

CITY OF TORONTO
SUPPLEMENTARY CONDITIONS TO CCDC 2-2008
STIPULATED PRICE CONTRACT
July 2018

AMENDMENTS TO THE STIPULATED PRICE CONTRACT, CCDC2-2008

The Standard Construction Document for 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 these *Contract Documents*, with the following amendments, additions and modifications:

1. AGREEMENT BETWEEN OWNER AND CONTRACTOR

1.1 ARTICLE A-3-CONTRACT DOCUMENTS

1.1.1 Amend paragraph 3.1 by adding the following after the words, "The General Conditions of the Stipulated Price Contract":

- "These Supplementary Conditions

-The Specific Conditions, if any

-*Drawings*

-*Specifications*"

1.2 ARTICLE A-5 – PAYMENT

1.2.1 Delete paragraph 5.3 – Interest, in its entirety.

1.3 ARTICLE A-6 – RECEIPT AND ADDRESSES FOR NOTICES IN WRITING

1.3.1 Amend paragraph 6.1, by deleting the words, "or by facsimile" in the second sentence, the words, "facsimile or other form of" in the fourth sentence, and the words, "facsimile number" wherever they appear.

2. DEFINITIONS

2.1.1 Delete Definition 4, "*Consultant*", and replace it with the following:

"The '*Consultant*', shall be the person or entity designated as the *Consultant* by the *Owner*, from time to time.

2.1.2 Add a new Definition, "*Act*", as follows:

"*Act*" means the *Construction Act* (Ontario), as amended."

2.1.3 Add a new Definition, "*OHSA*", as follows:

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

2.1.4 Add a new Definition, "*Submittals*", as follows:

"*Submittals*

Submittals are documents or items required by the *Contract Documents* to be provided by the *Contractor* in accordance with the *Contract Documents* such as:

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

- As-built drawings and manuals to provide instructions to the operation and maintenance of the *Work*.

2.1.5 Add a new Definition, "*WSIB*", as follows:

"*WSIB*' means the Workplace Safety & Insurance Board."

2.1.6 Add a new Definition "*Daily Work Records*", as follows:

"*Daily Work Records*' mean daily records detailing the number and categories of workers and hours worked or on standby, types and quantities of *Construction Equipment*, and descriptions and quantities of *Product* utilized."

3. GENERAL CONDITIONS OF THE STIPULATED PRICE CONTRACT

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

3.1 GC 1.1 - CONTRACT DOCUMENTS

3.1.1 Delete paragraph 1.1.7.1 in its entirety and replace it with new paragraph 1.1.7.1:

"1.1.7.1 If there is a conflict within the *Contract Documents*, the order of priority of documents, from highest to lowest, shall be:

any amendment to the *Agreement* between the *Owner* and the *Contractor*,

the *Agreement* between the *Owner* and the *Contractor*, as amended by these Supplementary Conditions

the Definitions,

Specific Conditions

Supplementary Conditions,

the General Conditions,

the *Drawings*,

Division 1 of the *Specifications*,

Technical *Specifications*,

material and finishing schedules."

3.1.2 Delete paragraph 1.1.8 in its entirety and replace it with new paragraph 1.1.8:

"1.1.8 The *Owner* shall provide the *Contractor*, without charge, up to ten copies of the *Contract Documents*. If requested by the *Contractor*, the *City* shall provide additional copies at the cost of printing handling and shipping."

3.1.3 Amend paragraph 1.1.9 by deleting the period at the end and replacing it with ", which shall not unreasonably be withheld."

3.2 GC 1.3 – RIGHTS AND REMEDIES

3.2.1 Amend paragraph 1.3.2 by deleting the word, "*Consultant*" and replacing it with "his representative".

3.3 GC 1.4 - ASSIGNMENT

3.3.1 Delete paragraph 1.4.1 in its entirety and replace it with the following:

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

3.4 GC 2.1 – AUTHORITY OF THE CONSULTANT

3.4.1 Delete paragraph 2.1 in its entirety and replace it with new paragraph 2.1:

"2.1.1 The *Consultant* will be the *Owner*'s representative during construction and until the issuance by the *Consultant* of a certificate at completion of the *Work* ("Completion Certificate") or the issuance by the *Consultant* of a certificate of final acceptance ("Final Acceptance Certificate") whichever is later. All instructions to the *Contractor* including instructions from the *Owner* will be issued by the *Consultant*. The *Consultant* will have the authority to act on behalf of the *Owner* only to the extent provided in the *Contract Documents*.

2.1.2 The *Consultant* will inspect the *Work* for its conformity with the plans and *Specifications*, and record the necessary data to establish payment quantities under the schedule of tender quantities and unit prices or to make an assessment of the value of the *Work* completed in the case of a lump sum price contract.

2.1.3 The *Consultant* will investigate all claims of a change in the *Work* made by the *Contractor* and issue appropriate instructions.

2.1.4 In the case of non-compliance with the provisions of the *Contract* by the *Contractor*, the *Consultant*, after consultation with the *Owner*, will have the authority to suspend the *Work* for such reasonable time as may be necessary to remedy such non-compliance. The *Contractor* shall not be entitled to any compensation for suspension of the *Work* in these circumstances.

3.5 GC 2.2 - ROLE OF THE CONSULTANT

3.5.1 Amend paragraph 2.2.3 by deleting the second sentence thereof.

3.5.2 Amend paragraph 2.2.7 by deleting the words "except with respect to GC 5.1 – FINANCING INFORMATION REQUIRED OF THE OWNER."

3.5.3 Delete paragraph 2.2.16 and replace it with the following:

2.2.16 The *Consultant* and the *Contractor* will jointly conduct reviews of the *Work* to determine the date of *Substantial Performance of the Work* and completion of the *Work* as provided in GC 5.4 SUBSTANTIAL PERFORMANCE OF THE WORK and GC 5.7 – FINAL PAYMENT, respectively.

3.6 GC 2.4 - DEFECTIVE WORK

3.6.1 Amend paragraph 2.4.1 by adding the following at the end, "at no additional cost to the *Owner*"

3.6.2 Add new subparagraphs 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*."

3.7 GC 3.2 - CONSTRUCTION BY OWNER OR OTHER CONTRACTORS

3.7.1 Delete subparagraphs 3.2.2.4 and 3.2.2.5 in their entirety.

3.8 GC 3.4 - DOCUMENT REVIEW

3.8.1 Delete paragraph 3.4.1 in its entirety and replace it with new paragraph 3.4.1:

"3.4.1 The *Contractor* shall review the *Contract Documents* and shall report promptly to the *Consultant* any error, inconsistency or omission the *Contractor* may discover. Such review by the *Contractor* shall comply with the standard of care described in GC 3.14 STANDARD OF CARE. Except for its obligation to make such review and report the result, the *Contractor* does not assume any responsibility to the *Owner* or to the *Consultant* for the accuracy of the *Contract Documents*. The *Contractor* shall not be liable for damage or costs resulting from such errors, inconsistencies, or omissions in the *Contract Documents*, which the *Contractor* could not reasonably have discovered. If the *Contractor* does discover any error, inconsistency or omission in the *Contract Documents*, the *Contractor* shall not proceed with the *Work* affected until the *Contractor* has received corrected or missing information from the *Consultant*."

3.8.2 Add new paragraph 3.4.2:

"3.4.2 If the *Contractor* finds discrepancies in and/or omissions from the *Contract Documents* or has any doubt as to the meaning or intent of any part thereof, the *Contractor* shall immediately notify the *Consultant*, who will provide written instructions or explanations. Neither the *Owner* nor the *Consultant* will be responsible for oral instructions."

3.9 GC 3.5 - CONSTRUCTION SCHEDULE

3.9.1 Add the following sections 3.5.1.1.1 to 3.5.1.1.5

"3.5.1.1.1 The schedule shall take into account the sequence of construction and the completion dates contained in the information for bidders and the tender submission package;

3.5.1.1.2 Only computerised type schedules will be accepted;

3.5.1.1.3 The schedule must show the *Project* critical path and the critical path must be identified in a contrasting colour (red) from the other activities;

3.5.1.1.4 The schedule must clearly show, in weekly intervals, the logic and timing of major activities, proposed start dates and estimated duration for activities;

3.5.1.1.5 The schedule must have a level of detail sufficient to identify the *Contractor* and each specific *Subcontractor* and their respective parts of the *Work* and the specific location thereof."

3.10 GC 3.6 – SUPERVISION

3.10.1 Amend paragraph 3.6.1 by adding the following after the words, "competent representative", "who shall be a Competent Person, as that term is defined in the *Occupational Health and Safety Act*", and by deleting the last sentence, and replacing it with the following, "The *Contractor* shall not be entitled to change the Competent Person without the prior written authorization of the *Owner*, which shall not be unreasonably withheld."

