contract Date*.

1c. Authority

Authority means the Authorized Nominating Authority designated under section 13.2 of the *Act*.

1d. Bid

Bid means the offer or bid received from the *Contractor* in response to a *Bid Request* and accepted by the *Owner*.

1e. Bid Request

Bid Request means the solicitation from the *Owner* to potential bidders to submit a bid and includes any addenda issued, through which the *Contractor* was retained.

2a. 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* shall not include information that:

- 1) is or becomes generally available to the public without fault or breach on the part of the *Contractor*, including without limitation breach of any duty of

confidentiality owed by the *Contractor* to the *Owner* or to any third party, but only after that information becomes generally available to the public;

- 2) the *Contractor* can demonstrate to have been rightfully obtained by the *Contractor* from a third party who had the right to transfer or disclose it to the *Contractor* free of any obligation of confidence;
- 3) the *Contractor* can demonstrate to have been rightfully known to or in the possession of the *Contractor* at the time of disclosure, free of any obligation of confidence; or
- 4) is independently developed by the *Contractor* without use of any *Confidential Information*.

3a. Construction Schedule

Construction Schedule means the schedule for the performance of the *Work* provided by the *Contractor* pursuant to GC 3.5 CONSTRUCTION SCHEDULE, including any amendments to the *Construction Schedule* made pursuant to the *Contract Documents*.

5a. Contractor’s Qualified Person (“Contractor QP”)

Contractor’s Qualified Person (“Contractor QP”) means a Qualified Person retained by the Contractor.

5b. Contract Date

Contract Date means the date the *Contract* was entered into as shown at the top of the *Contract*, or where there is no date at the top of the *Contract*, then the date of award of the *Contract* as set out on the *Owner’s* purchase order.

10a. Deficiency Reserve

Deficiency Reserve has the meaning set out in paragraph 2.4.1 of GC 2.4 – DEFECTIVE WORK, as amended by the *Owner’s* “Amendments to CCDC 2 – 2008”.

10b. Draft Proper Invoice

A *Draft Proper Invoice* means a preliminary invoice submitted by the *Contractor* to the *Consultant* that includes:

- 1) the *Contractor’s* name and address;
- 2) the date of the invoice and the date on which the invoice is submitted to the *Consultant* and the period during which the *Work*, *services*, *Products* or materials for which payment is being applied for were performed or supplied or the milestone or other contractual payment entitlement to which the invoice relates;

- 3) information identifying the *Contract* or other authorization under which the *Work*, services, *Products* or materials were performed or supplied such as a contract number, contract line item number or purchase order number;
- 4) a description, including quantity where appropriate, of the services or materials that were supplied during the payment period;
- 5) the amount payable for the services or materials that were supplied during the payment period, with a clear identification of the portions of the amount that are holdbacks, and HST;
- 6) the payment terms;
- 7) the name, title, telephone number and mailing address of the person to whom payment is to be sent or if payment is to be sent to an office or department, its name, mailing address and telephone number;
- 8) the *Contractor's* HST number;
- 9) evidence reasonably required by the *Consultant* to establish the value and delivery of *Products* for which payment is claimed in the *Draft Proper Invoice*, and which have been delivered to the *Place of Work*, but have not yet been incorporated into the *Work*;
- 10) evidence satisfactory to the *Owner's Qualified Person* that during the applicable *Payment Period* for which a *Draft Proper Invoice* is being submitted that the *Contractor* has prepared, submitted and filed all documentation and notices as required pursuant to the *Excess Soil Legislation and Excess Soil Regulation*, and further evidence of the *Contractor's* compliance with the *Excess Soil Legislation and Excess Soil Regulation* as required to be undertaken and addressed by the *Contractor* pursuant to the terms of this *Contract*, including but not limited to Part 13– Excess Soil;
- 11) backup documentation to support any cash allowances included in the *Draft Proper Invoice* pursuant to GC 4.1 – CASH ALLOWANCES;
- 12) a schedule of values indicating the percentage of work completed per division, with each division further subdivided to show the percentage of work completed for each subtrade;
- 13) an updated *Construction Schedule* that shows revisions to the baseline *Construction Schedule* referred to in paragraph 3.5.1.1, together with site photographs showing the progress of the *Work*;

- 14) any other information that is necessary for the proper functioning of the *Owner's* accounts payable system that the *Owner* reasonably requests or as may be prescribed under *the Act* from time to time; and
- 15) a “draft” watermark on each page of the *Draft Proper Invoice*.

10c. Excess Soil Legislation

Excess Soil Legislation means any laws, statutes, codes, bylaws, rules, regulations, or other legislative requirements, which are or thereafter become in force during the performance of this *Contract* and the *Work* including, without limitation, the *Excess Soil Regulation*, as defined below, dealing with any aspect of *Excess Soil*, including, but not limited to, the management, reuse, excavation, removal, transportation and disposal of *Excess Soil* between two or more sites.

10d. Excess Soil Registry

Excess Soil Registry means the registry as established and maintained by the RPR, where notices as required pursuant to the *Excess Soil Legislation* are to be filed and maintained.

10e. Excess Soil Regulation

Excess Soil Regulation means the On-Site and Excess Soil Management Regulation (O. Reg 406/19) made under the Environmental Protection Act, R.S.O. 1990, c. E. 19 (“*Environmental Protection Act*”), including without limitation both the “Part I: Rules for Soil Management” and “Part II: Excess Soil Quality Standards” as incorporated by reference into the *Excess Soil Regulation*, all as may be amended from time to time.

10f. Excess Soil

Excess Soil has the same meaning as within the *Excess Soil Regulation*, as may be amended from time to time.

10g. Force Majeure

Force Majeure means any circumstance, occurrence, event, or cause, beyond the reasonable control of the party seeking relief from its obligations under the *Contract*, other than bankruptcy or insolvency or economic hardship, which prevents the performance a party of any of its obligations under the *Contract* and the event of *Force Majeure* was not caused by a party’s default or active commission or omission and could not be avoided or mitigated by the exercise of reasonable effort or foresight by a party. *Force Majeure* includes *Labour Disputes*, fire, unusual delay by common carriers or unavoidable casualties, civil disturbance, acts, orders, legislation, regulations or directives of any government or other public authority, acts of a public enemy, terrorism, war, riot, sabotage, blockage, embargo, lightning, earthquake, or other acts of God, and epidemic or pandemic outbreaks, but shall not include adverse or inclement weather or climatic conditions or any kind whatsoever, whether abnormal or not.

10h. Health and Safety Acknowledgement Form

Health and Safety Acknowledgement Form means the *Owner's* Health and Safety Acknowledgement Form referred to in the *Bid Request* and executed by the *Contractor*.

10i. Include

Include means “including but not limiting the generality of”, unless inconsistent with the context. *Include* has this meaning whether or not the first letter is capitalized.

10j. Install

Install means install and connect. *Install* has this meaning whether or not the first letter is capitalized.

10k. Labour Dispute

Labour Dispute means any lawful or unlawful labour problems, work stoppage, labour disruption, strike (including lockouts decreed or recommended for its members by a recognized contractor's association of which the *Contractor* is a member or to which the *Contractor* is otherwise bound), job action, slow down, picketing, refusal to work or continue to work, refusal to supply materials, cessation or work or other labour controversy which does, or might, affect the *Work*.

10l. Liquid Soil

Liquid Soil has the same meaning as within the *Excess Soil Regulation*, as may be amended from time to time.

12a. OHSA

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

12b. Other Party

Other Party means any other party having an interest in the *Work* as the *Owner* may advise.

12c. Owner's Qualified Person (“Owner QP”)

Owner's Qualified Person (“Owner QP”) means a *Qualified Person* as retained by the *Owner* or the *Consultant*, unless otherwise stated under this *Contract*, to undertake and fulfill the duties and obligations of a *Qualified Person* as set out under the *Excess Soil Legislation* and *Excess Soil Regulation* regarding *Excess Soil* for the *Project*, if applicable, including, but not limited to:

- 1) the preparation of;

- (i) an assessment of past uses with respect to the *Place of the Work*;
 - (ii) a sampling and analysis plan and an *Excess Soil* characterization report to understand the quality of the soil that will be considered *Excess Soil* to determine if excavated soils are potentially impacted based on prescribed criteria including contaminants, fluidity and odour or have the potential for reuse for beneficial purposes at *Reuse Sites* where and if possible;
 - (iii) an *Excess Soil* destination assessment report to document each *Receiving Site* at which the *Excess Soil* will be deposited, including the location of each *Receiving Site*, and an estimate of the quality and quantity of *Excess Soil* that will be deposited at each *Receiving Site*. The *Contractor* shall be responsible for assisting and coordinating with the *Owner QP*, if required and as directed by the *Owner QP*, in the preparation of this report and for verification that the intended *Receiving Sites* can accept the *Excess Soil* to be sent to them;
 - (iv) amendments to the above-noted documents and reports when required; and
 - (v) filing and updating the required notices for the *Excess Soil Registry* including completing and uploading required documentation and reviewing and processing payment. The *Contractor* shall be responsible for assisting and coordinating with the *Owner QP* in the preparation of these notices, if required and as directed by the *Owner QP*, and the *Contractor* shall be required to fully comply with these notices;
- 2) the identification of;
- (i) through the assistance and coordination with the *Contractor*, review and approval of the proposed list of *Receiving Sites* to verify that the intended *Receiving Sites* can accept the *Excess Soil* to be sent to them;
 - (ii) through the assistance and coordination with the *Contractor*, contingency measures to be implemented in the event that the *Excess Soil* cannot be deposited at a *Receiving Site* identified, including the location of an alternate *Receiving Site*; and
 - (iii) if not already in place in a manner acceptable to the *Owner* the development and application of a tracking system for each load of *Excess Soil* during its transportation and deposit at a *Receiving Site*.

13a. Payment Period

Payment Period means the period of time for which the *Contractor* seeks payment in an application for progress payment, as agreed upon by the parties at the pre-construction meeting.

13b. Personal Information

Personal Information has the same definition as in subsection 2(1) of *MFIPPA* and includes an individual's name, address, age, date of birth, sex, and religion, whether recorded in printed form, on film, by electronic means, or otherwise and disclosed to the *Contractor*.

14a. Price Schedules

Price Schedules means the "Stipulated Price Contract/Price Schedule", the "Unit Price Schedule", the "Separate Price Schedule" and the "Substitution Price Schedule", or any one of them, or any combination of them, forming part of the *Bid*.

15a. Project Leader

Project Leader means the person or persons under the *Excess Soil Regulation* and the *Excess Soil Legislation* who is responsible for making decisions relating to the planning and implementation of the *Project*. Unless otherwise stated under this *Contract* and/or agreed to by the Parties in writing the *Owner* is the *Project Leader* for this *Project* as defined under the *Excess Soil Regulation* and the *Excess Soil Legislation*.

15b. Proper Invoice

A *Proper Invoice* means an invoice submitted by the *Contractor* to the *Owner* via Concur, and copied to the *Consultant*, on or after the seventh calendar day following submission by the *Contractor* to the *Consultant* of a *Draft Proper Invoice*, and includes:

- 1) properly completed Invoice/Progress Payment Cover Sheet;
- 2) the invoice number;
- 3) the *Contractor's* name and address;
- 4) the date of the invoice and the date on which the invoice is submitted to the *Consultant* and the period during which *the Work*, services, *Products* or materials for which payment is being applied for were performed or supplied or the milestone or other contractual payment entitlement to which the invoice relates;
- 5) information identifying the *Contract* authorization under which the *Work*, services, *Products* or materials were performed or supplied such as a contract number, contract line number or purchase order number;

- 6) a description, including quantity where appropriate, of the services or materials that were supplied during the payment period;
- 7) the amount payable for the services or materials that were supplied during the payment period, with a clear identification of the portions of the amount that are holdbacks, and HST;
- 8) the payment terms;
- 9) the name, title, telephone number and mailing address of the person to whom payment is to be sent or if payment is to be sent to an office or department, its name, mailing address and telephone number;
- 10) the *Contractor's* HST number;
- 11) if required by the *Owner* and the *Consultant*, invoices and time sheets from sub trades whose work is included in the *Proper Invoice*;
- 12) evidence reasonably required by the *Consultant* to establish the value and delivery of *Products* for which payment is claimed in the *Proper Invoice*, and which have been delivered to the *Place of Work*, but have not yet been incorporated into the *Work*;
- 13) evidence satisfactory to the *Owner's Qualified Person* that during the applicable *Payment Period* for which a *Proper Invoice* is being submitted that the *Contractor* has prepared, submitted and filed all documentation and notices as required pursuant to the *Excess Soil Legislation and Excess Soil Regulation*, and further evidence of the *Contractor's* compliance with the *Excess Soil Legislation and Excess Soil Regulation* as required to be undertaken and addressed by the *Contractor* pursuant to the terms of this *Contract*, including but not limited to Part 13– Excess Soil;
- 14) backup documentation to support any cash allowances included in the *Proper Invoice* pursuant to GC 4.1 – CASH ALLOWANCES;
- 15) a schedule of values indicating:
 - (i) the percentage of work completed per division, with each division further subdivided to show the percentage of work completed for each subtrade;
 - (ii) an updated list of change orders, showing the percentage of work completed under each change order;
 - (iii) an updated cash allowance list, showing the percentage of work completed in respect of each cash allowance.

- 16) a Statutory Declaration on an original CCDC Document 9A-2001, attesting to the truth of the statements made therein;
- 17) a Workplace Safety & Insurance Board Clearance Certificate;
- 18) current certificates of insurance, in conformance with the requirements set out in GC 11.1 – INSURANCE;
- 19) an updated *Construction Schedule* that shows revisions to the baseline *Construction Schedule* referred to in paragraph 3.5.1.;
- 20) a copy of the *Draft Proper Invoice* submitted for the relevant payment period, as well as any comments provided to the *Contractor* by the *Consultant* upon the *Consultant's* review of the *Draft Proper Invoice*; and,
- 21) any other information that is necessary for the proper functioning of the *Owner's* accounts payable system that the *Owner* reasonably requests or as may be prescribed under *the Act* from time to time.

