

APPENDIX D
WORK ASSIGNMENT TERMS AND CONDITIONS

Last Revised January 18, 2019

For each Work Assignment arising from a Work Assignment RFQ awarded to a Contractor, the Process Terms and Conditions of the Work Assignment RFQ, the RFSQ and the Executed Roster Agreement, together with the City's General Conditions, attached hereto as Part 1, as modified by the Specific Terms and Conditions attached hereto as Part 2, or as further modified by the Work Assignment RFQ, and subject to the policy attached hereto as Part 3, shall constitute the Agreement between the parties. These terms are mandatory and are not negotiable.

PART 1 – GENERAL CONDITIONS

PART 2 – SPECIFIC TERMS AND CONDITIONS

PART 3 – CITY POLICY (TREE PROTECTION)

PART 1 – GENERAL CONDITIONS

January 2019

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SECTION GC 1.0 INTERPRETATION

GC 1.01 Captions

The captions appearing in these general conditions have been inserted as a matter of convenience and for ease of reference only and in no way define, limit or enlarge the scope or meaning of the general conditions or any provision hereof.

GC 1.02 Abbreviations

.01 The abbreviations listed on the left below are commonly found in the Contract Documents and represent the organizations and phrases listed on the right:

"AASHTO"	-	American Association of State Highway Transportation Officials
"ANSI"	-	American National Standards Institute
"ASTM"	-	American Society for Testing and Materials
"AWG"	-	American Wire Gauge
"AWWA"	-	American Water Works Association
"CESA"	-	Canadian Engineering Standards Association
"CGSB"	-	Canadian General Standards Board
"CSA"	-	Canadian Standards Association
"CWB"	-	Canadian Welding Bureau
"GC "	-	General Condition
"MOE"	-	Ministry of the Environment (Ontario)
"MTO"or"MTC"	-	Ministry of Transportation (Ontario)
"MUTCD"	-	Manual of Uniform Traffic Control Devices, published by MTO
"OPS"	-	Ontario Provincial Standard
"OPSD"	-	Ontario Provincial Standard Drawing
"OPSS"	-	Ontario Provincial Standard Specification
"PEO"	-	Professional Engineers Ontario
"SAE"	-	Society of Automotive Engineers
"SSPC"	-	Structural Steel Painting Council
"THEC"	-	Toronto Hydro Electric Commission or successor business corporation as provided for under the Electricity Act, 1998, as may be amended.
"TRCA"	-	Toronto Region Conservation Authority
"UL"	-	Underwriters Laboratories
"ULC"	-	Underwriters Laboratories Canada

GC 1.03 Gender and Singular References

.01 References to the masculine or singular throughout the Contract Documents shall be considered to include the feminine and the plural and vice versa as the context requires.

GC 1.04 Definitions

For the purposes of this Contract the following definitions apply:

Act: means the Construction Lien Act (Ontario), as amended

Actual Measurement: means the field measurement of that quantity within the approved limits of the Work.

Addenda: means additions or changes made by the City to the Work Assignment RFQ before the closing of the Work Assignment RFQ.

Additional Work: means work not provided for in the Contract and not considered by the Contract Administrator to be essential to the satisfactory completion of the Contract within its intended scope.

Agreement: means, for each Work Assignment RFQ awarded to a Proponent, the terms and conditions of the RFSQ and the Work Assignment RFQ, together with the General Conditions, attached to the Work Assignment RFQ as Appendix D, Part 1, as modified by the Specific Roster Terms and Conditions, attached to the Work Assignment RFQ as Appendix D, Part 2, or as further modified by the Work Assignment RFQ, and subject to the policy attached to the Work Assignment RFQ as Appendix D, Part 3.

Bid: means an offer in writing from the Contractor, submitted in the format prescribed by the Owner, to complete the Work.

Certificate of Substantial Performance: means the certificate issued by the Contract Administrator at Substantial Performance.

Change Directive: means any written instruction signed by the Owner, or by the Contract Administrator where so authorized, directing that a Change in the Work or Extra Work be performed.

Change in the Work: means the deletion, extension, increase, decrease or alteration of lines, Grades, dimensions, quantities, methods, drawings, changes in the character of the Work to be done or materials of the Work or part thereof, including changes in geotechnical, subsurface, surface or other conditions, within the intended scope of the Contract.

Change Order: means a written amendment to the Contract signed by the Contractor and the Owner, or the Contract Administrator where so authorized, covering contingencies, a Change in the Work, Extra Work or, Additional Work, and establishing the basis for payment and the time allowed for the adjustment of the Contract Time, if any.

City: means the City of Toronto, the Owner, for whom the Work is being performed .

“Completion” has the meaning as defined in the Construction Lien Act, as amended.;

Completion Certificate: means the certificate issued by the Contract Administrator at Completion.