3.10.2 Add paragraphs 3.6.3 to 3.6.7 as follows:

"3.6.3 The *Contractor* shall furnish competent and adequate staff, who shall be in attendance at the *Place of the Work* at all times, as necessary, for the proper administration, co-ordination, supervision and superintendence of the *Work*; organize the procurement of all *Product* and *Construction Equipment* so that they will be available at the time they are needed for the *Work*; and keep an adequate force of skilled workers on the job to complete the *Work* in accordance with all requirements of the *Contract Documents*.

3.6.4 Prior to commencement of the *Work*, the *Contractor* shall select a competent and experienced full time *Project manager* (the "Project Manager") who shall be in attendance at the *Place of the Work* or on the road and engaged in the *Work* at all times, and a competent and experienced full time site supervisor (the "Site Supervisor") who shall be in attendance at the *Place of the Work* at all times. The Project Manager shall have full responsibility for the prosecution of the *Work*, with full authority to act in all matters as may be necessary for the proper co-ordination, supervision, direction and technical administration of the *Work*, who shall attend site meetings in order to render reports on the progress of the *Work* and who shall have authority to bind the *Contractor* in all matters related to this *Contract*. The Project Manager and the Site Supervisor shall be satisfactory to the *Owner* and shall not be changed except for good reason and with the prior written approval of the *Owner*, which shall not unreasonably be withheld. The Project Manager may be the same person as the competent representative set out in section 3.6.1.

3.6.5 The Project Manager and Site Supervisor shall represent the *Contractor* at the *Place of the Work* and notices and instructions given to the Project Manager and/or the Site Supervisor shall be held to have been received by the *Contractor*.

3.6.6 The *Owner* acting reasonably, shall have the right to order the *Contractor* to remove from the *Project* any representative or employee of the *Contractor*, *Subcontractors* or *Suppliers* who, in the opinion of the *Owner*, are a detriment to the *Project*.

3.6.7. The *Contractor* shall provide the *Owner* and the *Consultant* with the names, work addresses and telephone numbers of the Project Manager, the Site Supervisor and other responsible field persons who may be contacted for emergency and other reasons during non-working hours."

3.11 GC 3.7 - SUBCONTRACTORS AND SUPPLIERS

3.11.1 Add a new paragraph 3.7.1.4, as follows:

"3.7.1.4 at all times ensure full compliance with all of the *Owner's* policies including the *Owner's* Fair Wage Policy, and its collective agreements."

3.11.2 Delete paragraphs 3.7.3, 3.7.4, and 3.7.5 in their entirety, and replace them with sections 3.7.3, 3.7.4, 3.7.5, 3.7.6, 3.7.7, and 3.7.8 as follows:

"3.7.3 The *Contractor* may subcontract any part of the *Work*, subject to these General Conditions and any limitations specified in the *Contract Documents*.

3.7.4 The *Contractor* shall notify the *Consultant*, in writing, of its intention to subcontract. Such notification shall identify the part of the *Work* and the *Subcontractor* with whom it is intended to subcontract.

3.7.5 The *Contractor* shall not, without the written consent of the *Owner*, and whose consent shall not be unreasonably withheld, change a *Subcontractor* who has been engaged in accordance with this General Condition.

3.7.6 The *Contractor* shall preserve and protect the rights of the *Owner* with respect to that part of the *Work* to be performed under subcontract and shall enter into agreements with the intended *Subcontractors* to require them to perform their *Work* in accordance with the *Contract Documents* and shall be as fully responsible to the *Owner* for acts and omissions of the *Contractor's* *Subcontractors* and of persons directly and indirectly employed by them as for acts and omissions of persons employed directly by the *Contractor*.

3.7.7 The *Owner's* consent to subcontracting by the *Contractor* shall not be construed as relieving the *Contractor* from any obligation under the *Contract* and shall not impose any liability on the *Owner*. Nothing contained in the *Contract Documents* shall create a contractual relationship between a *Subcontractor* and the *Owner*.

3.7.8 The *Contractor* and all associated *Subcontractors* shall be subject to the *Owner's* policies, including any Fair Wage Policy, if any, as may be adopted by the *Owner* from time to time, and any of the *Owner's* or legislated labour trades requirements. Failure to comply with these policies or requirements may lead to termination of the *Contract*, or rejection of a *Subcontractor*, as the case may be."

3.12 GC 3.8 - LABOUR AND PRODUCTS

3.12.1 Paragraph 3.8.2 is amended by adding the following sentence to the end:

"The *Contractor* shall not change the source of supply of any *Product* without the written authorization of the *Consultant*."

3.12.2 Amend paragraph 3.8.3 by adding the following at the end thereof:

"and shall not employ any persons on the *Work* whose labour affiliation (or lack thereof) is incompatible with other labour employed in connection with the *Work* or at the *Place of the Work*."

3.13 GC 3.11- USE OF THE WORK

3.17.1 Amend section 3.11.2 by adding the words, ", individuals and the area adjacent to the work.", at the end thereof.

3.14 GC 3.12- CUTTING AND REMEDIAL WORK

3.18.1 Amend paragraph 3.12.1 by adding the word, "coring," before the word, "cutting".

3.15 GC 3.13- CLEANUP

3.15.1 Amend paragraph 3.13.2 by adding the following at the end thereof, "all to the satisfaction of the *Consultant* and the *Owner*, acting reasonably."

3.15.2 Add a new paragraph 3.13.4 as follows:

"3.13.4 The *Owner* shall have the right to back charge cleaning to the

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

3.16 GC 3.14 – STANDARD OF CARE

3.16.1 Add new General Condition 3.14 as follows:

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

3.14.2 The *Contractor* further represents covenants and warrants to the *Owner* that 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*."

3.17 GC 5.1 - FINANCING INFORMATION REQUIRED OF THE OWNER

3.17.1 Delete GC 5.1.1 and 5.1.2 in their entirety and replace them with "Intentionally left blank."

3.18 GC 5.2 - APPLICATIONS FOR PROGRESS PAYMENT

3.18.1 Amend paragraph 5.2.4 by deleting the words "calendar days" and replacing them with "Working Days".

3.18.2 Amend paragraph 5.2.7 by adding the following at the end thereof:

"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 GC 13.1 OWNERSHIP OF MATERIALS."

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

"5.2.8 The *Contractor* shall submit a *WSIB* clearance certificate and a Statutory Declaration of Progress Payment Distribution by Contractor in a form acceptable to the *Owner* with each application for progress payment.

5.2.9 The *Contractor* shall, within 21 days of the signing of the *Contract*, and prior to the first claim for monthly payment, submit to the *Owner* a detailed breakdown of the lump sum tender price for the purpose of establishing monthly payments. The *Owner*, acting reasonably, reserves the right to modify costs allocated to the various breakdown items to prevent unbalancing.

5.2.10 Payment for mobilizing and setting up plant, temporary buildings and services, premiums and other disbursements, shall be prorated based on the value of the *Work* performed during a billable period..

5.2.11 Payment for bonds and insurance will be paid 100 per cent on the first progress payment, provided that respective invoices are submitted as proof of payment.

5.2.12 An "as-built" item shall be identified on the cost breakdown with a corresponding fair and reasonable value for the purpose of ensuring that the as-built information drawings are given due diligence. A detailed description of as-built information/drawings performed for that month shall accompany the invoice.

5.2.13 Prior to applying for any payment from the City, the *Contractor* shall submit a monthly projected/estimated payment schedule based on the detailed construction schedule and the *Contract Price* for the duration of the *Contract*."

3.19 GC 5.3 - PROGRESS PAYMENT

3.19.1 Amend subparagraph 5.3.1.2 by adding the following sentence at the end thereof:

"For clarity, the ten calendar day period referenced in this paragraph shall not commence until such time as the *Consultant* has determined that he has received from the *Contractor* all required documents supporting the invoice and evidencing the *Work* being invoiced, all to the *Consultant's* reasonable satisfaction."

3.19.2 Amend paragraph 5.3.1.3 by deleting the number "20" and replacing it with the number, "30", and by deleting everything after the word "after" and replacing it with the following:

"the *Consultant* and the *Contractor* have reached mutual agreement on the amount of the invoice evidencing the *Work* being invoiced with required supporting documents. The Owner shall retain, from funds owing under the Contract, the statutory holdbacks required under the *Act*. Unless otherwise specified in the Contract Documents, no letter of credit or demand-worded holdback will be accepted or used to retain any part of the statutory holdbacks required under the *Act*."

3.20 GC 5.4 – SUBSTANTIAL PERFORMANCE OF THE WORK

3.20.1 Delete paragraph 5.4.3 in its entirety and replace it with the following:

"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 correcting deficient *Work*, and the construction schedule shall be deemed to be amended to include this completion schedule."

3.20.2 Add new paragraphs 5.4.4 and 5.4.5:

"5.4.4 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 12.3.6;
- .3 certificates;
- .4 testing and balancing reports;
- .5 distribution system diagrams;
- .6 spare parts;
- .7 maintenance/operation manuals;
- .8 training manuals;
- .9 samples;
- .10 reports and correspondence from authorities having jurisdiction in the *Place of the Work*;
- .11 *Shop Drawings*, and marked up *Drawings*;
- .12 completed as-built drawings in the latest edition of a Computer Assisted Design Drawing software program;
- .13 inspection certificates;

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*.