15c. Proposed Change

Proposed Change means a proposed change in the *Work* prior to the issuance of a *Change Directive* or a *Change Order* in respect of such proposed change.

16a. Qualified Person

Qualified Person means a qualified person as defined under the *Environmental Protection Act*, O. Reg. 153/04, and as further defined by and within the meaning of the *Excess Soil Legislation* and *Excess Soil Regulation*.

16b. Request for Information/RFI

Request for Information or *RFI* means written documentation sent by the *Contractor* to the *Consultant* requesting written clarification(s) and/or interpretation(s) of the *Drawings* and/or *Specifications*, *Contract* requirements and/or other pertinent information required to complete the *Work* of the *Contract* but not with respect to applying for a change or changes to the *Work*.

16c. Receiving Site

Receiving Site means any permitted site the *Excess Soil* is to be deposited as authorized under the *Excess Soil Legislation* including a *Reuse Site*.

16d. Resource Productivity and Recovery Authority or RPRA

Resource Productivity and Recovery Authority or RPRA means the Resource Productivity and Recovery Authority as defined under the *Excess Soil Legislation* which is responsible

for oversight, compliance and enforcement of resource recovery and waste reduction activities.

16e. Reuse Site

Reuse Site means a site at which *Excess Soil* is used for a beneficial purpose and does not include a waste disposal site.

25a. Warranty Period

Warranty Period has the meaning set out in paragraph 12.3.1.

25b. Warranty Reserve

Warranty Reserve means the percentage of each invoice that the *Owner* shall retain, in addition to the holdbacks required to be retained under the *Act*, to ensure the proper completion of all warranty work by the *Contractor*, calculated as follows:

<u>Contract Price</u>	<u>Warranty Reserve</u>
\$0 - \$4,999,999.99	2.5%
\$5,000,000.00 - \$9,999,999.99	2%
Greater than \$10,000,000.00	1.5% to a maximum of \$500,000.00

GENERAL CONDITIONS OF THE STIPULATED PRICE CONTRACT

Add new preamble as follows:

- 1.1 Where a General Condition or paragraph of the General Conditions of the Stipulated Price Contract is deleted by these Amendments to CCDC 2 - 2008, the numbering of the remaining General Conditions or paragraphs shall remain unchanged and the numbering of the deleted item will be retained, unused, unless specifically stated otherwise.

GC 1.1 CONTRACT DOCUMENTS

- 1.1.6 Add the following to the end of paragraph 1.1.6:

The *Specifications* are divided into divisions and sections for convenience but shall be read as a whole and neither such division nor anything else contained in the *Contract Documents* will be construed to place responsibility on the *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 proceeding 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 *Contract Documents*, wherever located and whenever issued, which compile information of similar content and may consist of drawings, tables and/or lists.

1.1.7 Delete subparagraph 1.1.7.1 in its entirety and replace with:

- .1 the order of priority of documents, from highest to lowest, shall be
 - Amendments to CCDC 2 – 2008,
 - *Health and Safety Acknowledgement Form*,
 - the Agreement between the *Owner* and the *Contractor*,
 - *Price Schedules*,
 - the *Definitions*,
 - the *General Conditions*,
 - Division 1 of the *Specifications*,
 - technical *Specifications*,
 - material and finishing schedules,
 - the *Drawings*.

Add new paragraphs 1.1.7.5, 1.1.7.6, 1.1.7.7, 1.1.7.8, 1.1.7.9 and 1.1.7.10 as follows:

- .5 noted materials and annotations on the *Drawings* shall govern over the graphic representation of the *Drawings*.
- .6 finishes in the room finish schedules shall govern over those shown on the *Drawings*.
- .7 Schedules of Division 01 – General Requirements of the *Specifications* shall form part of and be read in conjunction with the technical specification section as listed in the table of contents of the *Specifications*.
- .8 architectural drawings shall have precedence over structural, plumbing, mechanical, electrical and landscape drawings insofar as outlining, determining and interpreting conflicts over the required design intent of all architectural layouts and architectural elements of construction, it being understood that the integrity and installation of the systems designed by the *Consultant* or its sub-*Consultants* are to remain with each of the applicable drawing disciplines.
- .9 fixturing drawings provided by the *Owner* shall have precedence over architectural drawings insofar as outlining, determining and interpreting conflicts over the required design intent of all architectural layouts.

- .10 should reference standards in the *Specifications* conflict with the *Specifications*, the more stringent requirements shall govern, unless the *Owner* and/or the *Consultant* gives written directions to the contrary.

- 1.1.11 Add new paragraph 1.1.11 as follows:

The *City* and the *Contractor* shall sign one (1) original set of the *Contract Documents*. The *City* shall retain the original signed *Contract Documents* and the *Contractor* shall receive an electronic copy.

GC 1.3 RIGHTS AND REMEDIES

- 1.3.2 Delete the word “No” from the beginning of paragraph 1.3.2 and substitute the words:

Except with respect to the notice requirements set out in paragraphs 6.4.2, 6.5.4 and 6.6.1, no...

GC 1.5 TIME IS OF THE ESSENCE OF THE CONTRACT

Add new GC 1.5 – TIME IS OF THE ESSENCE OF THE CONTRACT as follows:

- 1.5.1 All time limits stated in the *Contract Documents* are of the essence of the *Contract*.

GC 2.2 ROLE OF THE CONSULTANT

- 2.2.4 Delete paragraph 2.2.4 in its entirety.

- 2.2.7 Delete the words “Except with respect to GC 5.1 – FINANCING INFORMATION REQUIRED OF THE OWNER”.

- 2.2.15 Add “*Proposed Changes*,” before “*Change Orders*” in the first line.

- 2.2.19 Add new paragraph 2.2.19 as follows:

The *Consultant* or the *Owner*, acting reasonably, may from time to time require the *Contractor* to remove from the *Project* any personnel, 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

- 2.3.2 Amend paragraph 2.3.2 by adding the words “and *Owner*” after the word “*Consultant*” in the third line, and add to end of the sentence “and the *Owner* shall have access to the *Work* for the purpose of reviewing the inspections, tests and approvals, and any results thereof.”

- 2.3.4 Insert the word “review” after the word “inspections” in the first, second and third lines of paragraph 2.3.4.

2.3.8 Add new paragraph 2.3.8 as follows:

The *Contractor* shall attend all site meetings related to the *Work* and any meetings of the *Owner*, when reasonably called upon to do so, to discuss the *Construction Schedule* and the progress of the *Work*.

GC 2.4 DEFECTIVE WORK

2.4.1 In paragraph 2.4.1, in the first line, delete the words “shall promptly correct” and replace with the words “shall promptly remove from the *Place of the Work* and replace or re-execute”.

Add the following to the end of paragraph 2.4.1:

The correction of defective work that has been rejected by the *Consultant* shall be at the *Contractor's* expense. A *Deficiency Reserve* may be withheld from any amounts payable and retained by the *Owner* (including any holdback amount required by the *Act* that is not required to satisfy liens) to secure the correction of deficiencies, the amount of the *Deficiency Reserve* to be based on the *Consultant's* reasonable estimate of the cost of correcting deficient items.

Add new paragraphs 2.4.1.1 and 2.4.1.2:

2.4.1.1 The *Contractor* shall rectify, in a manner acceptable to the *Owner* and the *Consultant*, all defective work and deficiencies throughout the *Work*, whether or not they are specifically identified by the *Consultant*.

2.4.1.2 The *Contractor* shall prioritize the correction of any defective work, which, in the sole discretion of the *Owner*, adversely affects the day to day operation of the *Owner* or adversely affects the progress of the *Work*.

2.4.4 Add new paragraph 2.4.4 as follows:

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

GC 3.1 CONTROL OF THE WORK

3.1.3 Add a new paragraph 3.1.3 as follows:

Prior to commencing individual 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 affected *Work*.

3.1.4 Add a new paragraph 3.1.4 as follows:

Notwithstanding the provisions of paragraphs 3.1.1 and 3.1.2, the *Owner* shall have access to the site at all times to review all aspects of construction. Such access shall in no circumstances affect the obligations of the *Contractor* to fulfill its contractual obligations.

GC 3.2 CONSTRUCTION BY OWNER OR OTHER CONTRACTORS

3.2.2.1 Delete paragraph 3.2.2.1 in its entirety.

3.2.2.2 Delete paragraph 3.2.2.2 in its entirety.

3.2.2.3 Delete paragraph 3.2.3.2 and replace it with the following:

Co-ordinate and schedule the activities and work of other contractors and *Owner's* own forces with the *Work* of the *Contractor* and connect as specified or shown in the *Contract Documents*.

3.2.2.4 Add new paragraph 3.2.3.4 as follows:

Subject to GC 9.4 CONSTRUCTION SAFETY, for the *Owner's* own forces and for other contractors, assume overall responsibility for compliance with all aspects of the applicable health and safety legislation of the *Place of the Work*, including all of the responsibilities of the "Constructor" as that term is defined in *OHSA*.

GC 3.3 TEMPORARY WORK

3.3.2 In paragraph 3.3.2, in the second line after the words "where required by law", insert "or the *Consultant*".

3.3.3 In the third line of paragraph 3.3.3, add the words "for *Temporary Work*" after the words "specify a method of construction in whole or in part,".

GC 3.4 DOCUMENT REVIEW

3.4.1 Delete paragraph 3.4.1 in its entirety and substitute new paragraph 3.4.1:

In addition to such obligations that the *Contractor* may have under this *Contract*, including, but not limited to, those obligations as set out in Part 13 – Excess Soil herein, the *Contractor* shall review the *Contract Documents* and shall report promptly to the *Consultant* any error, inconsistency, or omission the *Contractor* may discover. Such review by the *Contractor* shall be undertaken with the standard of care described in paragraph 3.14.1 of the *Contract*. Except for its obligation to make such review and report the result, the *Contractor* does not assume any responsibility to the *Owner* or to

the *Consultant* for the accuracy of the *Contract Documents*. Provided it has exercised the degree of care and skill described in this paragraph 3.4.1, the *Contractor* shall not be liable for damage or costs resulting from such errors, inconsistencies, or omissions in the *Contract Documents*, which the *Contractor* could not reasonably have discovered through the exercise of the required standard of care. If the *Contractor* does discover any error, inconsistency, or omission in the *Contract Documents*, the *Contractor* shall not proceed with the work affected until the *Contractor* has received corrected or missing information from the *Consultant*.

3.4.2 Add new paragraph 3.4.2. as follows:

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. Neither the *Owner* nor the *Consultant* will be responsible for the consequences of any action of the *Contractor* based on oral instructions.

Add new paragraphs 3.4.3 and 3.4.4 as follows:

3.4.3 The *Contractor* shall bring errors, inconsistencies and/or omissions in the *Drawings* and/or *Specifications* which do not allow completion of all or a portion of the *Work* to the *Consultant's* attention prior to the commencement of the *Work*, or during the *Work*, as the case may be, by means of an *RFI*. Before issuing an *RFI*, however, the *Contractor* shall carry out a thorough review of the *Contract Documents* to make sure that the matter in question is not dealt with. If the *Contractor* does not carry out such a review, the *RFI* shall not form the basis for a claim for delay.

3.4.4 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 *RFIs*, issued during execution of the *Work* to establish a change and/or changes in the *Work* pursuant to Part 6 – CHANGES IN THE WORK.

GC 3.5 CONSTRUCTION SCHEDULE

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

The *Contractor* shall:

- 1) within seven (7) 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* that indicates the timing of the activities of the *Work* and provides sufficient detail of the critical events and their inter-relationship to demonstrate the *Work* will be performed in conformity with the *Contract Time* and in accordance with the *Contract Documents*. The

Construction Schedule and any updated *Construction Schedule* provided in accordance with paragraph 5.2.12 shall include a provision for contingency time to reflect normally adverse weather conditions appropriate to the season;

- 2) employ construction scheduling software 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*;
- 3) provide the expertise and resources, such resources including manpower and equipment, as are necessary to maintain progress under the accepted baseline *Construction Schedule* or any successor or revised *Construction Schedule* accepted by the *Owner* pursuant to GC 3.5 CONSTRUCTION SCHEDULE;
- 4) monitor the progress of the *Work* on a weekly basis relative to the baseline *Construction Schedule*, or any successor or revised *Construction Schedule* accepted by the *Owner* pursuant to GC 3.5 CONSTRUCTION SCHEDULE, update the *Construction Schedule* on a monthly basis, at a minimum, or as required by the *Consultant* and provide the *Consultant* and the *Owner* with written notice of any variation from the baseline *Construction Schedule* or slippage in the *Construction Schedule*; and
- 5) if, after applying the expertise and resources required under subparagraph 3.5.1.3, the *Contractor* forms the opinion that the variation or slippage in the *Construction Schedule* reported pursuant to subparagraph 3.5.1.4 cannot be recovered by the *Contractor*, it shall, in the same notice, indicate to the *Consultant* and the *Owner* if the *Contractor* intends to apply for an extension of *Contract Time* as provided in PART 6 - CHANGES IN THE WORK.

3.5.2 Add new paragraph 3.5.2 as follows:

If, at any time, it appears to the *Owner* or the *Consultant* that the actual progress of the *Work* is behind schedule or is likely to become behind schedule, or if the *Contractor* has given notice of such to the *Owner* or the *Consultant* pursuant to subparagraph 3.5.1.4, the *Contractor* shall take appropriate steps to cause the actual progress of the *Work* to conform to the *Construction Schedule* or minimize the resulting delay and shall produce and present to the *Owner* and the *Consultant* a recovery plan demonstrating how the *Contractor* will achieve the recovery of the *Construction Schedule*. If the *Contractor* intends to apply for a change in the *Contract Price* in relation to a *Construction Schedule* recovery plan, then the *Contractor* shall proceed in accordance with GC 6.5 DELAYS.

GC 3.6 SUPERVISION

3.6.1 Delete paragraph 3.6.1 in its entirety and replace with the following:

The *Contractor* shall provide all necessary supervision and appoint a competent representative who shall be in full-time attendance at the *Place of the Work* while work is being performed. The appointed representative shall not be changed except for valid reasons, and upon the *Contractor* obtaining the *Owner's* written consent.