Constructor: means, for the purposes of, and within the meaning of the *Occupational Health and Safety Act*, R.S.O. 1990, Chapter O.1, as amended, the Contractor who executes the Agreement, unless otherwise stated in the Contract Documents or otherwise indicated in writing by the Contract Administrator.

Contract: means the undertaking by the Owner and the Contractor to perform their respective duties, responsibilities and obligations as prescribed in the Contract Documents.

Contract Administrator: means the person, partnership or corporation designated by the Owner to be the Owner's representative for the purposes of the Contract.

Contract Documents: mean the RFSQ and Addenda, if any, the Executed Roster Agreement the General Conditions of the Work Assignment, the Specific Conditions of the Work Assignment, the Work Assignment RFQ, the Special Provisions, the Specifications, the Contract Drawings, and any Change Orders.

Contract Drawings: or **Contract Plans:** mean drawings or plans, any Geotechnical Report, any Subsurface Report and other reports and information provided by the Owner for the Work, and without limiting the generality thereof, may include soil profiles, foundation investigation reports, reinforcing steel schedules, aggregate sources lists, Quantity Sheets, cross-sections and standard drawings.

Contract Price: means the amount payable by the Owner to the Contractor for Work to be completed under the Contract in accordance with the method and manner of payment stipulated in the Contract and the unit prices or lump sum prices tendered by the Contractor, and includes any additional amounts payable for Extra Work and approved Changes in the Work as provided for and authorised in the Contract Documents.

Contract Time: means the time stipulated in the Contract Documents for Completion of the Work, including any extension of time made pursuant to the Contract Documents.

Contractor: means the person, partnership or corporation undertaking the Work as identified in a RFQ Work Assignment.

Controlling Operation: means any component of the Work, which, if delayed, will delay the completion of the Work.

Cost Plus: See "Time and Material".

Cut-off Date: means the date up to which payment will be made for work performed.

Daily Work Records: mean daily Records detailing the number and categories of workers and hours worked or on standby; types and quantities of Equipment and number of hours in use or on standby; and description and quantities of Material utilized.

Day: means a calendar day.

Drawings: or **Plans:** mean any Contract Drawings or Contract Plans or any Working Drawings or Working Plans, or any reproductions of drawings or plans pertaining to the Work.

Equipment: means all machinery and equipment used for preparing, fabricating, conveying or erecting the Work and normally referred to as construction machinery and equipment.

Estimate: means a calculation of the quantity or cost of the Work or part of it depending on the context.

Extra Work: means work not provided for in the Contract as awarded but considered by the Contract Administrator to be essential to the satisfactory completion of the Contract within its

intended scope, including unanticipated work required to comply with legislation and regulations which affect the Work.

“**Final Acceptance**” has the meaning set out in [GC 1.07](#).

Final Acceptance Certificate: means the certificate issued by the Contract Administrator at Final Acceptance of the Work.

Final Detailed Statement: means a complete evaluation prepared by the Contract Administrator showing the quantities, unit prices and final dollar amounts of all items of Work completed under the Contract, including variations in Work Assignment RFQ items and Extra Work, all as set out in the same general form as the monthly Estimates.

Force Account: See "Time and Material".

Geotechnical Report: means a report or other information identifying surface and below surface soil, rock and ground water conditions in the area of any proposed construction.

Grade: means the required elevation of that part of the Work.

Hand Tools: means tools that are commonly called tools or implements of the trade and include small power tools.

Hazardous Material: means any contaminant, pollutant, dangerous substance, potentially dangerous substance, noxious substance, toxic substance, hazardous waste, flammable material, explosive material, radioactive material, urea formaldehyde foam insulation, asbestos, polychlorinated biphenyls, coal tar and any other biological or chemical agent, substance or material named, described, declared or defined to be hazardous, toxic, or a contaminant or pollutant in, or pursuant to, any applicable federal, provincial or municipal statutes, by-laws, regulations, codes, agreements, standards or orders.

Highway: means a common and public highway any part of which is intended for or used by the general public for the passage of vehicles and includes the area between the lateral property lines thereof.

Inspector: means any person, partnership or corporation appointed by the Contract Administrator to participate in the inspection and measurement of the Work and the Material used, or to be used, in the Work.

Lump Sum Item: means a Work Assignment RFQ item indicating a portion of the Work for which payment will be made at a single tendered price. Payment is not based on a measured quantity, although a quantity may be given in the Contract Documents.

Major Item: means any Work Assignment RFQ item that has a value, calculated on the basis of its actual or estimated Work Assignment RFQ quantity, whichever is the larger, multiplied by its Work Assignment RFQ unit price, which is equal to or greater than the lesser of:

- i. \$100,000, or
- ii. 5% of the total Work Assignment RFQ value calculated on the basis of the total of all the estimated Work Assignment RFQ quantities and the Work Assignment RFQ unit prices.