5.4.5 Where the *Contractor* is unable to deliver the documents and materials described in paragraph

5.4.4, 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* may be withheld if the *Contractor* fails to deliver maintenance manuals, as required in paragraph 5.4.4.7, or completed as-built drawings, as required in subparagraph 5.4.5.12. Any documents or materials not delivered in accordance with paragraph 5.4.5 shall be delivered as provided in paragraph 5.7.1.2 of GC 5.7."

3.21 GC 5.5 - PAYMENT OF HOLDBACK UPON SUBSTANTIAL PERFORMANCE OF THE WORK

3.21.1 Delete paragraph 5.5.1.2 in its entirety,

3.21.2 Amend paragraph 5.5.2 by deleting the words "and the statement " from line 1, and adding the following at the end of the paragraph:

"The Substantial Performance Statutory Holdback Release Payment Certificate will be a payment certificate releasing to the Contractor the statutory holdback due in respect of Work performed up to the date of Substantial Performance of the Work. Payment of such statutory holdback shall be due 61 days after the date of publication of the Certificate of Substantial Performance but subject to the provisions of the *Act* and subject to GC 5.5.4 ."

3.21.3 Delete paragraph 5.5.3 in its entirety.

3.21.4 Amend paragraph 5.5.4 by deleting the last sentence and replacing it with the following: "In accordance with the *Act*, the *Owner* may retain out of the holdback amount any sums required by law to satisfy any liens against the *Work* and, the *Owner* acting reasonably, may retain any amounts in respect of claims of third parties made to the *Owner* in respect of the *Contract* or the *Work*, and in respect of any claims the *Owner* may have against the *Contractor*."

3.22 GC 5.6 - PROGRESSIVE RELEASE OF HOLDBACK

3.22.1 Amend paragraph 5.6.1 by deleting the period at the end of the first sentence and substituting ",subject to, and in accordance with, the terms of this GC 5.6." and by deleting the last sentence thereof and by adding the following as paragraphs 5.6.1.1, and 5.6.1.2:

"5.6.1.1 The holdback in respect of a subcontract shall be released 61 days after the date the subcontract is certified complete , provided the *Contractor* submits the following to the *Consultant*:

- (a) a document satisfactory to the *Consultant* that will release the *Owner* from all further claims relating to the subcontract, qualified by stated exceptions such as holdback monies;
- (b) evidence satisfactory to the *Consultant* that the *Subcontractor* has discharged all liabilities incurred in carrying out the subcontract;
- (c) a satisfactory clearance certificate or letter from the Workplace Safety and Insurance Board relating to the subcontract; and
- (d) a copy of the contract between the *Contractor* and the *Subcontractor* and a satisfactory statement showing the total amount due to the *Subcontractor* from the *Contractor*."

5.6.1.2 The *Owner* may retain out of the holdback amount any sums required by law to satisfy any liens against the *Work* and any amounts in respect of claims of third parties made to the *City* in respect of the *Contract* or the *Work*. "

3.23 GC 5.7 - FINAL PAYMENT

- 3.23.1 Amend paragraph 5.7.1 by renumbering it as 5.7.1.1 and adding the following subparagraph as 5.7.1.2.,

"5.7.1.2 The *Contractor's* application for final payment shall be accompanied by any documents or materials not yet delivered pursuant to paragraph 5.4.4. 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."

- 3.23.2 Amend paragraph 5.7.4 by deleting the number, "5" and replacing it with "60".

3.24 GC 6.2 - CHANGE ORDER

- 3.24.1 Add new paragraphs 6.2.3 and 6.2.4 as follows:

"6.2.3 Work on a Lump Sum Basis

6.2.3.1 Any agreement reached by the *Owner* and *Contractor* on an adjustment of the *Contract Price* on either a lump-sum or unit price basis shall be subject to the conditions contained in this paragraph 6.2.3.

6.2.3.2 Where a change in the *Work*, is performed by the *Contractor's* own forces, the negotiated lump sum price for change in the *Work*, or negotiated unit price(s) for each unit priced item shall be all-inclusive, except HST and mark-up as provided hereafter, and shall include, without limitation, all costs, charges, expenses and fees whatsoever required or related to perform such change, or such unit priced item. The *Contractor* shall be allowed a mark-up to a maximum amount of 15% of the lump sum price, or aggregate of unit items and applicable unit price(s), for such change, net of taxes on the first \$100,000 and 10% thereafter. The *Contractor* shall provide a written quotation identifying each amount to be charged for transportation, labour, *Product*, *Construction Equipment* and services and all other costs for the performance of the *Work*. The HST, as applicable, shall be identified separately in a manner satisfactory to the *Owner*.

6.2.3.3 Where a change in the *Work* is performed by a *Subcontractor's* forces, the *Subcontractor's* lump sum price for change in the *Work*, or unit price (s) for each unit priced item shall be all-inclusive, except HST and mark-up as provided hereafter, and shall include all of its costs, charges, expenses and fees whatsoever required or related to perform such change, or such unit priced item. The *Contractor* shall provide a written quotation with back-up documentation from the *Subcontractor* identifying each amount to be charged for transportation, labour, *Product*, *Construction Equipment* and services and all other costs for the performance of the *Work* and the total price charged by the *Subcontractor*. The *Subcontractor* shall be allowed a mark-up to a maximum amount of 15% of the lump sum price, or aggregate of unit items and applicable unit price(s), for such change, net of taxes on the first \$100,000 and 10% thereafter. The *Contractor* is allowed a maximum mark-up of 10% on the total price charged by the *Subcontractor* to the *Contractor* for such change, net of taxes and *Subcontractor* mark-up. The HST, as applicable, shall be identified separately in a manner satisfactory to the *Owner*.

6.2.3.4 In the event any of the change in the *Work*, contains items or parts that, in the opinion of the *Consultant*, are the same or equivalent to items for which the *Contractor* submitted unit prices in the tender submitted by the *Contractor*, then the prices in the tender shall be the prices paid by the *Owner* for that work or parts of the work in respect of any such change in the *Work*.

6.2.3.5 Where a change in the *Work* is performed either by the *Contractor* or a *Subcontractor*, and requires *Construction Equipment*, reasonable rental charges for *Construction Equipment*, such as tractors, bulldozers, ditching machines, air compressors, compactors, concrete mixers and graders, for the actual time required in operation for the performance of the *Work* must be agreed upon before commencing the *Work*.

6.2.3.6 The mark-ups provided for in paragraph 6.2.3.2 and 6.2.3.3 shall constitute the only compensation the *Contractor* shall be entitled to for any and all overhead, profit, incidental and administrative costs whatsoever related to the change, including but not limited to, costs relating to superintendence and supervision, shop drawing production, estimating, site office and home office expenses, workers tools, temporary facilities and controls, and coordination of any and all *Work*-related activities.

6.2.3.7 No claim whatsoever for a change in the *Contract Time*, delay, prolongation charges, remobilization or otherwise shall be permitted with respect to a change, unless first authorized by the *Consultant* and approved by the *Consultant* and set out in the *Change Order* or *Change Directive*, as the case may be, by the *Owner*.

6.2.3.8 No compensation for any change in the *Work* shall be allowed unless such change is first ordered in writing by the *Consultant* and authorized by the *Owner*.

6.2.4 Work on a Time and Material Basis

6.2.4.1 Where agreement is not reached on a lump-sum or unit price basis for a change in the *Contract Price* arising out of a change in the *Work*, the *Owner* may choose to issue a *Change Order* for *Work on a Time and Material Basis*, in which case the following provisions in this section 6.2.4 shall apply:

6.2.4.2 For the purposes of this paragraph 6.2.4, the following definitions apply:

Cost of Labour: means the amount of wages, salary, travel, travel time, food, lodging or similar items and Payroll Burden paid or incurred directly by the *Contractor* to or in respect of labour and supervision actively and necessarily engaged on the *Work* based on the recorded time and hourly rates of pay for such labour and supervision, but shall not include any payment or costs incurred for general supervision, administration or management time spent on the entire *Work* or any wages, salary or Payroll Burden for which the *Contractor* is compensated by any payment made by the *Owner* for *Construction Equipment*.

Cost of Product: means the cost of *Product* purchased, or supplied from stock, and valued at current market prices, for the purpose of carrying out extra *Work*, by the *Contractor*, or by others when such arrangements have been made by the *Contractor* for completing the *Work*, as shown by itemized invoices.

Operated Rented Construction Equipment: means rented *Construction Equipment* for which an operator is provided by the supplier of the *Construction Equipment* and for which the rent or lease includes the cost of the operator.

Payroll Burden: means the payments in respect of workplace insurance, vacation pay, employment insurance, sickness and accident insurance, pension fund and such other welfare and benefit payments forming part of the *Contractor's* normal labour costs.

Rented Equipment: means *Construction Equipment* that is rented or leased for the special purpose of *Work on a Time and Material Basis* from a person, firm or corporation that is not an associate of the lessee as defined by the *Securities Act*, R.S.O. 1990, Chapter c.S.5, as amended, and is approved by the *Consultant*.