3.6.3 Add new paragraph 3.6.3:

The *Owner* may, at any time during the course of the *Work*, request the replacement of the appointed representative, where the grounds for the request involve conduct which jeopardizes the safety and security of the site or the *Owner's* operations. Immediately upon receipt of the request, the *Contractor* shall make arrangements to appoint a replacement acceptable to the *Owner*, as evidenced by the *Owner's* written consent.

GC 3.7 SUBCONTRACTORS AND SUPPLIERS

3.7.1.1 In paragraph 3.7.1.1 add to the end of the second line “including any warranties and service agreements which extend beyond the term of the *Contract*, and without limiting the generality of the foregoing, provisions which provide for all warranties to commence to run from the date of *Substantial Performance of the Work* in the event of early release of holdback, pursuant to GC 5.6 PROGRESSIVE RELEASE OF HOLDBACK.

3.7.1.2 In subparagraph 3.7.1.2 after the words “the *Contract Documents*” insert “including required surety bonding”.

3.7.2 In paragraph 3.7.2, in the first line, delete the words “if requested by the *Owner*”.

Add to the end of the paragraph the following:

The *Contractor* agrees not to change *Subcontractors* without prior written consent of the *Owner*, which approval will not be unreasonably withheld.

3.7.7 Add new paragraphs 3.7.7, 3.7.8 and 3.7.9 as follows:

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 the *Owner* shall have no further liability for such contract upon the *Contractor* receiving the notice of award of the *Contract*.

3.7.8 Neither the *Owner* nor the *Consultant* shall incur any liability to the *Contractor* or any *Subcontractor* or *Supplier* for specifying any *Product* or a particular subcontractor(s) or supplier(s) for any aspect of the *Work*.

3.7.9 In addition to the obligations assumed by the *Contractor* pursuant to GC 3.7 SUBCONTRACTORS AND SUPPLIERS, the *Contractor* agrees to discharge all liabilities incurred by it for labour, materials, services, *Subcontractors* and *Products*, used or reasonably required for use in the performance of the *Work*, on the date upon which each such liability becomes due, except for amounts withheld by reason of legitimate

dispute which have been identified to the party or parties, from whom payment has been withheld.

GC 3.8 LABOUR AND PRODUCTS

3.8.1 Add the following at the end of paragraph 3.8.1:

The *Contractor* shall not use the permanent building systems for the *Work* unless it obtains the *Owner's* prior written consent.

3.8.2 Delete paragraph 3.8.2 and substitute with the following:

Products provided shall be new and shall conform to all current applicable specifications of the Canadian Standards Association, Canadian Standards Board or General Standards Board, ASTM, National Building Code, Ontario Building Code, National Fire Prevention Association, the Technical Standards and Safety Authority (also known as TSSA) and all governmental authorities 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*. *Products* brought on to the *Place of the Work* by the *Contractor* shall be deemed to be the property of the *Owner*, but the *Owner* shall be under no liability for loss thereof or damage thereto arising from any cause whatsoever. The said *Products* shall be at the sole risk of the *Contractor*.

3.8.3 Amend paragraph 3.8.3 by adding the words, "..., agents, *Subcontractors* and *Suppliers...*" after the word "employees" in the first line.

Add new paragraphs 3.8.4, 3.8.5, 3.8.6 and 3.8.7 as follows:

3.8.4 Unless otherwise specified, all materials existing at the *Place of the Work* at the time of execution of the *Contract* shall remain the property of the *Owner*. All *Work* and *Products* delivered to the *Place of the Work* by the *Contractor* shall be the property of the *Owner*. The *Contractor* shall remove all surplus or rejected materials as its property when notified in writing to do so by the *Consultant*.

3.8.5 Upon receipt of a written notice from the *Consultant*, the *Contractor* shall dismiss, from the *Place of the Work*, tradesmen and labourers whose *Work* is unsatisfactory to the *Consultant* or who are considered by the *Consultant* to be unskilled or otherwise objectionable.

3.8.6 The *Contractor* shall not employ any persons for the *Work* whose labour affiliation or lack thereof is incompatible with other labour employed in connection with the *Work*. Any costs arising from *Labour Disputes*, as a result of the employ of any such person by the *Contractor*, its *Subcontractors* or *Suppliers*, shall be the sole expense of the *Contractor*.

3.8.7 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*. In the event that there is a *Labour Dispute* that stops the *Work*, the *Contractor* shall ensure that the *Place of the Work* and the *Work* are left in a safe, secure condition, as required by authorities having jurisdiction at the *Place of the Work*, and in accordance with the *Contract Documents*.

GC 3.9 DOCUMENTS AT THE SITE

3.9.1 Delete paragraph 3.9.1 in its entirety and substitute the following:

The *Contractor* shall keep at the *Place of the Work* one copy of the current *Contract Documents*, *Supplemental Instructions*, *Proposed Changes*, *Change Directives*, cash allowance disbursement authorizations, reviewed *Shop Drawings*, current as-built drawings as required by paragraph 5.2.10, submittals, reports and records of meetings, and all documents and notices and filings required pursuant to the *Excess Soil Legislation* and *Excess Soil Regulation*, including those as set out in Part 13 – Excess Soil herein, in good order and available to the *Owner* and *Consultant*.

Add new paragraphs 3.9.2, 3.9.3 and 3.9.4 as follows:

- 3.9.2 The *Contractor* shall cause its supervisor or such competent person as it may delegate, to prepare and keep at the *Place of the Work* a daily log or diary reporting on weather conditions, work force of the *Contractor*, *Subcontractors*, *Suppliers* and any other forces on site and also record the general nature of *Work* activities (the “Logs”). The Logs shall also include any extraordinary or emergency events which may occur and the identities of any persons who visit the site who are not part of the day-to-day work force. The *Contractor* shall bring the Logs to the site meetings for review by the *Consultant*. The *Consultant* may issue comments and instructions to the *Contractor* to rectify the Logs which shall be completed by the *Contractor* by the next site meeting.
- 3.9.3 During the course of the *Work*, the *Contractor* shall maintain records, either at its head office or at the *Place of the Work*, recording manpower and material resourcing on the *Project*, including records which document the activities of the *Contractor* in connection with GC 3.5 CONSTRUCTION SCHEDULE, and comparing that resourcing to the resourcing anticipated when the most recent version of the *Construction Schedule* was prepared pursuant to GC 3.5 CONSTRUCTION SCHEDULE (the “Records”). The *Contractor* shall make the Records available to the *Consultant* or the *Owner*, upon request, during normal business hours, prior to *Substantial Performance of the Work*
- 3.9.4 The *Contractor* shall maintain and keep accurate *Project* records (which means all tangible records, documents, computer printouts, electronic information, books, plans, *Drawings*, *Specifications*, accounts or other information relating to the *Work*) in its office in Ontario in accordance with requirements of law but in any event for not less than six (6) years from *Substantial Performance of the Work* or until all claims have been settled. During this time, the *Contractor* shall allow the *Owner* access to the *Project* records during normal business hours upon the giving of reasonable notice. The *Contractor* shall ensure that equivalent provisions to those provided herein are made in each

subcontract (and shall require the *Subcontractors* and *Suppliers* to incorporate them into every level of contract thereunder for any part of the *Work*).

GC 3.10 SHOP DRAWINGS

3.10.3 Delete paragraph 3.10.3 in its entirety and replace with the following:

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.

3.10.8.1 In the second line, delete the words “or will do so”.

3.10.9 Add the following at the end of paragraph 3.10.9:

Where manufacturers’ literature is submitted in lieu of scaled drawings, it shall be clearly marked in ink, to indicate the specific items for which review is requested.

3.10.12 Delete paragraph 3.10.12 in its entirety.

Add new paragraphs 3.10.13, 3.10.14, 3.10.15, 3.10.16 and 3.10.17 as follows:

3.10.13 Reviewed Shop Drawings shall not authorize a change in the Contract Price and/or the Contract Time.

3.10.14 Except where the parties have agreed to a different Shop Drawings schedule pursuant to paragraph 3.10.3, the Contractor shall comply with the requirements for Shop Drawings submissions stated in the Specifications.

3.10.15 The Contractor shall not use the term “by others” on Shop Drawings or other submittals. The related trade, Subcontractor or Supplier shall be stated.

3.10.16 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.

3.10.17 The Consultant will review and return Shop Drawings and submittals in accordance with the schedule agreed upon in paragraph 3.10.3, or, in the absence of such a schedule, with reasonable promptness.

GC 3.11 USE OF THE WORK

3.11.3 Add new paragraph 3.11.3 as follows:

The *Owner* shall have the right to enter or 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 do 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 relieves the *Contractor* from its responsibility to complete the *Contract*.

GC 3.13 CLEAN UP

3.13.2 In paragraph 3.13.2, in the fourth line add the word “materials” between the word “tools” and the words “*Construction Equipment*”.

3.13.3 In paragraph 3.13.3, in the first and second lines add the word “materials” between the word “tools” and the words “*Construction Equipment*”.

3.13.4 Add new paragraph 3.13.4 as follows:

In the event that the *Contractor* fails to remove waste and debris as provided in this GC 3.13 CLEAN UP, then the *Owner* or the *Consultant* may give the *Contractor* twenty-four (24) hours’ written notice to meet its obligations respecting clean up. Should the *Contractor* fail to meet its obligations pursuant to GC 3.13 CLEAN UP within the twenty-four (24) hour period next following delivery of the notice, the *Owner* may remove such waste and debris and deduct from payments otherwise due to the *Contractor*, the *Owner’s* costs for such clean up, including a reasonable mark-up for administration.

GC 3.14 CONTRACTOR STANDARD OF CARE

Add a new General Condition 3.14 as follows:

3.14.1 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*.

3.14.2 The *Contractor* further represents covenants and warrants to and in favour of the *Owner*, acknowledging that the *Owner* is relying thereon, 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;
- 3) it has a qualified team of *Subcontractors* and *Suppliers* with a proven record of performing large projects on time;

- 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*.

GC 4.1 CASH ALLOWANCES

4.1.1 Delete paragraph 4.1.1 in its entirety and replace with the following:

4.1.1 The *Consultant* may direct the *Contractor* to bid work for which payment is made from a cash allowance.

4.1.2 Add to the end of paragraph 4.1.2 the following:

Cash allowances cover the net cost to the *Contractor* of services, *Products*, *Construction Equipment*, freight, unloading, handling, storage, installation, and other authorized expenses incurred in performing the work stipulated under the cash allowances. The net cost to the *Contractor* of such items shall be charged to the *Owner* on a flow-through basis and the *Contractor* shall provide the *Owner* with invoices evidencing such net cost. The *Contractor* shall not be entitled to any overhead and profit on such net cost or on any *Value Added Taxes* payable by the *Owner* to the *Contractor*.

4.1.4 Delete paragraph 4.1.4 in its entirety and substitute the following:

Where the actual cost of the *Work* under any cash allowance exceeds the amount of the allowance, any unexpended amounts from other cash allowances shall be reallocated, at the *Consultant's* direction, to cover the shortfall, and, in that case, there shall be no additional amount added to the *Contract Price* for overhead and profit. Only where the actual cost of the *Work* under all cash allowances exceeds the total amount of all cash allowances shall the *Contractor* be compensated for the excess incurred and substantiated by a *Change Order*; plus an amount for the *Contractor's* overhead and profit on the excess only, as set out in the *Contract Documents*.

4.1.5 Delete paragraph 4.1.5 in its entirety and substitute the following:

The net amount of any unexpended cash allowances, after providing for any reallocations as contemplated in paragraph 4.1.4, shall be deducted from the *Contract Price* by *Change Order* without any adjustment for the *Contractor's* overhead and profit on such amount.

4.1.8 Add new paragraph 4.1.8 as follows:

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

GC 4.2 CONTINGENCY ALLOWANCE

Delete GC 4.2 CONTINGENCY ALLOWANCE in its entirety and substitute the following:

- 4.2.1 The *Contract Price* includes the contingency allowance, if any, as determined by the *Owner*.
- 4.2.2 The amount of any contingency allowance shall not include the *Contractor's* overhead and profit in connection with such contingency allowance.
- 4.2.3 Expenditures under the contingency allowance shall be authorized and valued as provided in GC 6.1 – OWNER'S RIGHT TO MAKE CHANGES, GC 6.2 – CHANGE ORDER and GC 6.3 – CHANGE DIRECTIVE.
- 4.2.4 The *Contract Price* shall be adjusted by *Change Order* to provide for any difference between the expenditures authorized under paragraph 4.2.3 and the contingency allowance.
- 4.2.5 The amount of any unused contingency allowance shall be deducted from the *Contract Price* or reallocated to a cash allowance by *Change Order*, in the discretion of the *Owner*.

GC 5.1 FINANCING INFORMATION REQUIRED OF THE OWNER

- 5.1.1 Delete paragraph 5.1.1 in its entirety.
- 5.1.2 Delete paragraph 5.1.2 in its entirety.

GC 5.2 APPLICATIONS FOR PROGRESS PAYMENT

- 5.2.1 Amend paragraph 5.2.1 as follows:

Add the word “progress” after the words “Applications for” in the first line of paragraph 5.2.1.

Delete the word “monthly” in the first line of paragraph 5.2.1 and replace with the words “following each Payment Period”.

- 5.2.2 Delete paragraph 5.2.2 and substitute with the following:

By no later than the fifth (5th) day following the last day of the *Payment Period*, the *Contractor* shall submit to the *Consultant* a *Draft Proper Invoice* for an amount proportionate to the amount of the *Contract*, of *Work* performed and *Products* delivered to the *Place of the Work* as of the last day of the *Payment Period*.

- 5.2.3 Delete paragraph 5.2.3 in its entirety, and substitute with the following:

The *Consultant* will evaluate the *Draft Proper Invoice* and, based upon its observations, may, in its sole discretion, provide comments to the *Contractor* in relation to the *Draft Proper Invoice*. The *Consultant* shall provide the *Contractor* no later than seven (7) calendar days after receiving an invoice submitted as a *Draft Proper Invoice* which does not comply with the requirements of a *Proper Invoice* written notification of any

deficiency and the matters required to address the deficiency in the invoice to render the invoice a *Proper Invoice*.