Material: means material, machinery, equipment and fixtures forming part of the Work.

OHSA: means the Occupational Health & Safety Act (Ontario).

Owner: means the City of Toronto, the party to the Contract for whom the Work is being performed, as identified in the Agreement, and includes, with the same meaning and import, "Authority".

Performance Bond: means the bonding security furnished to the Owner to guarantee completion of the Work in accordance with the Contract Documents.

Plan Quantity: means that quantity as computed from within the boundary lines of the Work as shown in the Contract Documents.

Project: means the construction of the Work as contemplated by the Contract.

Project Manager: means the Contractor's authorized representative in charge of the Work and who is a "competent person" within the meaning of the description contained within the Ontario Health and Safety Act (OHSA) as amended and who shall have full responsibility for the prosecution of the Work.

Quantity Sheet: means a list of the quantities of Work to be done.

Rate of Interest: means the rate determined by the Minister of Finance of Ontario and issued by, and available from, the Owner.

Records: mean any books, payrolls, accounts, invoices, receipts or other information or documentation which relate to the Work or any Change in the Work or claims arising therefrom or which are required to identify and calculate taxes paid or payable and any savings resulting from tax changes.

Shop Drawing: means any drawing, diagram, illustration, schedule, performance chart, scheme, brochure or data which is provided or required to be provided by the Contractor to illustrate specific details of the performance and construction of a portion of the Work.

Special Provisions: mean special directions containing requirements peculiar to the Work.

Specifications: means the Specifications for the Work included as part of the Work Assignment RFQ package.

Subcontractor: means a person, partnership or corporation undertaking the execution of a part of the Work by virtue of an agreement with the Contractor.

Subgrade: means the earth or rock surface, whether in cut or fill, as prepared to support the Base, Subbase and Pavement.

Submittals: means 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 including as-built drawings and manuals

"Substantial Performance" has the meaning as set out in the Construction Lien Act, as amended.

Subsurface Report: means a report or other information identifying the location of utilities, concealed and adjacent structures and physical obstructions which fall within the influence of the Work.

Superintendent: means the Contractor's authorized representative in charge of the Work and who is a "competent person" within the meaning of the definition contained in the Occupational Health and Safety Act (R.S.O. 1990, c. 0.1), as amended.

Surety: means the person, partnership or corporation, other than the Contractor, licensed in Ontario to transact business under the *Insurance Act*, R.S.O. 1990, c.1.8, as amended, executing a bond provided by the Contractor.

Roster Call: means this RFSQ in its entirety, inclusive of all appendices and Addenda/Addendum that may be issued by the City together with the Work Assignment RFQs for each Project.

Utility: means an aboveground or underground facility maintained by a municipality, public utility authority or regulated corporation and includes services such as sanitary sewer, storm sewer, water, electric, gas, oil, steam, data transmission, telephone and cable television.

Warranty Period: means the period of 12 months measured from the date of Substantial Performance or such longer or shorter period as may be specified for certain Materials or some or all of the Work, in the Contract Documents

Work: means the total construction and related services required by the Contract Documents.

Working Area: means all the lands and easements owned or acquired by the Owner for the construction of the Work.

Working Day: means any Day:

- a) except Saturdays, Sundays and statutory holidays;
- b) except a Day as determined by the Contract Administrator, on which the Contractor is prevented by inclement weather or conditions resulting immediately therefrom, from proceeding with a Controlling Operation. For the purposes of this definition, this will be a Day during which the Contractor cannot proceed with at least 60% of the normal labour and equipment force effectively engaged on the Controlling Operation for at least 5 hours; except a Day on which the Contractor is prevented from proceeding with a Controlling Operation, as determined by the Contract Administrator by reason of:
 - i. any breach of the Contract by the Owner or if such prevention is not due to the Owner, due to another contractor hired by the Owner, or an employee of any one of them, or by anyone else acting on behalf of the Owner.
 - ii. non-delivery of Owner-supplied materials,
 - iii. any cause beyond the reasonable control of the Contractor which can be substantiated by the Contractor to the satisfaction of the Contract Administrator.

Working Drawings: or **Working Plans:** means any Drawings or Plans prepared for the Contractor for the execution of the Work and may, without limiting the generality thereof, include formwork, falsework and shoring plans, Roadway protection plans, shop drawings, shop plans or erection diagrams.

WSIB: means the Workplace Safety & Insurance Board

GC 1.05 Not used

GC 1.06 Not used

GC 1.07 Final Acceptance

- .01 Final Acceptance shall be deemed to occur when the Work has passed all inspection and testing requirements and when the Contract Administrator is satisfied that, to the best of the Contract Administrator's knowledge at that time, the Contractor has rectified all imperfect work and has discharged all of the Contractor's obligations under the Contract.
- .02 For the purposes of GC 1.07.01, the Contract Administrator shall not take into account, in determining the discharge of the Contractor's obligations, any warranty obligation of the Contractor to the extent that the warranty extends beyond twenty-four (24) months after Substantial Performance.