Road Work: means the preparation, construction, finishing and construction maintenance of roads, streets, highways and parking lots and includes all work incidental thereto other than work on structures.

Sewer and Watermain Work: means the preparation, construction, finishing and construction maintenance of sewer systems and watermain systems, and includes all work incidental thereto other than work on structures.

Standby Time: means any period of time which is not considered *Working Time* and which together with the *Working Time* does not exceed 10 hours in any one *Working Day* and during which time a unit of

Construction Equipment cannot practically be used on other work but must remain on the site in order to continue with its assigned task and during which time the unit is in fully operable condition.

Structure Work: means the construction, reconstruction, repair, alteration, remodelling, renovation or demolition of any bridge, building, tunnel or retaining wall and includes the preparation for and the laying of the foundation of any bridge, building, tunnel or retaining wall and the installation of equipment and appurtenances incidental thereto.

The 127 Rate: means the rate for a unit of *Construction Equipment* as listed in OPSS.PROV 127, Schedule of Rental Rates for *Construction Equipment* Including Model and Specification Reference, which is current at the time the *Work* is carried out or for *Construction Equipment* which is not so listed, the rate which has been calculated by the *Owner*, using the same principles as used in determining The 127 Rates.

Work on a Time and Material Basis: means changes in the *Work* approved by the *Consultant* for payment on a time and material basis. The *Work on a Time and Material Basis* shall be subject to all the terms, conditions, *Specifications* and provisions of the *Contract*.

Working Time: means each period of time during which a unit of *Construction Equipment* is actively and of necessity engaged on a specific operation and the first 2 hours of each immediately following period during which the unit is not so engaged but during which the operation is otherwise proceeding and during which time the unit cannot practically be transferred to other work but must remain on the site in order to continue with its assigned tasks and during which time the unit is in a fully operable condition.

6.2.4.3 *Daily Work Records* prepared as the case may be by either the *Contractor's* representative or the *Consultant* and reporting the labour and *Construction Equipment* employed and the *Product* used for *Work on a Time and Material Basis*, shall be reconciled and signed each day by both the *Contractor's* representative and the *Consultant*.

6.2.4.4 Payment as herein provided shall be full compensation for all labour, *Construction Equipment* and *Product* to do the *Work on a Time and Material Basis* except where there is agreement to the contrary prior to the commencement of the *Work on a Time and Material Basis*. The payment adjustments on a time and material basis shall apply to each individual *Change Order* authorized by the *Consultant*.

6.2.4.5 The *Owner* will pay the *Contractor* for labour employed on each time and material project at 135% of the *Cost of Labour* up to \$3000, then at 120% of any portion of the *Cost of Labour* in excess of \$3000.

6.2.4.6 The *Owner* will make payment in respect of *Payroll Burden* for *Work on a Time and Material Basis* at the *Contractor's* actual cost of *Payroll Burden*.

6.2.4.7 At the *Owner's* discretion, an audit may be conducted in which case the actual *Payroll Burden* so determined shall be applied to all *Work on a Time and Material Basis*.

6.2.4.8 The *Owner* will pay the *Contractor* for *Product* used on each time and material project at 120% of the *Cost of Product* up to \$3,000, then at 115% of any portion of the *Cost of Product* in excess of \$3,000.

6.2.4.9 The *Owner* will pay the *Contractor* for the *Working Time* of all *Construction Equipment* other than rented *Construction Equipment* and *Operated Rented Construction Equipment* used on the *Work on a Time and Material Basis* at the *127 Rates* with a cost adjustment as follows:

- (a) Cost \$10,000 or less - no adjustment;
- (b) Cost greater than \$10,000 but not exceeding \$20,000 - payment \$10,000 plus 90% of the portion in excess of \$10,000; and

(c) Cost greater than \$20,000 - \$19,000 plus 80% of the portion in excess of \$20,000.

6.2.4.10 The *Owner* will pay the *Contractor* for the *Working Time* of *Rented Equipment* used on the *Work on a Time and Material Basis* at 110% of the invoice price approved by the *Consultant* up to a maximum of 110% of the 127 Rate. This constraint will be waived when the *Consultant* approves the invoice price prior to the use of the *Rented Equipment*.

6.2.4.11 The *Owner* will pay the *Contractor* for the *Working Time* of *Operated Rented Construction Equipment* used on the *Work on a Time and Material Basis* at 110% of the *Operated Rented Construction Equipment* invoice price approved by the *Consultant* prior to the use of the *Construction Equipment* on the *Work on a Time and Material Basis*.

6.2.4.12 The *Owner* will pay the *Contractor* for *Standby Time* of *Construction Equipment* at 35% of the 127 Rate or 35% of the invoice price whichever is appropriate. The *Owner* will pay reasonable costs for *Rented Equipment* where this is necessarily retained in the *Place of the Work* for extended periods agreed to by the *Consultant*. This will include *Rented Equipment* intended for use on other work, but has been idled due to the circumstances giving rise to the *Work on a Time and Material Basis*.

6.2.4.13 In addition, the *Owner* will include the *Cost of Labour* of operators or associated labourers who cannot be otherwise employed during the standby period or during the period of idleness caused by the circumstances giving rise to the *Work on a Time and Material Basis*.

6.2.4.14 *Rented Equipment* idled by the circumstances giving rise to the *Work on Time and Material Basis* to be returned to the lessor until the work requiring the *Rented Equipment* can be resumed. The *Owner* will pay such costs as result directly from such return.

6.2.4.15 When *Construction Equipment* is transported, solely for the purpose of the *Work on a Time and Material Basis*, to or from the *Place of the Work*, payment will be made by the *Owner* only in respect of the transporting units. When *Construction Equipment* is moved under its own power it shall be deemed to be working. *Construction Equipment* rates shall be subject to the approval of the *Consultant*.

6.2.4.16 Notwithstanding any other provision of this Section, no payment shall be made to the *Contractor* for or in respect of hand tools or equipment that are tools of the trade.

6.2.4.17 For changes in the *Work*, where the *Work* is performed by a *Subcontractor* the *Owner* shall pay the *Contractor* a mark up in the amount of 10 % of the first \$10,000 plus 5 % of the amount in excess of \$10,000.

6.2.4.18 No further markup will be applied regardless of the extent to which the *Work* is assigned or sublet to others. If *Work* is assigned or sublet to an associate, as defined by the Securities Act no markup whatsoever will be applied.

6.2.4.19 At the start of the *Work on a Time and Material Basis*, the *Contractor* shall provide the applicable labour and *Construction Equipment* rates not already submitted to the *Consultant* during the course of such work.

6.2.4.20 Separate summaries shall be completed by the *Contractor* according to the standard form "Summary for Payment of Accounts on a Time and Material Basis". Each summary shall include the order number and covering dates of the *Work* and shall itemize separately labour, *Product* and *Construction Equipment*. Invoices for *Product*, *Rented Construction Equipment* and other charges incurred by the *Contractor* on the *Work on a Time and Material Basis* shall be included with each summary.

6.2.4.21 Each month the *Consultant* will include with the monthly progress payment certificate, the costs of the *Work on a Time and Material Basis* incurred during the preceding month all in accordance with the

Contract administrative procedures and the *Contractor's* invoice of the *Work on a Time and Material Basis*.

6.2.4.22 The final "Summary for Payment of Accounts on a Time and Material Basis" shall be submitted by the *Contractor* within 60 days after the completion of the *Work on a Time and Material Basis*."

3.25 GC 6.3 - CHANGE DIRECTIVE

3.25.1 Delete paragraph 6.3.7.1 in its entirety and replace it with the following:

".1 salaries, wages and benefits paid to personnel in the direct employ of the *Contractor*, applying the labour rates set out in the wage schedule in the *Contract Documents* or as otherwise agreed between the *Owner* and *Contractor* for personnel,

- (1) carrying out the *Work*, including necessary supervisory services;
- (2) engaged in expediting the production or transportation of material or equipment, at shops or on the road;
- (3) engaged in the preparation of *Shop Drawings*, fabrication drawings, coordination drawings and *Contract* as-built drawings, or,
- (4) including clerical staff engaged in processing changes in the *Work*."

3.25.2 Amend paragraph 6.3.8 by adding the words "except for paragraph 6.3.14" after the word "*Contract*" in the first line.

3.25.3 Add new paragraph 6.3.14 as follows:

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

- .1 head office salaries and benefits and all other overhead or general expenses, except only for the salaries, wages and benefits of personnel described in paragraph 6.3.7.1 and the contributions, assessments or taxes referred to in paragraphs 6.3.7.2;
- .2 capital expenses and interest on capital;
- .3 general clean-up, except where the performance of the *Work* in the *Change Directive* causes specific additional clean-up requirements;
- .4 wages paid for project managers, superintendents, assistants, watch persons and administrative personnel, provided the *Change Directive* does not result in an extension of *Contract Time*;
- .5 wages, salaries, rentals, or other expenses that exceed the rates that are standard in the locality of the *Place of the Work* that are otherwise deemed unreasonable by the *Consultant*;
- .6 any costs or expenses attributable to the negligence, improper *Work*, deficiencies, or breaches of *Contract* by the *Contractor* or *Subcontractor*;
- .7 any cost of quality assurance, such as inspection and testing services, charges levied by authorities, and any legal fees unless any such costs or fees are pre-approved in writing by the *Owner*."