5.2.6 Delete paragraph 5.2.6 in its entirety and substitute with the following:

Applications for progress payment shall be made by the *Contractor* submitting a *Proper Invoice* by e-mail to Concur, which e-mail shall be copied to the project manager and the *Consultant*, on or after the seventh calendar day following the *Contractor's* submission of a *Draft Proper Invoice* to the *Consultant*.

5.2.7 Delete paragraph 5.2.7 in its entirety, and substitute with the following:

Any application for progress payment that is submitted before the seventh calendar day following the *Consultant's* receipt of a *Draft Proper Invoice* shall not constitute a *Proper Invoice* within the meaning of the *Act*.

Add new paragraphs 5.2.8, 5.2.9, 5.2.10, 5.2.11, 5.2.12, 5.2.13 and 5.2.14 as follows:

5.2.8 A *Proper Invoice* is deemed to be received by the *Owner* on the date that it is sent by e-mail to Concur provided that the e-mail is delivered before 5:00 pm. If the e-mail is sent after 5:00 pm, the *Proper Invoice* is deemed to be received by the *Owner* on the following day.

5.2.9 A *Proper Invoice* may be revised by the *Contractor* after it has been given to the *Owner*, provided that the *Consultant* agrees in advance to the revision and the *Proper Invoice* continues to meet the definition of a *Proper Invoice* after it has been revised.

5.2.10 The *Owner* shall provide the *Contractor* no later than seven (7) calendar days after receiving an invoice submitted as a *Proper Invoice* or as revisions to a *Proper Invoice* in accordance with paragraph 5.2.9 which does not comply with the requirements of a *Proper Invoice* written notification of any deficiency and the matters required to address the deficiency in the invoice to render the invoice a *Proper Invoice*.

5.2.11 No amount claimed in a *Proper Invoice* shall include *Products* delivered to the *Place of the Work* unless the *Products* are free and clear of all security interests, liens, and other claims of third parties.

5.2.12 Any *Products* delivered to the *Place of the Work* but not yet incorporated into the *Work* shall remain at the risk of the *Contractor* notwithstanding that title has passed to the *Owner* pursuant to paragraphs 3.8.2 and 3.8.4 of GC LABOUR AND PRODUCTS.

5.2.13 The *Contractor* shall prepare and maintain at the *Place of the Work* 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 made available by the *Contractor* to the *Consultant* for review at the weekly site meeting prior to each application for progress payment. The *Consultant* shall retain a reasonable amount for the value of the as-built drawings not presented for review.

5.2.14 Notwithstanding anything herein to the contrary,

- .1 for *Work* performed and *Products* delivered to the *Place of Work* in the *Payment Period* ending November 30th, a *Proper Invoice* shall be submitted no later than December 9 (and if December 9 is not a *Working Day*, then on the immediately preceding *Working Day*); and
- .2 for *Work* performed and *Products* delivered to the *Place of Work* in the *Payment Period* ending December 31st, a *Proper Invoice* shall be submitted no earlier than January 3 and no later than January 8 (and if January 8 is not a *Working Day*, then on the immediately preceding *Working Day*).

For clarity, no *Proper Invoice* shall be submitted between December 10 and January 2 inclusive. Further, this paragraph does not amend the *Contractor's* obligation or timeframe to submit a *Draft Proper Invoice*.

GC 5.3 PROGRESS PAYMENT

5.3.1 Add the word “progress” after the words “application for” in the first line, of paragraph 5.3.1.

5.3.1.1 Delete subparagraph 5.3.1.1 in its entirety.

5.3.1.2 Amend subparagraph 5.3.1.2 as follows:

Add the word “progress” after the words “application for” in the second line of paragraph 5.3.1.2.

Delete the second sentence of paragraph 5.3.1.2

5.3.1.3 Delete subparagraph 5.3.1.3 in its entirety and substitute the following:

subject to the giving of a notice of non-payment under subparagraph 5.3.1.4, the *Owner* shall make payment to the *Contractor* on account as provided in Article A-5 of the Agreement – PAYMENT no later than 28 calendar days after receiving the *Contractor's* application for progress payment,

5.3.1.4 Add new subparagraph 5.3.1.4 as follows:

in the event that the *Owner* intends to pay the *Contractor* an amount that is less than that set out in the *Proper Invoice*, the *Owner* shall, no later than 14 calendar days after receiving the *Proper Invoice* from the *Contractor*, give to the *Contractor* a notice of non-payment, in the form and manner prescribed in the *Act*, specifying the amount of the *Proper Invoice* that is not being paid and detailing the reasons for non-payment.

GC 5.4 SUBSTANTIAL PERFORMANCE OF THE WORK

5.4.3 Delete paragraph 5.4.3 in its entirety and substitute as follows:

Immediately prior to the issuance of the certificate of *Substantial Performance of the Work*, the *Contractor*, in consultation with the *Consultant*, shall establish a schedule for completion of the *Work* and the *Construction Schedule* shall be deemed to be amended to include this completion schedule.

Add new paragraphs 5.4.4, 5.4.5 and 5.4.6 as follows:

- 5.4.4 Within seven (7) days of receiving a copy of the certificate of *Substantial Performance of the Work* signed by the *Consultant*, the *Contractor* shall publish a copy of the certificate in a construction trade newspaper (as that term is defined in the *Act*) and shall provide to the *Consultant* and the *Owner* the date of publication and the name of the construction trade newspaper in which the publication occurred. If the *Contractor* fails to comply with this provision, the *Owner* may publish a copy of the certificate and charge the *Contractor* with the costs so incurred.
- 5.4.5 Prior to submitting its written application for *Substantial Performance of the Work*, the *Contractor* shall submit to the *Consultant* all:
- 1) guarantees;
 - 2) warranties, completed as per paragraph 12.3.8;
 - 3) certificates;
 - 4) testing and balancing reports;
 - 5) distribution system diagrams;
 - 6) spare parts;
 - 7) maintenance/operation manuals;
 - 8) samples;
 - 9) reports and correspondence from authorities having jurisdiction in the *Place of the Work*;
 - 10) shop drawings;
 - 11) completed as-built drawings;
 - 12) inspection certificates;
 - 13) an original of the performance bond rider pursuant to paragraph 11.2.2;
 - 14) copies of the Logs, as defined in and pursuant to paragraph 3.9.2;
 - 15) copies of the Records, as defined in and pursuant to paragraph 3.9.3.

and other materials or documentation required to be submitted under the *Contract*, together with written proof acceptable to the *Owner* and the *Consultant* that the *Work* has been substantially performed in conformance with the requirements of municipal, governmental and utility authorities having jurisdiction in the *Place of the Work*.

- 5.4.6 Where the *Contractor* is unable to deliver the documents and materials described in paragraph 5.4.5, then, provided that none of the missing documents and materials interferes with the use and occupancy of the *Project* in a material way, and except as described herein, the failure to deliver shall not be grounds for the *Consultant* to refuse to certify *Substantial Performance of the Work*. However, certification of *Substantial Performance of the Work* will be withheld if the *Contractor* fails to deliver maintenance manuals, as required in subparagraph 5.4.5.7, the original of the performance bond rider and completed as-built drawings, as required in subparagraph 5.4.5.11. Any documents or materials not delivered in accordance with paragraph 5.4.5 shall be delivered as provided in paragraph 5.7.1 of GC 5.7 FINAL PAYMENT.

GC 5.5 PAYMENT OF HOLDBACK UPON SUBSTANTIAL PERFORMANCE OF THE WORK

- 5.5.1 Delete the word “After” at the beginning of paragraph 5.5.1 and substitute with the words “No later than the twentieth day following”.

Add new subparagraphs 5.5.1.3 and 5.5.1.4 as follows:

5.5.1.3 submit a sworn statement that the *Contractor* has not received any claims for or written notices of a lien.

5.5.1.4 submit a Workplace Safety & Insurance Board clearance certificate.

- 5.5.2 Delete the word “After” at the beginning of paragraph 5.5.2 and substitute the words “No later than the fifteenth day following”.

- 5.5.3 Delete paragraph 5.5.3 in its entirety.

- 5.5.4 Delete the second sentence of paragraph 5.5.4.

- 5.5.5 Delete paragraphs 5.5.5 in its entirety and replace with the following paragraph:

Subject to any deductions, set offs and other rights and remedies as may be exercised by the *Owner* and subject to any amounts retained under the *Act* as required with respect to any liens against the *Work* and any other third party monetary claims against the *Contractor* which are enforceable against the *Owner* the *Owner* shall release all or part of the holdback in accordance with the provisions of the *Act*.

GC 5.6 PROGRESSIVE RELEASE OF HOLDBACK

- 5.6.1 Add the words “and the *Owner* agrees” to the first line of paragraph 5.6.1 after “permits” and before “and where”.

Add new paragraph 5.6.4 as follows:

- 5.6.4 For release of holdback on subcontracted work that is 100% complete prior to final payment, the *Contractor* shall make application by written request for a review to determine the date of completion of the subcontract and shall submit such supporting material as the *Consultant* may, in his discretion require, and may include statutory declarations from such persons and dealing with such matters as the *Consultant* requires. Such material shall, in any event, include:
- 1) description of the scope of work included in the subcontract;
 - 2) Declaration of Last Supply by the *Subcontractor* as prescribed in s. 31(5) of the *Act* (Form 7);
 - 3) Certificate of Completion of Subcontract as prescribed in s. 33(1) of the *Act* (Form 10);
 - 4) Workplace Safety & Insurance Board clearance certificate for the *Contractor*, the *Subcontractor* in question and any other *Subcontractors* and *Suppliers* who have provided any services or materials to the *Subcontractor*;
 - 5) statutory declaration by an officer of the *Subcontractor* in the form CCDC Document 9B – 2001;
 - 6) *Contractor's* written acknowledgement to the *Owner* that the requirements of the *Contract Documents* will not be altered by early release of the holdback of the completed subcontracts, including, but not limited to any and all warranty periods commencing to run from the date of *Substantial Performance of the Work*;
 - 7) confirmation from the *Contractor's* bonding company that it has been notified of the intent to claim early release of holdback and does not object.

GC 5.7 FINAL PAYMENT

- 5.7.1 Delete paragraph 5.7.1 in its entirety and substitute the following:

When the *Contractor* considers that the *Work* is completed, the *Contractor* shall submit an application for final payment. The *Contractor's* application for final payment shall be accompanied by any documents or materials not yet delivered pursuant to paragraph 5.4.5. The *Work* shall be deemed not to be performed until all of the aforementioned documents have been delivered, and the *Owner* may withhold payment in respect of the delivery of any documents in an amount determined by the *Consultant* in accordance with the provisions of GC 5.8 WITHHOLDING OF PAYMENT.

- 5.7.2 Delete from the first line of paragraph 5.7.2 the words, "calendar days" and substitute the words "*Working Days*".

5.7.4 Delete from the second line of paragraph 5.7.4 the words, “5 calendar days after the issuance of ” and substitute the words “28 calendar days after receipt of a *Proper Invoice* in relation to ”.

5.7.5 Add new paragraph 5.7.5 as follows:

The *Warranty Reserve* shall be paid to the *Contractor* at the later of (1) final completion of the *Work* and (2) the expiration of the one (1) year *Warranty Period* set out in GC 12.3 – WARRANTY, subject to any deductions to the *Warranty Reserve* made in accordance with paragraph 12.3.10.

GC 5.10 ANNUAL RELEASE OF HOLDBACK

Add a new General Condition 5.10 Annual Release of Holdback

GC 5.10 ANNUAL RELEASE OF HOLDBACK.

5.10.1 The *Owner* shall following each *Annual Anniversary Date*:

- .1 publish no later than 14 calendar days after the *Annual Anniversary Date* a notice of annual release of holdback in the prescribed form specifying the amount of the holdback that the *Owner* intends to release and pay to the *Contractor* and the intended payment date; and
- .2 subject to the requirement immediately below and subject to any deductions, set offs and other rights and remedies as may be exercised by the *Owner*, make payment to the *Contractor* of all or part of the accrued holdback in respect of *Work* performed or *Products* supplied by the *Contractor* during the year immediately preceding the *Annual Anniversary Date* at least 60 calendar days but not later than 74 calendar days after the date on which the notice of annual release of holdback was published;

provided however that the *Owner* shall not be required to pay the accrued holdback to the *Contractor* where a lien has been preserved or perfected in the respect of the *Contract* in accordance with the *Act* and the lien has not been satisfied or discharged or an order declaring that the lien has expired or has been vacated has not been made by a court of competent jurisdiction.

GC 5.11 CONSTRUCTION LIENS

Add a new General Condition 5.11 as follows:

5.11.1 In the event that a claim for lien is preserved against the *Project* premises by a *Subcontractor* or *Supplier*, and provided the *Owner* has paid all amounts properly owing under the *Contract*, the *Contractor* shall, at its own expense:

- 1) within ten (10) days, ensure that any and all claims for lien and certificates of action are discharged, released, or vacated by the posting of security or otherwise; and
- 2) in the case of written notices of lien, ensure that such notices are withdrawn, in writing.

5.11.2 In the event that the *Contractor* fails to conform with the requirements of paragraph 5.11.1, the *Owner* may fulfil those requirements without *Notice in Writing* to the *Contractor* and set off and deduct from any amount owing to the *Contractor*, all costs and associated expenses, including the costs of posting security and all legal fees and disbursements associated with discharging or vacating the claim for lien or certificate of action and defending the action. If there is no amount owing by the *Owner* to the *Contractor*, then the *Contractor* shall reimburse the *Owner* for all of the said costs and associated expenses.

GC 6.1 OWNER'S RIGHT TO MAKE CHANGES

6.1.2 Amend paragraph 6.1.2 by adding the following to the end of that paragraph:

This requirement is of the essence and it is the express intention of the parties that any claims by the *Contractor* for a change in the *Contract Price* and/or *Contract Time* shall be barred unless there has been strict compliance with PART 6 CHANGES IN THE WORK. No course of conduct or dealing between the parties, no express or implied acceptance of alterations or additions to the *Work* and no claims that the *Owner* has been unjustly enriched by any alteration or addition to the *Work*, whether in fact there is any such unjust enrichment or not, shall be the basis of a claim for additional payment under this *Contract* or a claim for any extension of the *Contract Time*.

Add new paragraph 6.1.3 as follows:

6.1.3 The *Contractor* agrees that changes resulting from construction coordination, including but not limited to site surface conditions, site coordination, *Subcontractor* and *Supplier* coordination are included in the *Contract Price* and shall not entitle the *Contractor* to claim in addition to the *Contract Price* in relation to coordination.

GC 6.2 CHANGE ORDER

6.2.1 Delete "proposed change in the *Work*" in the second and fourth lines of paragraph 6.2.1 and replace with "*Proposed Change*".

Add new paragraph 6.2.3 as follows:

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

- 1) by quotation and acceptance of a lump sum, and all quotations must contain an itemized and complete breakdown of costs, including hours and hourly rates of

labour, payroll burden, itemized costs of materials, quantity of materials, *Products*, and all other costs to perform the change in the *Work* including any mark-up, such that the quotations are capable of being evaluated by the *Consultant*. The *Contractor* shall require *Subcontractors* and *Suppliers* to supply similar information to the *Consultant*.

- 2) by unit prices set out in the *Price Schedules* or subsequently agreed upon by the parties. Unit prices shall include materials, labour, equipment, delivery, freight, handling, disposal, statutory charges, supervisions, testing, all applicable duties, brokerage charges, import charges, PST, bonding, overhead, profit and all relative charges and expenses including, but not limited to, office administration charges such as disbursements, travel costs, printing and incidentals to the *Contractor*, and shall be the total cost to the *Owner*. Adjustment to the *Contract Price* shall be based on a net quantity difference from the original quantity.

- 3) by the amount, net of all credits, of time, materials, *Construction Equipment* and *Products* expended:
 - (i) by a *Subcontractor* applying its labour charge out rates, together with the actual costs, without mark-up, of materials, *Construction Equipment* and *Products* utilized in the change, plus the *Subcontractor's* mark-up disclosed in the table below which applies to material and *Product* costs only;
 - (ii) by the *Contractor* applying its labour charge out rates, together with the actual costs, without mark-up, of materials, *Construction Equipment* and *Products* plus the mark-up disclosed in the table below which applies to material, *Construction Equipment* and *Product* costs only;
 - (iii) the *Contractor* shall be entitled to the *Contractor* mark-up in the table below on the value of *Subcontractor* work even where the *Subcontractor* is not entitled to a mark-up on its labour charge out rates pursuant to paragraph 6.2.3.3(i).

Change in the <i>Contract Price</i>	<i>Subcontractor</i> and <i>Contractor's</i> Own Forces Mark-Up (%) (includes overhead and profit)	<i>Contractor</i> Mark-Up (%) on <i>Subcontractor's</i> work (includes overhead and profit)
Any Decrease (Credit)	0	0
\$0 - \$49,999.99	5	5
Over \$50,000.00	5	3

- 4) the mark-ups described in paragraphs 6.2.3.1 and 6.2.3.3 include all necessary supervision, general account items, general clean-up, small tools, as-built drawings and job safety necessary to perform the change. Additional bonding cost is excluded from the mark-ups but may be included as a cost, using the value declared for bonding by the *Contractor* in its bid to the *Owner*, unless otherwise agreed by the parties.

GC 6.3 CHANGE DIRECTIVE

6.3.6 Delete paragraph 6.3.6 in its entirety, and replace with the following:

6.3.6 The adjustment in the *Contract Price* for a change carried out by way of a *Change Directive* shall be determined on the basis of unit prices where provided in the *Contract Documents*, or the cost of expenditures and savings to perform the work attributable to the change. If a change in the *Work* results in a net increase in the *Contract Price*, overhead and profit shall be calculated as per the table described under GC 6.2 CHANGE ORDER.

6.3.7 Delete paragraph 6.3.7 in its entirety.

6.3.8 In paragraph 6.3.8, delete the words “any item under any cost element referred to in paragraph 6.3.7” and substitute the words “expenditures and savings”.

GC 6.4 CONCEALED OR UNKNOWN CONDITIONS

6.4.1 Delete paragraph 6.4.1 and replace with the following:

6.4.1 If the *Contractor* was given access to the *Place of the Work* prior to the submission of the bid on which the *Contract* was awarded, then the *Contractor* confirms that it carefully investigated the *Place of the Work* and carried out such tests as it deemed appropriate and, in doing so, applied to that investigation the degree of care and skill required by paragraph 3.14.1.

6.4.2 Amend paragraph 6.4.2 by addition of 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.

Amend the existing second sentence of paragraph 6.4.2 in the second line, following the word “materially” by adding the words “or were concealed from discovery notwithstanding the conduct of the investigation described in paragraph 6.4.1.”

6.4.3 Delete paragraph 6.4.3 in its entirety and substitute the following:

If the *Consultant* makes a finding pursuant to paragraph 6.4.2 that no change in the *Contract Price* or the *Contract Time* is justified, the *Consultant* shall report in writing the reasons for this finding to the *Owner* and the *Contractor*.

- 6.4.4 Amend paragraph 6.4.4 by adding “or relate to *Excess Soil* the parties will be governed by the provisions of PART 13 – EXCESS SOIL” at the end of the paragraph.

GC 6.5 DELAYS

- 6.5.1 Delete the words after the word “for” in the fourth line of paragraph 6.5.1, and add the words “...reasonable direct costs directly flowing from the delay, but excluding any consequential, indirect or special damages.”

- 6.5.2 Delete the words after the word “for” in the fourth line of paragraph 6.5.2, and add the words “...reasonable direct costs directly flowing from the delay, but excluding any consequential, indirect or special damages.”

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

If the *Contractor* is delayed in the performance of the *Work* by *Force Majeure*, then the *Contract Time* shall be extended for such reasonable time as the *Consultant* may recommend in consultation with the *Contractor*. The extension of time shall not be less than the time lost as a result of the event causing the delay, unless the *Contractor* agrees to a shorter extension. The *Contractor* shall not be entitled to payment for costs incurred by such delays.

Add new paragraphs 6.5.6, 6.5.7 and 6.5.8 as follows:

- 6.5.6 If the *Contractor* is delayed in the performance of the *Work* by an act or omission of the *Contractor* or anyone directly or indirectly employed or engaged by the *Contractor*, or by any cause within the *Contractor’s* control, then the *Contract Time* shall be extended for such reasonable time as the *Consultant* may decide in consultation with the *Contractor*. The *Owner* shall be reimbursed by the *Contractor* for all reasonable costs incurred by the *Owner* as the result of such delay, including, but not limited to, the cost of all additional services required by the *Owner* from the *Consultant* or any sub-consultants, project managers, or others employed or engaged by the *Owner*, and in particular, the costs of the *Consultant’s* services during the period between the date of *Substantial Performance of the Work* stated in Article A-1 herein, or as amended pursuant to the *Contract*, and any later or actual date of *Substantial Performance of the Work* achieved by the *Contractor*.

- 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* may, by *Notice in Writing*, direct the *Contractor* to stop the *Work* where the *Owner* determines that there is an imminent risk to the safety of 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* unless the resulting delay, if any, would entitle the *Contractor* to an extension of the *Contract Time* or the reimbursement of the *Contractor's* costs as provided in paragraphs 6.5.1, 6.5.2 or 6.5.3.

- 6.5.8 No delay in payment by the *Owner* to the *Contractor* shall be considered a default of the *Owner's* contractual obligations, nor shall it constitute grounds for termination under GC 7.2 CONTRACTOR'S RIGHT TO STOP THE WORK OR TERMINATE THE CONTRACT.

GC 6.6 CLAIMS FOR A CHANGE IN CONTRACT PRICE

- 6.6.1 Delete paragraph 6.6.1 and change to read as follows:

If the *Contractor* intends to make a claim for an increase to the *Contract Price*, or if the *Owner* intends to make a claim against the *Contractor* for a credit to the *Contract Price*, the party that intends to make the claim shall give timely *Notice in Writing*, in accordance with paragraph 6.6.2, of intent to claim to the other party and to the *Consultant*.

- 6.6.2 Delete paragraph 6.6.2 and change to read as follows:

Upon commencement of the event or series of events giving rise to a claim, the party intending to make the claim shall:

- 1) take all reasonable measures to mitigate any loss or expense which may be incurred as a result of such event or series of events;
- 2) keep such records as may be necessary to support the claim, and
- 3) provide *Notice in Writing*.

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

Revise the heading to read: "**OWNER'S RIGHT TO PERFORM THE WORK, TERMINATE THE CONTRACTOR'S RIGHT TO CONTINUE WITH THE WORK, SUSPEND THE WORK OR TERMINATE THE CONTRACT**"

- 7.1.2 Delete paragraph 7.1.2 entirely and replace with the following:

If the *Contractor*:

- a) neglects to prosecute the *Work* properly, in the opinion of the *Consultant*; or
- b) fails or neglects to maintain the latest *Construction Schedule* provided pursuant to GC 3.5 CONSTRUCTION SCHEDULE; or
- c) has made incorrect or untrue statements contained in the *Bid*; or

- d) fails to comply with all municipal laws and regulations as they pertain to the *Owner* in respect of the operation of the *Contractor's* business and/or if the *Contractor* fails to ensure that its *Subcontractors* and *Suppliers* also remain in compliance with such municipal laws and regulations in respect of the performance of the *Contract*; or
- e) fails to comply with all federal and provincial laws in respect of the performance of the *Contract*; or
- f) or any *Subcontractor* or *Supplier* is a party in a claim, judicial or arbitral proceedings against, by or otherwise involving the *Owner*, other than in respect of the *Contract*; or,
- g) or any *Subcontractor* or *Supplier* is related to or controlled by another person or entity to whom or to which, as applicable, statements c), d), e), or f) immediately above applies; or,
- h) fails to comply with the requirements of the *Contract* to a substantial degree; the *Owner* may, without prejudice to any other right or remedy the *Owner* may have, give the *Contractor Notice in Writing* that the *Contractor* is in default of the *Contractor's* contractual obligations and instruct the *Contractor* to correct the default in the 5 *Working Days* immediately following the receipt of such *Notice in Writing*.

Add a new subparagraph 7.1.3.4 as follows:

7.1.3.4 An "acceptable schedule" as referred to in subparagraph 7.1.3.2. means a schedule approved by the *Consultant* and the *Owner* 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*.

7.1.5.3 In subparagraph 7.1.5.3, after the words "*Contract Price*" in the fourth line, add the words "excluding the *Warranty Reserve* set out in paragraph 5.2.11 and any reserve fund set out in paragraph 5.5.2." and 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."

Add new subparagraph 7.1.5.5 as follows:

7.1.5.5 In addition to any charges certified by the *Consultant* pursuant to the provisions of subparagraphs 7.1.4.1 or 7.1.5.3, the *Contractor* shall pay an allowance for the additional time and service required of the *Owner's* representative and other employees of the *Owner*, equivalent to the relevant payroll costs, plus ten percent (10%).

Delete paragraph 7.1.6 and add new paragraphs 7.1.6, 7.1.7, 7.1.8, 7.1.9, 7.1.10, and 7.1.11 as follows:

- 7.1.6 In addition to its right to terminate the *Contract* set out herein and in ARTICLE A–9 CONFLICT OF INTEREST, paragraph 9.5, the *Owner* may terminate the *Contract* at any time for any other reason and without cause upon giving the *Contractor Notice in Writing* to that effect. In such event, the *Contractor* shall be entitled to be paid for all or a portion of the *Work* performed including reasonable profit, for loss sustained upon *Products* and *Construction Equipment*, and such other damages as the *Contractor* may have sustained as a result of the termination of the *Contract*, but in no event shall the *Contractor* be entitled to be compensated for any loss of profit on unperformed portions of the *Work*, or indirect, special, or consequential damages incurred.
- 7.1.7 The *Owner* may suspend all or a portion of the *Work* under this *Contract* at any time for any reason and without cause upon giving the *Contractor Notice in Writing* to that effect. In such event, the *Contractor* shall be entitled to be paid for all or a portion of the *Work* performed to the date of suspension and be compensated for all actual costs incurred arising from the suspension, including reasonable profit, for loss sustained upon *Products* and *Construction Equipment*, and such other damages as the *Contractor* may have sustained as a result of the suspension of the *Work*, but in no event shall the *Contractor* be entitled to be compensated for any indirect, special, or consequential damages incurred. In the event that the suspension continues for more than 180 calendar days, the *Contract* shall be deemed to be terminated and the provisions of paragraph 7.1.6 shall apply.
- 7.1.8 In the event of *Force Majeure* lasting a minimum of thirty (30) days the *Owner* may, upon giving the *Contractor Notice in Writing*, terminate the *Contract*, provided however, the *Notice in Writing* must be provided prior to the end of the *Force Majeure*.
- 7.1.9 In the case of either a termination of the *Contract* or a suspension of the *Work* under GC 7.1 - OWNER'S RIGHT TO PERFORM THE WORK, TERMINATE THE CONTRACTOR'S RIGHT TO CONTINUE WITH THE WORK, SUSPEND THE WORK, OR TERMINATE THE CONTRACT or GC 7.2 - CONTRACTOR'S RIGHT TO SUSPEND THE WORK OR TERMINATE THE CONTRACT or ARTICLE A-9 CONFLICT OF INTEREST, the *Contractor* shall use its best commercial efforts to mitigate the financial consequences to the *Owner* arising out of the termination or suspension, as the case may be.
- 7.1.10 Upon the resumption of the performance of the *Work* following a suspension under GC 7.1 - OWNER'S RIGHT TO PERFORM THE WORK, TERMINATE THE CONTRACTOR'S RIGHT TO CONTINUE WITH THE WORK, SUSPEND THE WORK OR TERMINATE THE CONTRACT or GC 7.2 - CONTRACTOR'S RIGHT TO SUSPEND THE WORK OR TERMINATE THE CONTRACT, the *Contractor* will endeavour to minimize the delay and financial consequences arising out of the suspension.
- 7.1.11 The *Contractor's* obligations under the *Contract* as to quality, correction, and warranty of the *Work* performed by the *Contractor* up to the time of termination or suspension shall continue after such termination of the *Contract* or suspension of all or a portion of the *Work*.