3.26 GC 6.5 - DELAYS

3.26.1 Amend paragraphs 6.5.1, and 6.5.2 by deleting the period at the end of each paragraph, and substituting the following words, ", but excluding any consequential, indirect or special damages, loss of profit, loss of opportunity or loss of productivity resulting from such delay."

3.26.2 Add new subparagraphs 6.5.6, 6.5.7, 6.5.8 and 6.5.9 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 employed or engaged by the *Contractor* directly or indirectly, or by any cause within the *Contractor's* control, then the *Contract Time* shall be extended for such reasonable time as the *Consultant* may decide in consultation with the *Contractor*. The *Owner* shall be reimbursed by the *Contractor* for all reasonable costs incurred by the *Owner* as the result of such delay, including all services required by the *Owner* from the *Consultant* as a result of such delay by the *Contractor* and, in particular, the cost of the *Consultant's* services during the period between the date of *Substantial Performance of the Work* stated in Article A-1 herein as the same may be extended through the provisions of these General Conditions and any later, actual date of *Substantial Performance of the Work* achieved by the *Contractor*.

6.5.7 The *Contractor* shall be responsible for the care, maintenance and protection of the *Work* in the event of any suspension of construction as a result of the delay described in paragraphs 6.5.1, 6.5.2 or 6.5.3. In the event of such suspension, the *Contractor* shall be reimbursed by the *Owner* for the reasonable costs incurred by the *Contractor* for such care, maintenance and protection, but excluding the costs of the *Contractor's* head office personnel. The *Contractor's* entitlement to costs pursuant to this paragraph 6.5.7, if any, shall be in addition to amounts, if any, to which the *Contractor* is entitled pursuant to paragraphs 6.5.1, 6.5.2 or 6.5.3.

6.5.8 Without limiting the obligations of the *Contractor* described in GC 3.2 – CONSTRUCTION BY OWNER OR OTHER CONTRACTORS and GC 9.4 – CONSTRUCTION SAFETY, the *Owner* may, by *Notice in Writing*, direct the *Contractor* to stop the *Work* where the *Owner* determines that there is an imminent risk to the safety of persons or property at the *Place of the Work*. In the event that the *Contractor* receives such notice, it shall immediately stop the *Work* and secure the *Project* site. The *Contractor* shall not be entitled to an extension of the *Contract Time* or to an increase in the *Contract Price* unless the resulting delay, if any, would entitle the *Contractor* to an extension of the *Contract Time* or the reimbursement of the *Contractor's* costs as provided in paragraphs 6.5.1, 6.5.2 or 6.5.3.

6.5.9 The *Contractor* recognizes and agrees that the *Owner* will suffer financial loss if the *Work* is not completed within the time specified in the *Contract*. The *Contractor* also recognizes the delays, expenses and difficulties involved in proving the actual loss suffered by the *Owner* if the *Work* is not completed on time. Accordingly, instead of requiring any such proof, the *Contractor* agrees that as liquidated damages for delay (but not as penalty) the *Contractor* shall pay to the *Owner*, as liquidated damages, an amount per day, as designated in the Specific Conditions of Contract for each and every day's delay from the specified time for completion of the *Work* until actual completion of the *Work*, and it is further expressly acknowledged and agreed by the *Contractor* that:

- (a) this amount is a reasonable estimate of the actual damage that will be incurred by the *Owner* due to any failure to complete the *Work* within the time required by this *Contract*;
- (b) the *Owner* may deduct the amount due under this section from any monies that may be due or payable to the *Contractor*, whether under this *Contract* or any other agreement;
- (c) the liquidated damages provided for in this section shall be without prejudice to any other remedy to which the *Owner* is entitled at law or in equity."

3.27 GC 6.6 CLAIMS FOR CHANGE IN CONTRACT PRICE

3.27.1 GC 6.6.1 - 6.6.6 are deleted in their entirety and replaced with the following:

"6.6.1 Claims for a change in the Contract Price shall be determined in accordance with GC 8, as amended."

3.28 GC 7.1 - OWNER'S RIGHT TO PERFORM THE WORK, STOP THE WORK, OR TERMINATE THE CONTRACT

3.28.1 Amend paragraph 7.1.2 by adding the following sentence to the end:

"Failure by the *Owner* to provide such notice shortly after the default has occurred shall not constitute condonation of the default."

3.28.2 Add a new paragraph 7.1.5.5 as follows:

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

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

3.29.1 Delete paragraphs 7.2.1, and 7.2.3.1 in their entirety.

3.29.2 In paragraph 7.2.2, insert the words "other than the City of Toronto" after the words "public authority" in the second line.

3.29.3 Delete subparagraph 7.2.3.4 and replace it with the following:

".4 the *Owner* violates the requirements of the *Contract* to a substantial degree"

3.29.4 Delete paragraph 7.2.5 and replace it with the following:

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

.1 commences the correction of the default within the specified time; and

.2 provides the *Contractor* with an acceptable schedule for such correction; and

.3 completes the correction in accordance with such schedule."

3.29.5 Add new paragraph 7.2.6:

"7.2.6 If the *Contractor* terminates the *Contract* under the conditions described in this GC 7.2, the *Contractor* shall be entitled to be paid for all *Work* performed to the date of termination. 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 special, indirect or consequential losses, or loss of use."

3.30 GC 8.0 – DISPUTE RESOLUTION

3.30.1 Delete Part 8 in its entirety and replace it with the following:

"8.0 DISPUTE RESOLUTION

8.1.1 Continuance of the *Work*

Unless the *Contract* has been terminated or completed, the *Contractor* shall in every case, after serving or receiving any notification of a claim or dispute, verbal or written, continue to proceed with the *Work* with due diligence and expedition. It is understood by the parties that such action shall not jeopardize any claim it may have.

8.1.2 Record Keeping

Immediately upon commencing *Work* that may result in a claim, the *Contractor* shall keep *Daily Work Records* during the course of the *Work*, sufficient to substantiate the *Contractor's* claim, and the *Consultant* shall keep *Daily Work Records* to be used in assessing the *Contractor's* claim, all records to be in accordance with the requirements of the *Contract*.

8.1.3 The *Contractor* and the *Consultant* shall attempt to reconcile their respective *Daily Work Records* on a daily basis, to simplify review of the claim, when submitted. If the *Contractor* and the *Consultant* fail to reconcile their respective *Daily Work Records*, then the *Contractor* shall submit its *Daily Work Records* as part of its claim, whereby the resolution of the dispute about the *Daily Work Records* shall not be resolved until there is a resolution of the claim.

8.1.4 The keeping of *Daily Work Records* by the *Consultant* or the reconciling of such *Daily Work Records* with those of the *Contractor* shall not be construed to be acceptance of the claim.

8.2 Claims Procedure

8.2.1 The *Contractor* shall give verbal notice to the *Consultant* of any situation which may lead to a claim for additional payment immediately upon becoming aware of the situation and shall provide written notice to the *Consultant* of such situation or of any express intent to claim such payment, within seven days of the commencement of any part of the *Work* which may be affected by the situation or shall form part of the claim.

8.2.2 The *Contractor* shall submit detailed claims as soon as reasonably possible and in any event no later than 30 days after completion of the *Work* affected by the situation. The detailed claim shall:

- a) identify the item or items in respect of which the claim arises;
- b) state the grounds, contractual or otherwise, upon which the claim is made; and
- c) include the records maintained by the *Contractor* supporting such claim.

In exceptional cases the 30 days may be increased to a maximum of 90 days with approval in writing from the *Consultant*.

8.2.3 Within 30 days of the receipt of the *Contractor's* detailed claim, the *Consultant* may request the *Contractor* to submit any further and other particulars as the *Consultant* considers necessary to assess the claim. The *Contractor* shall submit the requested information within 30 days of receipt of such request.

8.2.4 Within 90 days of receipt of the detailed claim, the *Owner*, or if authorized by the *Owner*, the *Consultant*, shall advise the *Contractor*, in writing, of the *Owner's* opinion with regard to the validity of the claim.

8.3 Negotiations

- 8.3.1 The parties shall make all reasonable efforts to resolve their dispute by amicable negotiations and agree to provide, without prejudice, open and timely disclosure of relevant facts, information, and documents to facilitate these negotiations.
- 8.3.2 Should the *Contractor* disagree with the opinion given in paragraph 8.2.4, with respect to any part of the claim, the *Consultant* shall enter into negotiations with the *Contractor* to resolve the matters in dispute. Negotiation shall occur on three levels; first, with the *Consultant*, second, with the *Owner's* Manager level, and third, with the *Owner's* Director, General Manager or Executive Director level. Corresponding level shall be involved in the discussions on behalf of the *Contractor*. Any agreement reached with the *Consultant* shall be subject to the *Owner's* approval. Prior to commencement of construction the *Owner* and the *Contractor* shall meet to determine the names of the representatives at the three levels of discussion. These names shall be put in writing, to be used in the event of a dispute in issue.
- 8.3.3 Discussions with the *Consultant* shall be completed as soon as possible and shall be limited to a period of no more than 30 days following receipt of the opinion given in paragraph 8.2.4. Manager level discussion shall be completed as soon as possible following failed discussions with the *Consultant*, and shall be limited to a period of no more than a further 30 days. The Director, General Manager or Executive Director level discussion shall be completed as soon as possible following failed manager level discussions, and shall be limited to a period of no more than a further 30 days.
- 8.3.4 Each party shall be responsible for elevating an issue to the next level of negotiation, if the issue has not been resolved at the current level. The *Contractor* or *Consultant* shall notify the other properly in writing if he or she wishes to pursue an issue to the next level of negotiation.
- 8.3.5 Where a negotiated settlement cannot be reached, or it is agreed that payment cannot be made in accordance with paragraph 6.2.3 or paragraph 6.2.4, the parties may, upon mutual agreement, proceed in accordance with clause paragraph 8.4, Mediation.
- 8.4 Mediation
- 8.4.1 If a claim is not resolved satisfactorily through the negotiation process in paragraph 8.3, and the *Contractor* wishes to pursue the issue further, the parties may, upon mutual agreement, utilize the services of an independent third party mediator.
- 8.4.2 The mediator shall be mutually agreed upon by the *Owner* and *Contractor*.
- 8.4.3 The mediator shall be knowledgeable regarding the area of the disputed issue. The mediator shall meet with the parties together or separately, as necessary, to review all aspects of the issue. The mediator may provide the parties with his or her non-binding without prejudice settlement recommendation, on the day of the mediation.
- 8.4.4 Each party is responsible for its own costs related to the use of the third party mediator process. The costs of the third party mediator shall be equally shared by the *Owner* and *Contractor*.
- 8.5 Payment
- 8.5.1 Payment of the claim shall be made no later than 30 days after the date of resolution of the claim or dispute. Such payment shall be made according to the terms of Part 5, Payment.
- 8.6 Rights of Both Parties
- 8.6.1 Unless the parties agree otherwise, no action taken under paragraphs 8.1 to 8.6, by either party shall be construed as a renunciation or waiver of any of the rights or recourse available to the parties.

- 8.7 Arbitration
- 8.7.1 If a claim is not resolved satisfactorily through the negotiation process, or mediation if utilized, either party may request an arbitration of the dispute and the parties, by mutual agreement, may submit such dispute to arbitration and the provisions of the Ontario *Arbitration Act, 1991*, as amended, shall apply to such arbitration, including the provisions for appeal therein except as otherwise provided in this section 8.7. Notwithstanding this, in the case of claims for amounts less than \$150,000, exclusive of H.S.T., the provisions of subsection GC 8.7 to 8.11, Arbitration, shall be mandatory if requested by either party, and the matter shall proceed to arbitration if not resolved through the said negotiation or mediation processes.
- 8.7.2 If the Parties engage in arbitration to resolve the issue, notification to that effect shall be communicated in writing to the *Consultant* within 30 days of completing the negotiations referred in paragraph 8.3, or, if the parties proceed to mediation under paragraph 8.4, within 30 days of completing that mediation.
- 8.7.3 The parties shall be bound by the decision of the arbitrator.
- 8.7.4 The rules and procedures of the Arbitration Act, 1991, S.O. 1991, c.17, as amended, shall apply to any arbitration conducted hereunder except to the extent that they are modified by the express provisions of paragraphs 8.7 to 8.11.
- 8.8 Arbitration Procedure
- 8.8.1 The following provisions are to be included in the agreement to arbitrate:
- .1 All existing actions in respect of the matters under arbitration shall be stayed pending arbitration;
 - .2 All then unresolved claims and matters to be settled are to be set out in a schedule to the agreement. Only such claims and matters as are in the schedule shall be arbitrated; and
 - .3 Before proceeding with the arbitration, the *Contractor* shall confirm that all matters in dispute are set out in the schedule.
- 8.9 Appointment of Arbitrator
- 8.9.1 The arbitrator shall be mutually agreed upon by the *Owner* and *Contractor* to adjudicate the dispute.
- 8.9.2 Where the *Owner* and *Contractor* cannot agree on a sole arbitrator within 30 days of the notification of arbitration noted in paragraph GC 8.7.2, the *Owner* and the *Contractor* shall each chose an appointee with 37 days of the notice of arbitration.
- 8.9.3 The appointees shall mutually agree upon an arbitrator to adjudicate the dispute within 15 days after the last appointee was chosen or they shall refer the matter to the Arbitration and Mediation Institute of Ontario Inc. which shall select an arbitrator to adjudicate the dispute within 7 days of being requested to do so.
- 8.9.4 The arbitrator shall not be interested financially in the *Contract* nor in either party's business and shall not be employed by either party.
- 8.9.5 The arbitrator is not bound by the rules of evidence which govern the trial of cases in court but may hear and consider any evidence which the arbitrator considers relevant.

- 8.9.6 The hearing shall commence within 90 days of the appointment of the arbitrator.
- 8.10 Costs
- 8.10.1 The arbitrator's fee shall be equally shared by the *Owner* and the *Contractor*.
- 8.10.2 The fees of any independent experts and any other persons appointed to assist the arbitrator shall be shared equally by the *Owner* and the *Contractor*.
- 8.10.3 The arbitration hearing shall be held in a place mutually agreed upon by both parties or in the event the parties do not agree, a site shall be chosen by the arbitrator. The cost of obtaining appropriate facilities shall be shared equally by the *Owner* and the *Contractor*.
- 8.10.4 The arbitrator may, in his or her discretion, award reasonable costs, related to the arbitration.
- 8.11 The Decision
- 8.11 The reasoned decision shall be made in writing within 90 days of the conclusion of the hearing. An extension of time to make a decision may be granted with consent of both parties. Payment shall be made in accordance with Part 5, Payment."

3.31 GC 9.1 - PROTECTION OF WORK AND PROPERTY

- 3.31.1 Delete subparagraph 9.1.1.1 in its entirety and replace it with new subparagraph 9.1.1.1:

"9.1.1.1 errors in the *Contract Documents* which the *Contractor* could not have discovered applying the standard of care described in GC 3.14 STANDARD OF CARE."

- 3.31.2 Amend paragraph 9.1.1.2 by adding the word, "negligent" at the beginning thereof.

- 3.31.3 Add new paragraphs 9.1.5 and 9.1.6 as follows:

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

9.1.6 The *Contractor* shall neither undertake to repair and/or replace any damage whatsoever to the *Work* of other *Contractors*, or to adjoining property, nor acknowledge the same was caused or occasioned by the *Contractor*, without first consulting the *Owner* and receiving written instructions as to the course of action to be followed from either the *Owner* or the *Consultant*. However, where there is danger to life or public safety, the *Contractor* shall take such emergency action as it deems necessary to remove the danger."

3.32 GC 9.4 - CONSTRUCTION SAFETY

- 3.32.1 Delete paragraph 9.4.1 in its entirety and substitute new paragraph 9.4.1:

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

3.32.2 Add new paragraphs 9.4.2, 9.4.3 and 9.4.4:

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

- .1 a current WSIB clearance certificate;
- .2 documentation of the *Contractor's* in-house safety-related programs;
- .3 a copy of the Notice of Project filed with the Ministry of Labour naming itself as "constructor" under OHSA

9.4.3 The *Contractor* shall indemnify and save harmless the *Owner*, its agents, officers, directors, employees, consultants, successors and assigns from and against the consequences of any and all safety infractions committed by the *Contractor* under 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.

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

3.33 GC 10.1 - TAXES AND DUTIES

3.33.1 Add the following to the end of paragraph 10.1.1:

"Any *Value Added Taxes* (including Harmonized Sales Tax), where applicable, shall be listed as line items separate from the total *Contract Price*."

3.33.2 Delete paragraph 10.1.2 and replace it with the following:

"Any increase or decrease in costs to the *Contractor* due to changes in such included taxes and duties at the time of the bid closing shall increase or decrease the *Contract Price* accordingly. 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."

3.33.3 Add new paragraphs 10.1.3, 10.1.4, 10.1.5, and 10.1.6, 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* or the *Owner's* representative, assist with the 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.

10.1.4 The *Contractor* shall maintain accurate records of *Construction Equipment*, *Product* and component costs reflecting the taxes, customs duties, excise taxes and *Value Added Taxes* paid.