GC 7.2 CONTRACTOR’S RIGHT TO STOP THE WORK OR TERMINATE THE CONTRACT

7.2.2 Delete paragraph 7.2.2 in its entirety.

7.2.3.1 Delete subparagraph 7.2.3.1 in its entirety.

7.2.3.2 Delete subparagraph 7.2.3.2 in its entirety.

7.2.3.3 Delete the words “certified by the *Consultant*” in the first line of subparagraph 7.2.3.3 and replace with “required in accordance with a determination made by an adjudicator pursuant to Part II.1 of the *Act* and PART 13 – ADJUDICATION”.

7.2.3.4 In subparagraph 7.2.3.4, delete the words "except for GC 5.1 - FINANCING INFORMATION REQUIRED OF THE OWNER".

7.2.4 Add the following to the end of paragraph 7.2.4:

If the default cannot be corrected within the 5 *Working Days* specified in the preceding sentence, 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.

Delete paragraph 7.2.5 in its entirety and substitute the following:

7.2.5 If the *Contractor* terminates the *Contract* under the conditions described in GC 7.2, the *Contractor* shall be entitled to be paid for that portion of the *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, 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.

Add new paragraph 7.2.6 as follows:

7.2.6 If the *Contractor* stops the *Work* or terminates the *Contract* as provided for in paragraphs 7.2.1 and 7.2.3 above, the *Contractor* shall ensure the site and the *Work* are left in a safe, secure condition as required by authorities having jurisdiction at the *Place of the Work* and the *Contract Documents*.

GC 8.1 AUTHORITY OF THE CONSULTANT

8.1.2 In paragraph 8.1.2, change “paragraphs 8.2.3 to 8.2.8 of GC 8.2 – NEGOTIATION, MEDIATION AND ARBITRATION” to “GC 8.2 – NEGOTIATION, MEDIATION, ARBITRATION AND ADJUDICATION”.

8.1.3 Delete last sentence of 8.1.3 and substitute the following:

If it is subsequently determined that such instructions were at variance with the *Contract Documents*, the *Owner* shall pay the *Contractor* costs incurred by the *Contractor* in carrying out such instructions which the *Contractor* was required to do beyond the requirements of the *Contract Documents*, including costs resulting from interruption of the *Work*.

GC 8.2 NEGOTIATION, MEDIATION AND ARBITRATION

Revise the heading to read: **GC 8.2 NEGOTIATION, MEDIATION, ARBITRATION AND ADJUDICATION**

Delete paragraphs 8.2.1 to 8.2.8 inclusive and replace with the following:

- 8.2.1. Subject to the provisions of the *Act*, the *Contractor* shall complete *the Work* in accordance with the *Contract* and *Contract Documents* and the directions of the *Consultant* and the *Owner*, notwithstanding any dispute, claim, mediation, arbitration, adjudication, or any legal action initiated by either or both of the parties.
- 8.2.2 The parties shall make all reasonable efforts to resolve disputes by amicable negotiation and agree to provide, without prejudice, frank, candid and timely disclosure of relevant facts, information and documents to facilitate these negotiations.
- 8.2.3 In the event the dispute is not resolved after the negotiations referred to in paragraph 8.2.2 above, the parties may but are not required to refer the dispute to a third party for mediation, being a mediator mutually agreed upon by the parties, to assist the parties in concluding an agreement on the dispute.
- 8.2.4 In the event that the dispute is not resolved after the negotiations referred to in paragraph 8.2.2 above, the parties may but are not required to refer the dispute to binding arbitration, being an arbitrator mutually agreed upon by the parties. If the parties agree to refer the dispute to arbitration, the decision of the arbitrator shall be final and binding upon the parties and the arbitration shall be conducted in the jurisdiction of the *Place of the Work* under the *Contract* and *Contract Documents*. The rules of arbitration as provided in CCDC 40 shall govern the arbitration process, unless the parties mutually agree that a different set of rules are to govern.
- 8.2.5 Subject to the notice requirements in paragraph 8.2.6 below, if either party wishes to refer a dispute to adjudication in accordance with Part II.1 of the *Act*, the parties to the adjudication will comply at all times with the scheme and process set out at Part II.1 of the *Act* and applicable regulations.
- 8.2.6 With the exception of disputes that arise as a result of a notice of non-payment given by the *Owner* under the *Act*, it is a pre-condition to either party prior to commencing an adjudication that at least 30 calendar days prior to commencing an adjudication, the party shall have given *Notice in Writing* of a dispute, which notice shall set out the nature, and a brief description, of the dispute. The *Notice in Writing* of a dispute is in

addition to any other notice provision contained within the *Contract* and *Contract Documents*.

- 8.2.7 The party commencing an adjudication shall use the Ontario Dispute Adjudication for Construction Contracts online portal to commence and conduct its adjudication, and shall identify the *Owner's* email address for service as adjudications@mississauga.ca. A written copy of the notice of adjudication given to the *Owner* shall also be delivered in person to the City Clerk's Office.
- 8.2.8 The party commencing adjudication, shall also, at the same time as commencing the adjudication, provide the names of three (3) adjudicators that the referring party nominates to adjudicate the dispute. Where *the Contractor* is the party commencing adjudication, an email from the *Contractor* to the *Owner* providing the names of the three (3) adjudicators nominated by *the Contractor* shall be sent to adjudications@mississauga.ca.
- 8.2.9 The responding party shall give notice in writing to the referring party stating either that: (i) the responding party accepts one of the referring party's nominees; or (ii) none of the referring party's nominees are acceptable. Absent agreement, the parties shall attempt to negotiate in good faith the selection of a mutually acceptable adjudicator, failing which, the parties will rely on the Authority to appoint a registry adjudicator.

GC 8.3 RETENTION OF RIGHTS

- 8.3.1 Delete paragraph 8.3.1 in its entirety and replace with the following:

It is agreed that no act by either party shall be construed as a renunciation or waiver of any rights or recourses.

- 8.3.2 In paragraph 8.3.2, delete the balance of the paragraph after the words "*Place of the Work*" in the second line.

GC 9.1 PROTECTION OF WORK AND PROPERTY

Delete subparagraph 9.1.1.1 in its entirety and substitute the following:

- 9.1.1.1 errors in the *Contract Documents* which the *Contractor* could not have discovered applying the standard of care described in paragraph 3.14.1;

Delete paragraph 9.1.2 in its entirety and substitute as follows:

- 9.1.2 Before commencing any *Work*, the *Contractor* shall determine the locations of all underground utilities and structures indicated in or inferable from the *Contract Documents*, or that are inferable from an inspection of the *Place of the Work* exercising the degree of care and skill described in paragraph 3.14.1.

Add new paragraph 9.1.5 as follows:

9.1.5 With respect to any damage to which paragraph 9.1.4 applies, the *Contractor* shall neither undertake to repair or replace any damage whatsoever to the work of other contractors, or to adjoining property, nor acknowledge that the same was caused or occasioned by the *Contractor*, without first consulting the *Owner* and receiving written instructions as to the course of action to be followed from either the *Owner* or the *Consultant*. Where, however, there is danger to life, the environment, or public safety, the *Contractor* shall take such emergency action as it deems necessary to remove the danger.

Add new paragraph 9.1.6 as follows:

9.1.6 Where permanent installations or otherwise, such as roads, curbs, sidewalks, boulevards, sod, trees, hydrants, fencing and street lighting abut, front or adjoin the *Work*, the *Contractor* shall identify the conditions of same prior to the commencement of the *Work* and record said conditions in such a manner as directed by the *Consultant*, to assist in the indemnification of the *Owner* and the *Contractor* against subsequent damage which may be alleged by others. Should any damage occur which is attributable to the *Contractor*, the *Contractor* shall be responsible to make good such damage at his own expense or pay all costs incurred by others in making good such damage.

GC 9.2 TOXIC AND HAZARDOUS SUBSTANCES

Add a new subparagraph 9.2.5.5 as follows:

9.2.5.5 in addition to the steps described in subparagraph 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.

9.2.6 Delete 9.2.6 in its entirety and replace with the following:

If the *Owner* and *Contractor* do not agree on the existence, significance of, or whether the toxic or hazardous substances were brought onto the *Place of the Work* by the *Contractor* or anyone for whom the *Contractor* is responsible, or whether any toxic or hazardous substances or materials already at the *Place of the Work* (and which were then harmless or stored, contained or otherwise dealt with in accordance with legal and regulatory requirements) were dealt with by the *Contractor* or anyone for whom the *Contractor* is responsible in a manner which does not comply with legal and regulatory requirements, or which threatens human health and safety or the environment, or material damage to the property of the *Owner* or others, the *Owner* shall retain and pay for an independent qualified expert to investigate and determine such matters. The expert's report shall be delivered to the *Owner* and the *Contractor*. For the purposes of this *Contract*, including GC 9.2 – Toxic and Hazardous Substances, *Excess Soil* is confirmed to be excluded from the definitions under this *Contract* of toxic and hazardous substances.

9.2.7.4 Delete subparagraph 9.2.7.4 in its entirety and replace with the following:

9.2.7.4 indemnify the *Contractor* from and against claims, demands, losses, costs, damages, actions suits or proceedings made, suffered or brought by third parties arising out of or resulting from exposure to, or the presence of, toxic or hazardous substances at the *Place of the Work* for which the *Contractor* is not responsible under GC 9.2 TOXIC AND HAZARDOUS SUBSTANCES. This obligation shall not be construed to negate, abridge or reduce other rights or obligations of indemnity set out in GC 12.1 – INDEMNIFICATION or that otherwise exist respecting a person or party described in this paragraph.

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

9.2.8 If the *Owner* and the *Contractor* agree or if the expert referred to in paragraph 9.2.6 determines that the toxic or hazardous substances were brought onto the *Place of the Work* by the *Contractor* or anyone for whom the *Contractor* is responsible, that any toxic or hazardous substances or materials already at the *Place of the Work* (and which were then harmless or stored, contained or otherwise dealt with in accordance with legal and regulatory requirements) were dealt with by the *Contractor* or anyone for whom the *Contractor* is responsible in a manner which does not comply with legal and regulatory requirements, or which threatens human health or safety or the environment, or material damage to the property of the *Owner* or others, the *Contractor* shall promptly at the *Contractor's* own expense:

- 1) take all necessary steps, in accordance with applicable legislation and regulations in force at the *Place of the Work*, to safely remove and dispose of the toxic or hazardous substances;
- 2) make good any damage to the *Work*, the *Owner's* property or property adjacent to the *Place of the Work* as provided in paragraph 9.1.3 of GC 9.1 PROTECTION OF WORK AND PROPERTY;
- 3) reimburse the *Owner* for reasonable costs incurred under paragraph 9.2.6 and as a result of the delay; and
- 4) indemnify the *Owner* as required by GC 12.1 INDEMNIFICATION.

GC 9.4 CONSTRUCTION SAFETY

Delete paragraph 9.4.1 in its entirety and substitute as follows:

9.4.1 The *Contractor* acknowledges and agrees that the obligations of the *Contractor* set out in this GC 9.4 Construction Safety are in addition to the *Contractor's* obligations set out in the *Health and Safety Acknowledgement Form*.

Add new paragraphs 9.4.2, 9.4.3, 9.4.4 and 9.4.5 as follows:

9.4.2 The *Contractor* shall be solely responsible for construction safety at the *Place of the Work* and for compliance with the rules, regulations, and practices required by the applicable construction health and safety legislation and shall be responsible for

initiating, maintaining and supervising all safety precautions and programs in connection with the performance of the *Work*.

9.4.3 Within seven (7) days of receipt of written notice to do so and prior to the commencement of the *Work*, the *Contractor* shall submit to the *Owner*:

- 1) a current Workplace Safety & Insurance Board Clearance Certificate, as required by paragraph 10.4.1;
- 2) certificates of insurance as required by SCHEDULE A – INSURANCE REQUIREMENTS;
- 3) documentation setting out the *Contractor*'s in-house safety programs;
- 4) a copy of the Notice of Project filed with the Ministry of Labour naming itself as "constructor" under the OHSA.

9.4.4 The *Contractor* shall indemnify, defend and save harmless the *Owner* its agents, officers, directors, employees, consultants, successors, appointees, and assigns from and against the consequences of any and all safety infractions committed by the *Contractor* under the OHSA, including the payment of legal fees and disbursements on a solicitor and client basis. Such indemnity shall apply to the extent to which the *Owner* is not covered by insurance, provided that the indemnity contained in this paragraph shall be limited to costs and damages resulting directly from such infractions and shall not extend to any consequential, indirect or special damages.

9.4.5 The *Owner* undertakes to include in its contracts with other contractors and in its instructions to its own forces the requirement that the other contractor or its own forces, as the case may be, comply with the policies and procedures of and the directions and instructions from the *Contractor* with respect to occupational health and safety and related matters.

GC 9.5 MOULD

Delete subparagraph 9.5.3.3 and replace with the following:

9.5.3.3 extend the *Contract Time* for such reasonable time as the *Consultant* may recommend in consultation with the *Contractor* and the *Owner*. If, in the opinion of the *Consultant*, the *Contractor* has been delayed in performing the *Work* and/or has incurred additional costs under paragraph 9.5.1.2, the *Owner* shall reimburse the *Contractor* for the reasonable costs incurred as a result of the delay and as a result of taking those steps.

9.5.3.4 Delete subparagraph 9.5.3.4 in its entirety.

GC 10.1 TAXES AND DUTIES

10.1.2 Amend paragraph 10.1.2 by adding the following sentence to the end of the paragraph:

For greater certainty, the *Contractor* shall not be entitled to any mark-up for overhead or profit on any increase in such taxes and duties and the *Owner* shall not be entitled to any credit relating to mark-up for overhead or profit on any decrease in such taxes.