10.1.5 Any refund of taxes, including, without limitation, any government sales tax, customs duty, excise tax or *Value Added Tax*, whether or not paid, which is found to be inapplicable or for which exemption may be obtained, is the sole and exclusive property of the *Owner*. The *Contractor* agrees to cooperate with the *Owner* and to obtain from all *Subcontractors* and *Suppliers* cooperation with the *Owner* in the application for any refund of any taxes, which cooperation shall include but not be limited to, making or concurring in

the making of an application for any such refund or exemption, and providing to the *Owner* copies, or where required, originals of records, invoices, purchase orders and other documentation necessary to support such applications or exemptions or refunds. All such refunds shall either be paid to the *Owner*, or shall be a credit to the *Owner* against the *Contract Price*, in the *Owner's* discretion. The *Contractor* agrees to enable, assist with and submit to any reasonable audit requested by the *Owner* with respect the potential refunds under this paragraph.

10.1.6 Customs duties penalties, or any other penalty, fine or assessment levied against the *Contractor*, shall not be treated as a tax or customs duty for the purpose of this GC 10.1"

3.34 GC 10.2 LAWS, NOTICES, PERMITS, AND FEES

3.34.1 Add to the end of paragraph 10.2.4, the following:

"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."

3.34.2 Delete paragraph 10.2.6 and replace it with the following:

"10.2.6 If the *Contractor* fails to notify the *Owner* and the *Consultant* in writing, fails to obtain direction as required in paragraph 10.2.5, and/or performs work that it knows or ought to have known that contravenes any laws, ordinances, guidelines, standards, permits, statutes, by-laws, rules, regulations, or codes, the *Contractor* shall be responsible for and shall correct the violations thereof, and shall bear the costs, expenses, and damages attributable to the failure to comply with the provisions of such laws, ordinances, guidelines, standards, permits, statutes, by-laws, rules, regulations, or codes, and, notwithstanding any limitations described in paragraph 12.1.1, shall indemnify and hold harmless the *Owner* and the *Consultant* from and against any claims, demands, losses, costs, damages, actions, suits or proceedings resulting from such failure or breach of law."

3.34.3 Add a new paragraph 10.2.8 as follows:

"10.2.8 Without limiting the generality of any other provision in the *Contract Documents*, the *Contractor* shall cause all certificates to be furnished that are required or given by the appropriate governmental or quasi-governmental authorities as evidence that the *Work* as installed conforms with the laws and regulations of any authorities having jurisdiction over the *Place of the Work*, including, without limitation, certificates of compliance for the *Owner's* occupancy or partial occupancy. The certificates are to be final certificates giving complete clearance of the *Work*, in the event that such governmental or quasi-governmental authorities furnish such certificates."

3.35 GC 10.3 PATENT FEES

3.35.1 Amend paragraph 10.3.1 by adding the words, "indemnify and" before the words, "hold the", in the second line.

3.35.2 In paragraph 10.3.2, add the words, "by the *Owner*", after the words, "supplied to the *Contractor*"

3.36 11.1 INSURANCE

3.36.1 Delete paragraph 11.1 in its entirety and replace it with the following:

"11.1 INSURANCE

11.1.1 Without restricting the generality of paragraph 12, Indemnification, the *Contractor* shall provide,

maintain and pay for the insurance coverages listed in this General Condition under paragraphs 11.1.2, 11.1.3, 11.1.4, and 11.1.5. Insurance coverage in paragraphs 11.1.6, and 11.1.7 will only apply when so specified in the *Contract Documents*.

11.1.2 Commercial General Liability Insurance

- .1 Commercial General Liability Insurance shall provide that the policy:
 - a) is in the amount of Five Million Dollars (\$5,000,000), per occurrence;
 - b) includes the *Owner* (City of Toronto), its Boards, Agencies and Commissions and subsidiary operations, as applicable, and the *Consultant* as additional insureds with respect to liability arising out of the operation of the insured for which a contract is issued by the *Owner*; and,
 - c) has provision for a cross liability and/or severability of interest, contractual liability, *Owner's* and *Contractor's* protective liability, broad form property damage, contingent/and or employer's liability, products and completed operations, non owned automobile liability and, if applicable to the insured operations as detailed in the *Contract Documents*, coverage for blasting, pile driving and collapse.
- .2 The *Contractor* shall maintain in force such policies of insurance specified by the *Contract Documents* at all times from the commencement of the *Work* until the end of any Warranty Period set out in these General Conditions of Contract or as otherwise required by the *Contract Documents*.
- .3 The *Contractor* shall maintain completed operations coverage for a period of six (6) years from Substantial Performance of the *Contract*, unless otherwise indicated in the *Contract Documents*. On an annual basis the contractor shall submit to the City a renewal Certificate or a replacement policy prior to the expiration date of the existing policy without notice or demand by the City. If the *Contractor* fails to do so, any limitation period for claiming indemnity described in the *Contract Documents* will not be binding on the *Owner*.
- .4 "Claims Made" insurance policies will not be permitted.

11.1.3 All Risk Property Insurance (Builders' Risk or Installation Floater)

.1 The *Contractor* shall provide, maintain and pay for a policy of all risk property insurance. The policy shall be maintained from the commencement of *Work* until 10 days after *Substantial Performance of the Work* and shall be written on a replacement cost basis on all *Products*, supplies and equipment and/or systems, including boiler and machinery, if applicable, that forms part of the *Work*. The policy may be in the form of a Builder's Risk or Installation Floater, as appropriate to the *Project*. The *Owner* shall be included as an additional insured and a joint loss payee on the Builder's Risk Insurance Policy.

11.1.4 Automobile Liability Insurance

.1 The *Contractor* shall provide, maintain and pay for a policy of automobile liability insurance in respect of all licensed owned/leased vehicles that will be utilized in the performance of the *Work*, unless otherwise required by the *Contract Documents*. This policy of automobile liability insurance shall have limits of not less than Two Million Dollars (\$2,000,000).

11.1.5 Contractor's Equipment Insurance

.1 The *Contractor* shall provide, maintain and pay for a policy of all risks *Contractor's* equipment insurance covering construction machinery and equipment used and owned by the *Contractor* for the performance of the *Work*, including boiler insurance on temporary boilers and pressure vessels. This policy shall be in a form acceptable to the *Owner* and shall not allow subrogation claims by the insurer against the *Owner*. Upon

agreement of the *Owner*, approval may be provided to the *Contractor* to waive the equipment insurance requirement for the purpose of this *Contract*.

11.1.6 *Contractor's* Pollution Liability Insurance

.1 Where specified in the *Contract Documents*, the *Contractor* shall provide, maintain and pay for a policy of pollution liability insurance. The policy shall have a limit of not less than Two Million Dollars (\$2,000,000) per claim limit. The policy shall cover third-party injury and property damage claims, including clean-up costs, as a result of pollution conditions arising from the *Contractor's* operations and completed operations (i.e. *Work* performed). The policy shall be kept in force for 24 months from the date of *Substantial Performance of the Work*. The *Owner* shall be included as an additional insured on this policy.

11.1.7 Use and Occupancy of the *Work* Prior to Completion

.1 Should the *Owner* wish to use or occupy part or all of the *Work* prior to *Substantial Performance of the Work*, the *Owner* will give 30 days' written notice to the *Contractor* of the intended purpose and extent of such use or occupancy. Prior to such use or occupancy the *Contractor* shall notify the *Owner* in writing of the additional premium cost, if any, to maintain property and boiler insurance, which shall be at the *Owner's* expense. If because of such use or occupancy the *Contractor* is unable to provide coverage, the *Owner* upon written notice from the *Contractor* and prior to such use or occupancy shall provide, maintain and pay for property and boiler insurance insuring the full value of the *Work*, including coverage for such use or occupancy, and shall provide the *Contractor* with proof of such insurance. The *Contractor* shall refund to the *Owner* the unearned premiums applicable to the *Contractor's* policies upon termination of coverage.

.2 The policies shall provide that, in the event of a loss or damage, payment shall be made to the *Owner* and the *Contractor* as their respective interests may appear. The *Contractor* shall act on behalf of both the *Owner* and the *Contractor* for the purpose of adjusting the amount of such loss or damage payment with the insurers. When the extent of the loss or damage is determined the *Contractor* shall proceed to restore the *Work*. Loss or damage shall not affect the rights and obligations of either party under the *Contract* except that the *Contractor* shall be entitled to such reasonable extension of *Contract Time* relative to the extent of the loss or damage as the *Consultant* may decide in consultation with the *Contractor*.

11.1.8 Payment for Loss or Damage

.1 The *Contractor* shall be entitled to receive from the *Owner*, in addition to the amount due under the *Contract*, the amount at which the *Owner's* interest in restoration of the *Work* has been appraised, such amount to be paid as the restoration of the *Work* proceeds and in accordance with the requirements of Part 5.0. In addition the *Contractor* shall be entitled to receive from the payments made by the insurers the amount of the *Contractor's* interest in the restoration of the *Work*.

.2 The *Contractor* shall be responsible for deductible amounts under the policies.

11.1.9 Insurance Requirements and Duration

.1 Unless specified otherwise, the duration of each insurance policy shall be from the date of commencement of the *Work* until 10 days after the date of final acceptance of the *Work*, as set out in the Final Acceptance Certificate.