Add new paragraph 10.1.3 as follows:

- 10.1.3 Where the *Owner* is entitled to an exemption or a recovery of sales taxes, customs duties, excise taxes or *Value Added Taxes* applicable to the *Contract*, the *Contractor* shall, at the request of the *Owner*, assist with application for any exemption, recovery or refund of all such taxes and duties and all amounts recovered or exemptions obtained shall be for the sole benefit of the *Owner*. The *Contractor* agrees to endorse over to the *Owner* any cheques received from the federal or provincial governments, or any other taxing authority, as may be required to give effect to this paragraph.

GC 10.2 LAWS, NOTICES, PERMITS, AND FEES

- 10.2.3 Add the following two sentences to the end of paragraph 10.2.3:

The *Contractor* shall notify the “Chief Building Official” or the registered code agency where applicable, of the readiness, substantial completion and completion of the stages of construction set out in the Ontario Building Code. The *Contractor* shall be present at each site inspection by an inspector or registered code agency as applicable under the Ontario Building Code.

- 10.2.5 Amend paragraph 10.2.5 by adding the words “Subject to paragraph 3.14.1” at the beginning of the paragraph.

- 10.2.6 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 and notwithstanding any limitations described in paragraph 12.1.1, the *Contractor* agrees to indemnify, defend 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*.

- 10.2.8 Add new paragraph 10.2.8 as follows:

The *Contractor* shall obtain all certificates of inspection and occupancy that may be required by authorities having jurisdiction over the *Work* and shall deliver such certificates to the *Consultant* upon completion of the *Work*.

GC 10.4 WORKERS’ COMPENSATION

- 10.4.1 Delete paragraph 10.4.1 and replaces with the following:

Within seven (7) days of receipt of written notice to do so and prior to commencing the *Work*, and with each and every application for payment thereafter, including the *Contractor’s* application for payment of the holdback amount following *Substantial*

Performance of the Work and again with the *Contractor's* application for final payment, the *Contractor* shall provide a Clearance Certificate from WSIB.

GC 11.1 INSURANCE

Delete GC 11.1 INSURANCE in its entirety and replace with “**INSURANCE REQUIREMENTS**” set out in **SCHEDULE A**.

GC 11.2 CONTRACT SECURITY

Delete paragraphs 11.2.1 and 11.2.2 in their entirety and replace with the following:

11.2.1 The *Contractor* shall, prior to the execution of the *Contract* and within seven (7) days of receiving written notice to so do, furnish a performance bond and a labour and material payment bond in the form required under the *Act*. Each bond shall:

- 1) be of an insurer licensed under the *Insurance Act* to write surety and fidelity Insurance;
- 2) have a coverage limit of at least 50% of the *Contract Price*, and
- 3) extend protection to subcontractors and persons supplying labour or materials to the improvement.

11.2.2 The performance bond shall be applicable to all of the *Contractor's* obligations under the *Contract*, including its obligations pursuant to GC 12.3 WARRANTY during the *Warranty Period* (as defined in paragraph 12.3.1). The *Contractor* shall maintain the bonds in good standing and keep them in force and effect until the *Contractor* has fulfilled all of its obligations under the *Contract* and the *Contract Documents*, including its obligations pursuant to GC 12.3 WARRANTY during the *Warranty Period*.

Add new paragraphs 11.2.3, 11.2.4 and 11.2.5 as follows:

11.2.3 The *Contractor* represents and warrants that it has provided its surety with a copy of the *Contract* prior to the issuance of the bonds referred to in paragraph 11.2.1.

11.2.3 The *Contractor* shall provide written notice to the surety for the performance bond, with a copy to the *Owner*, of any *Change Orders* to the *Contract*. Where a *Change Order* increases the *Contract Price*, the *Contractor* shall require that the amount of the bond be increased so that at all times the bond covers 50% of the *Contract Price*. The *Contractor* shall provide to the *Owner* upon *Substantial Performance of the Work* a rider indicating any increase in the penal amount of the bond as a result of such *Change Orders*.

11.2.4 Where required by the *Contract Documents*, the *Contractor* shall obtain a 50% performance and a 50% labour & material payment bond from required *Subcontractors*, and shall provide copies of such bonds to the *Owner* upon receipt. Each of such bonds shall be issued by a duly licensed surety company authorized to transact the business of

suretyship in the Province of Ontario, and shall be maintained in good standing until the fulfillment of the respective subcontract.

11.2.5 Subcontractor default insurance will not be accepted as a substitute for the surety bonds required under this Part.

GC 12.1 INDEMNIFICATION

Delete General Condition 12.1 – INDEMNIFICATION in its entirety and substitute the following:

12.1.1 For the purposes of GC 12.1 – INDEMNIFICATION, the following definitions shall apply:

12.1.1.1 “Claims” means any and all claims, actions, causes of action, complaints, demands, suits or proceedings of any nature of kind; and

12.1.1.2 “Costs” means those costs (including, without limitation, all legal fees and costs on a solicitor and client basis, other professional fees and disbursements, interest, liquidated damages, fines, penalties and amounts paid in settlement, whether from a third party or otherwise) awarded in accordance with the order of a court of competent jurisdiction, the order of a board, tribunal or arbitrator or costs negotiated in the settlement of a claim or action; and

12.1.1.3 “Indemnified Parties” means, collectively, the *Owner*, the *Consultant* and any *Other Party*, their respective elected and appointed officials, officers, employees, agents, and assigns, as applicable; and

12.1.1.4 “Losses” means, in respect of any matter, all losses, damages, liabilities, Costs and expenses.

12.1.2 Except for Claims or Losses arising from the negligence or wilful misconduct of the Owner, the *Contractor* shall indemnify, defend and hold harmless the Indemnified Parties and any one or more of them from and against:

- 1) any and all Claims or Losses whatsoever which may be brought against upon the Indemnified Parties or any one or more of them including but not limited to the *Contractor’s* failure to comply with the *Excess Soil Legislation and Excess Soil Regulation* and any and all obligations of the *Contractor* under this *Contract* regarding *Excess Soil*, including indemnification against any orders, fines and penalties imposed under the *Excess Soil Legislation and Excess Soil Regulation*, as applicable, and any costs or damages resulting from failing to comply with the *Excess Soil Legislation and Excess Soil Regulation* and any reporting requirements,, and
- 2) any and all Claims or Losses which the Indemnified Parties or any one or more of them may sustain, suffer, incur or be liable for, arising out of, resulting from or attributable to the *Contractor’s* or any *Subcontractor’s* or *Supplier’s* performance or non-performance of the *Contract*, or failure to exercise reasonable care, skill

or diligence in the performance of the *Contract*, regardless of whether or not caused in part by a party indemnified hereunder. It is expressly understood that the *Contractor* will save harmless the Indemnified Parties from all Claims made by any party other than the *Contractor* itself, financial or otherwise, relating to labour and materials furnished by the *Contractor* or by others for the *Work*.

- 12.1.3 The right of indemnification granted to the Indemnified Parties under GC 12.1 INDEMNIFICATION shall extend to any amount paid by any Indemnified Party in the settlement of any claim against it, and in entering into any such settlement such Indemnified Party may exercise its reasonable discretion as to the amount to be paid but shall serve prior notice of any intended settlement on the *Contractor* at least five *Working Days* prior to agreeing to any such settlement.
- 12.1.4 The *Owner* may enforce the rights of indemnity conferred on the other Indemnified Parties under GC 12.1 INDEMNIFICATION on their behalf and to the same extent as if they were parties to the *Contract*.
- 12.1.5 The rights to indemnity provided for in GC 12.1 INDEMNIFICATION shall be deemed to be in addition to any rights with respect to insurance in favour of any of the Indemnified Parties provided under the *Contract Documents*.
- 12.1.6 The rights to indemnity provided for in this GC 12.1 INDEMNIFICATION shall survive the expiration or any termination of the *Contract*.
- 12.1.7 The *Owner* shall indemnify and hold harmless the *Contractor*, his agents and employees from and against claims, demands, losses, costs, damages, actions, suits or proceedings arising out of the *Contractor's* performance of the *Contract* which are attributable to a lack of or defect in title or an alleged lack of or defect in title to the *Place of the Work*.
- 12.1.8 Notwithstanding the provisions of GC 1.1 CONTRACT DOCUMENTS, paragraph 1.1.7, GC 12.1 INDEMNIFICATION shall govern over the provisions of paragraph 1.3.1 of GC 1.3 – RIGHTS AND REMEDIES.

GC 12.2 WAIVER OF CLAIMS

- 12.2.1 In the fourth line, add the words “claims for delay pursuant to GC 6.5 DELAYS, claims for an increase in the *Contract Price*, pursuant to GC 6.6 CLAIMS FOR A CHANGE IN THE CONTRACT PRICE” after the word “limitation”. Add the words “(collectively “Claims”)” after “*Substantial Performance of the Work*” in the sixth line.
- 12.2.1.1 Change the word “claims” to “Claims” and change the word “claim” to “Claim”.
- 12.2.1.2 Change the word “claims” to “Claims”.
- 12.2.1.3 Delete paragraph 12.2.1.3 in its entirety.
- 12.2.1.4 Change the word “claims” to “Claims”.

- 12.2.2 Change the words “in paragraphs 12.2.1.2 and 12.2.1.3” to “in paragraph 12.2.1.2”. Change the word “claims” to “Claims” in both instances and change the word “claim” to “Claim”.
- 12.2.3 Delete paragraph 12.2.3 in its entirety.
- 12.2.4 Delete paragraph 12.2.4 in its entirety.
- 12.2.5 Delete paragraph 12.2.5 in its entirety.
- 12.2.6 Change the word “claim” to “Claim” in all instances in the paragraph.
- 12.2.7 Change “The party” to “The *Contractor*”. Change the word “claim” to “Claim” in all instances in the paragraph.
- 12.2.8 Change “under paragraphs 12.2.1 or 12.2.3” to “under paragraph 12.2.1”. Change both instances of the words “the party” to “the *Contractor*”. Change the word “claim” to “Claim” in all instances in the paragraph.
- 12.2.9 Delete paragraph 12.2.9 in its entirety.
- 12.2.10 Delete paragraph 12.2.10 in its entirety.

GC 12.3 WARRANTY

- 12.3.2 Delete from the first line of paragraph 12.3.2 the word, “The” and substitute the words “Subject to paragraph 3.4.1, the...”
- 12.3.3 Delete paragraph 12.3.3 in its entirety and replace with **the** following:

The *Owner*, through the *Consultant*, shall promptly give the *Contractor Notice in Writing* of observed defects and deficiencies that arise or occur prior to or during the *Warranty Period*, in accordance with the following procedures:

- 1) where the defect in the Work may affect the health and safety of any persons, the defect shall be corrected, repaired or replaced in accordance with the above immediately upon (i) the Contractor becoming aware of such defect or (ii) the receipt of verbal notice from the Owner as to the existence of such defect, followed by a written notice from the Owner verifying the defect (the “Warranty Notice”);
- 2) where the defect in the Work involves any mechanical or electrical system component or Product, the defect shall be corrected, repaired or replaced in accordance with the above within 24 hours from (i) the time the Contractor becomes aware of such defect, or (ii) the receipt of verbal notice from the Owner as to the existence of such defect followed by the Contractor’s receipt of a Warranty Notice;

- 3) in any other case, the defect shall be corrected, repaired or replaced in accordance with the above requirements within the time frame specified in the Warranty Notice.

Where the *Contractor* at any time fails to comply with its obligations noted above, the *Owner* shall be entitled, notwithstanding the provisions of GC 7.1 OWNER'S RIGHT TO PERFORM THE WORK, TERMINATE THE CONTRACTOR'S RIGHT TO CONTINUE WITH THE WORK OR TERMINATE THE CONTRACT without further notice to the *Contractor*, to undertake all work, measures, and actions necessary to correct, repair, or replace the defect or deficiency in the *Work*, and the *Contractor* shall pay to the *Owner* immediately upon written demand all costs and expenses incurred by the *Owner* in undertaking such correction, repairs or replacements to the *Work*, and upon failure to pay by the *Contractor*, the *Owner* shall recover such costs and expenses by drawing upon and utilizing the *Warranty Reserve* and the *Contractor* shall be liable for and shall immediately pay to the *Owner* any amounts outstanding which have not been recovered under the *Warranty Reserve*.

The *Contractor* agrees that any decision by the *Consultant* as to the necessity for the correction, repair, or replacement of any defect or deficiency in the *Work*, and the recovery of any costs and expenses incurred by the *Owner* in the enforcement of the *Contractor's* warranty obligations hereunder, shall be final and binding on the *Contractor*.

- 12.3.4 Delete paragraph 12.3.4 in its entirety and replace with the following:

The *Contractor* shall, during and throughout the performance of the *Work* and the *Warranty Period*, maintain and repair the *Work*, at its own cost and expense, and shall promptly and immediately correct, repair or replace any defects or deficiencies in the *Work* having regard to any one or more of materials, *Products* or workmanship, including any and all damages or injury to the *Work*, which occurs during construction or the *Warranty Period*, which are discovered or identified prior to and during the *Warranty Period*, all in accordance with the Specifications, and other applicable terms and conditions of the *Contract Documents*, and to the complete satisfaction of the *Consultant*.

Add new paragraphs 12.3.7, 12.3.8, 12.3.9 and 12.3.10 as follows:

- 12.3.7 Where required by the *Contract Documents*, the *Contractor* shall provide a maintenance bond as security for the performance of the *Contractor's* obligations as set out in GC 12.3 WARRANTY.
- 12.3.8 If any defects and/or deficiencies are to be remedied after *Substantial Performance of the Work*, the same period of warranty in reference to the material and workmanship in accordance with the provisions of GC 12.3 - WARRANTY shall run from the date when such defects and/or deficiencies shall be remedied.

12.3.9 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 of the company issuing the warranty.

The *Contractor* shall ensure that all warranties and guarantees required by the *Contract Documents* are issued in favour of the *Owner*.

12.3.10 In the event that the *Contractor* fails to maintain and repair the *Work* in accordance with paragraph 12.3.4, the *Owner* may, at its option, repair or replace any defects or deficiencies in the *Work* and deduct the cost of doing so from the *Warranty Reserve*.

Add PART 13 – EXCESS SOIL as follows:

PART 13 EXCESS SOIL

GC 13.1 EXCESS SOIL

13.1.1 a) The *Owner*, as the *Project Leader*, with the assistance of the *Owner QP*, as necessary and required, shall make the determination at the onset of the *Project* and prior to the call for tenders the extent to which the *Excess Soil Legislation*, and/or portions thereof, applies to the *Work* and/or the *Project* and the *Owner* may elect to have the *Work* and/or *Project* voluntarily comply with any portions of the *Excess Soil Legislation* which have not come into effect as of the date of execution of the *Contract* by both parties. The *Contractor* agrees to perform the *Work* in compliance with both the requirements of the *Excess Soil Legislation* and the obligations in this PART 13 - Excess Soil except only to the extent the *Excess Soil Legislation* may otherwise be determined by the *Owner* to not be applicable as provided in the call for tenders or as otherwise determined by the *Owner* at any time during the *Work*. The *Contractor* confirms and agrees that the performance of the obligations in this Part 13 - Excess Soil, to the extent applicable, and all other obligations in the *Contract* regarding *Excess Soil* form part of the *Contract Price*. The *Contractor* further acknowledges and agrees that notwithstanding the extent of the applicability of the *Excess Soil Legislation*, in whole or in part, the *Contractor* is obligated to comply with any and all applicable environmental legislation, requirements and obligations, including, but not limited to, with respect to *Excess Soil*. Notwithstanding that the *Owner* is

the *Project Leader* for the *Project* for the purposes only of the *Excess Soil Legislation*, the *Contractor* remains solely responsible for all health and safety for the *Project* and is in total control of the *Project* and is responsible for all construction means, methods, techniques and sequences for the *Project* and the *Work*. The *Contractor* acknowledges and agrees that it shall assist the *Owner* in any manner as deemed necessary by the *Owner*, in its sole discretion and as applicable, in regards to any obligations and requirements of the *Owner* as *Project Leader* pursuant to the *Excess Soil Legislation* and, if applicable, the *Contractor* shall in coordination with the *Owner QP* be responsible for ensuring compliance of the *Project* under the *Excess Soil Legislation*. For clarity, the *Contractor* acknowledges and agrees that this is an ongoing obligation of the *Contractor* during the performance of the *Work* for the *Project*. In the event that there are any issues with the *Excess Soil* for the *Project*, the *Contractor* agrees and understands that the *Owner* and *Owner QP* may suspend the *Project* until such time that these issues are resolved, and except where the issues with *Excess Soil* and suspension of the *Project* is the result of any act or omission of the *Contractor*, any said delay resulting from same will only entitle the *Contractor* to a reasonable and directly resulting increase in the *Contract Time* as to be discussed and agreed to by the parties acting reasonably but no increase in the *Contract Price*, and shall not be grounds for the *Contractor* to terminate the *Contract* or be entitled to any further damages or claims.

- b) To the extent the *Excess Soil Legislation* is determined by the *Owner* to apply to the *Work* and/or the *Project*, or the *Owner* elects to have the *Work* and/or *Project* voluntarily comply with portions of the *Excess Soil Legislation* which have not come into effect, subject to the other provisions in the *Contract Documents*, the *Contractor* shall, at its cost and expense:
- i) in coordination with the *Owner QP*, including but not limited to the obligations as set out under the Definitions which form part of the obligations of the *Contractor* under this *Contract*, ensure strict compliance with the requirements of the *Excess Soil Legislation* during the performance of the *Work*, including all notices, filings and reporting obligations as required pursuant to the terms of this *Contract*;
 - ii) to work with, coordinate, assist and follow the directions of the *Owner QP*, where necessary under the *Excess Soil Legislation*;
 - iii) subject to such other terms and obligations under this *Contract*, including GC 13.1.1(b)(vi) and (x), prior to proceeding with any of the *Contractor's* obligations under this *Contract* regarding maintaining compliance with the *Excess Soil Legislation* the *Contractor* shall first submit and obtain from the *Owner QP* the *Owner QP's* review, confirmation and approval regarding any documentation, reporting obligations or other actions as required by the *Contractor* under the *Excess Soil Legislation* and this *Contract*;

- iv) perform the *Work* in strict accordance with, and subject to, the *Excess Soil Legislation*;
- v) for the full duration of the *Project*, including the time that the *Owner* is the *Project Leader*, assist the *Owner* and *Owner QP* in carrying out and fulfilling the duties and responsibilities of the *Project Leader* in accordance with the requirements of the *Excess Soil Legislation*, including, but not limited to, the preparation and delivery of the required documents and forms to be filed and submitted with the *Excess Soil Registry* or as required by the *RPRA*;
- vi) as part of the bid submission has provided, or will provide if not already provided as part of the bid submission, particulars and details of *Receiving Sites* and in the case of *Reuse Sites* confirmation that the *Excess Soil* will be used for a beneficial purpose, and shall be required to provide to the *Owner* the *Contractor's* soil management and policies documents which shall comply with the *Excess Soil Legislation*;
- vii) unless otherwise stated under this *Contract* procure and pay for all permits, approvals, disposal fees, costs and expenses required by the *Excess Soil Legislation*;
- viii) ensure that all documents and forms as required pursuant to the *Excess Soil Legislation* and as required to be prepared by the *Contractor* under this *Contract* be properly prepared and/or kept including, but not limited to, with respect to the *Project Leader*, *Owner QP*, haulers, interim sites, landfills and dump sites and *Receiving Sites*. The *Contractor* shall submit all required documents and forms to the *Owner QP* who shall review the documentation and information as provided by the *Contractor* and direct the *Contractor* to make any required additions and amendments to same, which the *Contractor* shall forthwith complete. The *Owner QP* shall thereafter either conduct the filings or direct the *Contractor* to conduct the filings, but the *Contractor* shall not conduct any filings until authorized and directed by the *Owner QP* to do so;
- ix) ensure that all documents required under the *Excess Soil Legislation* including the contracts for the management and transportation of the *Excess Soil*, and all documents evidencing that the *Work* complies with the *Excess Soil Legislation* be prepared and/or obtained by the *Contractor*, as applicable, which documents shall be kept at the *Place of the Work* and copies forthwith submitted to the *Owner* and *Owner QP*, which documents shall thereafter be maintained by the *Contractor* for seven (7) years following the total performance of the *Work* (meaning the completion of all obligations of the *Contractor* under the *Contract* and *Contract Documents*), and the *Contractor* shall be further obligated

to ensure that all *Subcontractors, Suppliers* and haulers maintain all required records in compliance with the *Contract Documents*;

- x) shall be required and responsible, unless otherwise directed by the *Owner* or *Owner QP*, to find and locate suitable *Receiving Sites* for all *Excess Soil*, which sites shall be subject to the approval of the *Owner QP*, and shall ensure that it does its due diligence to ensure the *Receiving Sites* are approved under the *Excess Soil Legislation*. The *Contractor* and *Contractor QP* shall prepare the *Excess Soil* destination assessment report and implement the required tracking system and shall assist and cooperate with and follow the directions of the *Owner QP* to the extent that such obligations require the involvement of the *Owner QP*;
- xi) unless otherwise stated in this *Contract* shall undertake all additional sampling, testing and analysis required for the proper management of the *Excess Soil*, and to assist and cooperate with and follow the directions of the *Owner QP* to the extent that such obligations require the involvement of the *Owner QP*;
- xii) shall be responsible for identifying and selecting compliant haulers, receivers, recyclers, and *Receiving Sites* to complete the *Work* required under this *Contract* regarding *Excess Soil*, and to assist and cooperate with and follow the directions of the *Owner QP* to the extent that such obligations require the involvement of the *Owner QP*;
- xiii) prior to transporting any *Excess Soil* from the *Place of the Work* to a *Receiving Site*, the *Contractor* shall, in accordance with this GC 13.1.1.(b), unless otherwise stated in this *Contract*, receive written approval from the *Owner QP* and confirmation that all required notices under the *Excess Soil Legislation* have been properly prepared and filed in the *Excess Soil Registry*. A minimum of 14 days prior to commencing the removal of *Excess Soil* from the *Place of the Work*, the *Contractor* shall submit to the *Owner* and *Owner QP* written evidence and confirmation of the following:
 - a) that the *Receiving Site* is permitted to receive the *Excess Soil* in accordance with the *Excess Soil Legislation*;
 - b) the location(s) of each *Receiving Site*;
 - c) the name and contact information of the parties that will be acknowledging the deposit of the *Excess Soil* at the *Receiving Site*;
 - d) information and records from the haulers on the source, quality and destination of the *Excess Soil* they are transporting;
 - e) a signed declaration from the *Contractor* confirming that the *Contractor* has reviewed the *Excess Soil Legislation*, has reviewed any and all *Project* soil assessment reports it received from the *Owner*;

- f) preparation of the *Excess Soil* destination assessment report and implementation of the required tracking system by the *Contractor* and *Contractor QP*, including ensuring that all *Excess Soil* is deposited to the *Receiving Sites* designated under and in compliance with the these documents and to no other location; and
 - g) any additional information that may be requested or required by the *Owner*, by the *Owner QP* or by the *RPRA*;

- xiv) to follow the procedures as implemented by the *Owner QP*, and/or as directed by the *Owner QP*, to address the discharge and/or discovery of contaminants during excavation in compliance with the *Excess Soil Legislation* and the *Environmental Protection Act* and all regulations thereunder and ensure that any soil, *Excess Soil* or crushed rock is stored at the *Place of the Work* in compliance with the *Excess Soil Legislation*; and

- xv) shall be responsible for preparing, implementing and ensuring completeness and accuracy of the hauling records. This includes confirming the quantity of *Excess Soil* in each load that is to be transported from the *Place of the Work*, the location of the *Receiving Site* where each load of *Excess Soil* is to be deposited, and if to be deposited at multiple *Receiving Sites* the quantity of *Excess Soil* deposited at each *Receiving Site*; and following the deposit of each load of *Excess Soil*, written confirmation from each *Receiving Site* regarding the quantity of *Excess Soil* that each deposit site received and the date and time the *Excess Soil* was deposited.

- c) Prior to the importation of any fill or *Excess Soil* onto the *Place of the Work* obtained from other locations (excluding soil and/or granular material originating from a pit or quarry licensed under the *Aggregate Resources Act* or imported topsoil sourced from a property with a permit issued under the *Aggregate Resources Act*), the *Contractor* shall obtain and file, with the *Consultant* and *Owner QP* for review and approval, source site documentation of the location(s) where the *Contractor* intends to obtain the fill material. No fill material shall be imported onto the *Place of the Work* prior to the *Contractor* receiving written approval from the *Owner QP*. The *Contractor* shall retain, at the cost and expense of the *Contractor*, the *Contractor's Qualified Person* to undertake and perform all requirements under the *Excess Soil Legislation* and outlined herein, with respect to the importation of any fill or *Excess Soil* onto the *Place of the Work* obtained from other locations. The *Contractor* shall provide the *Owner* and *Owner QP* with written evidence and confirmation, prepared and signed by the *Contractor's QP*, of the following:
 - a. that the imported material meets appropriate soil characterization and quality parameters for the locations where the *Contractor* proposes to

- place the material and is appropriate in the circumstances, having regard to applicable environmental laws (including, but not limited to, the *Excess Soil Legislation* and *Excess Soil Regulation*);, MECP guidelines, standards, policies and best management practices.
- b. the supplier information (address, owner, contact information) for each source site;
 - c. type and quantity of material being imported per source site(s);
 - d. sampling methodology (sampling and analysis plan per the frequency requirements under the *Excess Soil Legislation* and *Excess Soil Regulation*;
 - e. results of the sampling, including the parameters analysed and the total number of samples collected per location(s) based on the volume(s) to be imported;
 - f. laboratory certificates of analysis or analytical reports for all samples analysed;
 - g. copies of the Assessment of Past Uses, Sampling and Analysis Plan, Site Characterization Report for the source site(s), if applicable, and
 - h. any other matters as required by the *Owner* and *Owner QP*.
- d) The documentation and reporting obligations of the *Contractor* under this GC 13.1.1., and in particular GC 13.1.1.(b) and (c), shall extend to and include the *Contractor's* ongoing obligations to obtain and submit the documentation and information to the *Owner* and *Owner QP* as required herein from any *Subcontractor*, *Supplier*, hauler, employee, or any other party that the *Contractor* may contract with, retain and/or use to carry out any of its obligations under this *Contract* regarding *Excess Soil*, which obligations shall be included in any contract entered into by the *Contractor* with said parties to ensure compliance with same. Further, the *Contractor* shall be obligated to have and to maintain an *Excess Soil* policy in a form acceptable to the *Owner* and the *Owner QP* setting out the manner and processes in which the *Contractor* and its *Subcontractors*, *Suppliers*, haulers and employees shall comply with the *Excess Soil Legislation*, including their record keeping and reporting obligations, and shall ensure that it and its *Subcontractors*, *Suppliers*, haulers and employees comply with same.
- e) This GC 13.1.1. *Excess Soil* applies to the *Excess Soil Legislation* and *Excess Soil Regulation*, including any changes implemented at any time during the *Project*, and any requirements implemented in phases. Any changes to the *Excess Soil Legislation* and *Excess Soil Regulation* shall be complied with by the *Contractor*. The obligations and responsibilities of complying with, or fulfilling, such changes or future requirements form part of the *Work* and the *Contract Price*. This GC 13.1.1. *Excess Soil* and such other provisions under this *Contract* dealing with *Excess Soil* are applicable to *Excess Soil* even when such *Excess Soil* differs

materially from that as indicated in the *Contract Documents* (including without limitation, a *Project* soil assessment report) or is of a nature which differs materially from that ordinarily found to exist and generally recognized as inherent in construction activities of the character provided for in the *Contract Documents*.

- f) Any failure of the *Contractor* to comply with this GC 13.1.1. *Excess Soil* and such other *Excess Soil* obligations pursuant to this *Contract* shall constitute a breach of contract under this *Contract* and entitle the *Owner* to avail itself of its remedies under this *Contract* and at law, including a claim for any damages suffered by the *Owner* against the *Contractor* due to such breaches.