.2 Prior to commencement of the *Work* and upon placement and at renewal, amendment or extension of all or any part of the insurance, the *Contractor* shall promptly provide the *Owner* with confirmation of coverage on the *Owner's* certificate of insurance form or on a form acceptable to the *Owner*, without notice or demand by the *Owner*. The insurance documents shall be signed by the insurer or an authorized representative of the insurer.

.3 If the *Owner* receives notice of cancellation for nonpayment of the insurance premium, the *Owner* may,

but is not obliged to, pay the premium of any policy of insurance required to be maintained herein and make a formal demand for reimbursement of such costs from the *Contractor*. If the *Contractor* fails to pay the cost of the insurance placed by the *Owner* within 15 days of the date on which the *Owner* made a formal demand for reimbursement of such costs, the *Owner* may deduct the costs thereof from monies which are due or may become due to the *Contractor*.

.4 The *Contractor* shall, on request, promptly provide the *Owner* with a certified true copy of each insurance policy exclusive of information pertaining to premium or premium bases used by the insurer to determine the cost of the insurance. The certified true copy shall include a signature of the insurer or the underwriter or the broker.

.5 All insurance policies taken out by the *Contractor* shall be placed with insurers licensed to write business in the Province of Ontario.

.6 The insurance policies required pursuant to this clause shall be primary and shall not call into contribution any insurance available to the *Owner*.

.7 The amount of the deductible for the purpose of this *Contract* shall not be more than \$25,000.00.

.8 The *Contractor* shall maintain such forms of insurance as the *Owner*, acting reasonably, may require from time to time, in amounts and for risks against which a prudent *Contractor* would insure."

.9 Each policy (except for the policy of automobile insurance required under section 11.1.4) shall contain an endorsement requiring the insurer(s) to notify the City of Toronto in writing, by registered mail, at least thirty (30) days, (fifteen (15) days if cancellation is due to non-payment of premium), prior to any cancellation of the Contractor's insurance."

3.37 GC 11.2 – CONTRACT SECURITY

3.37.1 Delete the last sentence in paragraph 11.2.2.

3.37.2 Add new paragraph 11.2.3 as follows:

"11.2.3 The premiums for the bonds required by the *Contract Documents* are included in the *Contract Price*."

3.38 GC 12.1 - INDEMNIFICATION

3.38.1 Delete paragraphs 12.1.1 through 12.1.6 and replace them with the following:

"12.1.1 The *Contractor* shall indemnify and hold harmless the *Owner* and each of the *Owner's* elected officials, officers, employees and agents (hereinafter referred to collectively as the "Indemnitees") from and against all claims, demands, actions, suits or proceedings which may be brought against or made by third parties, hereinafter called "claims", directly or indirectly arising or alleged to arise out of the performance of or the failure to perform any of its obligations under the *Contract Documents*.

12.1.2 The *Contractor* shall indemnify and hold harmless the *Owner* and the Indemnitees from all and every claim for damages, royalties or fees for the infringement of any patented invention or copyright occasioned by the *Contractor* in connection with the *Work* performed or *Product* furnished by the *Contractor* under the *Contract*.

12.1.3.1 The *Owner* shall indemnify and hold harmless the *Contractor* from and against all claims, demands, actions, suits or proceedings ("claims") in respect to claims against the *Contractor* by third parties that arise out of the *Contractor's* direct involvement in this *Contract* provided such claims are directly caused by the

negligent act or omission of the Owner, and then only to the extent the loss or damage was caused by the Owner.

12.1.3.2 The *Owner* shall indemnify and hold harmless the *Contractor*, its agents, officers and employees from and against all claims, demands, losses, expenses, costs, damages, actions, suits, or proceedings arising out of the *Contractor's* performance of its obligations under the *Contract Documents* 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*. The *Contractor* expressly waives the right to indemnity for claims other than those stated above.

12.1.4 The *Contractor* shall pay to the Indemnitees, or any of them, on demand any loss, costs, damages and expenses which may be sustained, incurred or paid by the Indemnitees, or any of them, in consequence of any such action, suit, claim, lien, execution or demand and any moneys paid or payable by the Indemnitees in settlement or in discharge or on account thereof. If the *Contractor* fails to make such payment, all such mentioned loss, costs, damages and expenses and all such moneys so paid or payable may be deducted from any moneys of the *Contractor* then remaining in the possession of the *Owner* on account of the *Work* or from moneys payable by the *Owner* to the *Contractor* on any account whatever or may be recovered from the *Contractor* or its Surety, as the case may be, in any court of competent jurisdiction as moneys paid at their request. The *Contractor* hereby authorizes and empowers the *Owner* or the *Consultant* as the case may be, or their Solicitor, for the time being, to defend, settle or compromise any of such actions, suits, claims, liens, executions or demands as the *Owner* or the *Consultant*, as the case may be, or their said Solicitor may deem expedient. The *Contractor* shall ratify and confirm all the acts of the *Owner* or the *Consultant* or their Solicitor in that behalf, and shall pay to such Solicitor on demand his or her reasonable costs of any such defense, settlement and/or compromise, and that in default of such payment the same may be deducted from any moneys payable by the *Owner* to the *Contractor* on any account whatever."

3.39 GC 12.2 - WAIVER OF CLAIMS

3.39.1 Amend paragraphs 12.2.1 through 12.2.10 as follows:

"GC 12.2 WAIVER OF CLAIMS

12.2.1 In the first line, change the words "fifth calendar day before the expiry of the lien period" to "twenty-fifth calendar day before the expiry of the lien period after substantial performance is declared or published as". 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".

12.2.1.1 Change the words "*Notice in Writing of claim*" to "*Notice in Writing of Claim*" and change the words "sixth calendar day before the expiry of the lien period" to "twenty-sixth calendar day before the expiry of the lien period after substantial performance is declared or published as".

12.2.1.3 Delete paragraph 12.2.1.3 in its entirety.

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 words "*Notice in Writing of claim*" to "*Notice in Writing of Claim*".

12.2.5 Delete the number "395" and substitute the number "760".

12.2.6 Change the words "*Notice in Writing of claim*" to "*Notice in Writing of Claim*".

12.2.7 Change "The party" to "The *Contractor*". Change the words "*Notice in Writing of Claim*" to "*Notice in Writing of Claim*". 12.2.9 Delete paragraph 12.2.9 in its entirety.

12.2.10 Delete paragraph 12.2.10 in its entirety.

3.40 GC 12.3 – WARRANTY

- 3.40.1 Amend paragraph 12.3.1 by deleting the words, "one year", and replacing them with the words, "two years", and by adding the following at the end of the paragraph, "With respect to equipment installed at the request of the *Owner*, and successfully operating at its intended design capacity before completion of the work, the warranty period shall be two years from the date the equipment commenced its successful operations.
- 3.40.2 Amend paragraphs 12.3.3, 12.3.4, and 12.3.6 by deleting the words, "one year", and replacing them with the words, "two years".
- 3.40.3 Add the following clauses as 12.3.7, 12.3.8, and 12.3.9"

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

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

12.3.9 The provisions of the GC 12.3 – WARRANTY shall not deprive the *Owner* of any action, right or remedy otherwise available to the *Owner* for the *Contractor's* failure to fulfill its obligations or responsibilities under the *Contract* and shall not be construed as a waiver of claims in favour of the *Contractor* or as a limitation on the time in which the *Owner* may pursue such other action, right or remedy. The warranties set out in the *Contract* are not supplemental to and do not limit or preclude the application of any other conditions and warranties, express or implied, by law or trade usage.”

PART 13 - OTHER PROVISIONS

- 3.41 Add New PART 13 As Follows:

"GC 13.1 - OWNERSHIP OF MATERIALS

13.1.1 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*.

GC 13.2 - CONSTRUCTION LIENS

13.2.1 In the event that a written notice of lien is delivered to the *Owner* in respect of the *Project* by or through a *Subcontractor* or *Supplier*, and provided the *Owner* has paid all amounts properly owing under the *Contract*, the *Contractor*, at its own expense and within ten (10) days, shall ensure that such written notice of lien is withdrawn as required in the *Act*.

13.2.2 In the event that the *Contractor* fails to conform with the requirements of 13.2.1, the *Owner* may set off and deduct from any amount owing to the *Contractor*, all costs and associated expenses, including legal fees and disbursements reasonably incurred to secure a written withdrawal of the notice of lien. 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 13.3 - CONTRACTOR DISCHARGE OF LIABILITIES

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

GC 13.4 – DAILY REPORTS/DAILY LOGS

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

13.4.2 The *Contractor* shall also maintain records, either at its head office or at the job site, recording manpower and material resourcing on the *Project*, including records which document the activities of the *Contractor* in connection with GC 3.5, and comparing that resourcing to the resourcing anticipated when the most recent version of the schedule was prepared pursuant to GC 3.5. The *Contractor* shall make these records available to the *Owner* and/or the *Consultant* for inspection, upon reasonable notice.

GC 13.5 - PUBLIC STATEMENTS

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

GC 13.6 OWNER'S SET-OFF

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

END OF SUPPLEMENTARY CONDITIONS