GC 1.08 Interpretation of Certain Words

- .01 The words "acceptable", "approval", "authorized", "considered necessary", "directed", "required", "satisfactory", or words of like import, shall mean approval of, directed, required, considered necessary or authorized by and acceptable or satisfactory to the Contract Administrator unless the context clearly indicates otherwise.

GC 1.09 Language of the Contract

- .01 For the purposes of this Contract, all documents and communications pertaining to this Contract shall be in the English language.

SECTION GC 2.0 CONTRACT DOCUMENTS

GC 2.01 Reliance on Contract Documents - Underground Structures and Utilities

- .01 For the limited purpose of determining any Change in the Work, the Owner represents that the information furnished in the Contract Documents can be relied upon, but subject to the following limitations or exceptions:
 - a) The Owner only represents that the location of all underground utilities or other structures which will affect the Work will be shown in any drawing to a tolerance of:
 - i. 1m horizontal and
 - ii. 0.3 m vertical;
 - b) The Owner does not represent or warrant the accuracy of any interpretations of data or opinions expressed in any Subsurface Report available for the perusal of the Contractor and excluded from the Contract Documents; and
 - c) The Owner does not represent or warrant the accuracy of any information for which the Contract Documents specifically exclude any representation or warranty by the Owner.
- .02 Despite GC2.01.01, the Owner will not be responsible for the accuracy of any information contained in the Contract Documents and does not represent that such information can be relied

upon in situations where the Owner's Work Assignment RFQ requires the Contractor to make relevant inquiries and such inquiries would reasonably have provided accurate information to the Contractor.

- a) The representations contained in this GC 2.01 shall not relieve the Contractor from properly performing the Work with due diligence and undertaking the repair of damage to all utilities or subsurface structures. The Contractor shall take all reasonable action not to damage any utilities or other subsurface structure.
- b) The Contractor shall arrange for stakeouts from the utility companies, in compliance with clause 7.

GC 2.02 Order of Precedence

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

- a) Executed Roster Agreement
- b) RFSQ (Including Addenda) and
- c) Work Assignment RFQ Addenda, if any
- d) Work Assignment RFQ
- e) The Definitions
- f) Specific Terms and Conditions of Work Assignment RFQ Appendix D –Part 2
- g) General Conditions of Work Assignment RFQ Appendix D –Part 1
- h) Division 1 of the Specifications
- i) Technical Specifications
- j) Material and finishing schedules
- k) Contract Drawings

Later dates shall govern within each of the above categories of documents.

.02 In the event of any conflict among or inconsistency in the information shown on Drawings, the following rules shall apply:

- a) Dimensions shown in figures on a Drawing shall govern where they differ from dimensions scaled from the same Drawing;
- b) Drawings of larger scale shall govern over those of smaller scale;
- c) Detailed Drawings shall govern over general Drawings; and
- d) Drawings of a later date shall govern over those of an earlier date in the same series.
- e) Figured dimensions shown on the Drawings shall govern over scaled dimensions thereon;
- f) Drawings of larger scale shall govern over those of smaller scale of the same date
- g) Later dated documents shall govern over earlier documents of the same type

.03 The Contract Documents are complementary, and what is required by any one shall be as binding as if required by all.

SECTION GC 3.0 ADMINISTRATION OF THE CONTRACT

GC 3.01 Contract Administrator's Authority and Role

- .01 The Contract Administrator will be the Owner's representative during construction and until the issuance of the Completion Certificate or the issuance of the Final Acceptance Certificate whichever is later. All instructions to the Contractor including instructions from the Owner will be issued by the Contract Administrator. The Contract Administrator will have the authority to act on behalf of the Owner only to the extent provided in the Contract Documents.
- .02 All claims, disputes and other matters in question relating to the performance and the quality of the Work or the interpretation of the Contract Documents shall be referred to the Contract Administrator.
- .03 The Contract Administrator will inspect the Work for its conformity with the plans and specifications, and to 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.
- .04 The Contract Administrator will determine the amounts owing to the Contractor under the Contract and will issue certificates for payment in such amounts as provided for in [Section GC 8.0](#), Measurement and Payment.
- .05 The Contract Administrator will, with reasonable promptness, review and take appropriate action upon the Contractor's submissions such as shop drawings, product data, and samples in accordance with the Contract Documents.
- .06 The Contract Administrator will investigate all allegations of a Change in the Work made by the Contractor and issue appropriate instructions.
- .07 The Contract Administrator will prepare Change Directives and Change Orders.
- .08 Upon written application by the Contractor, the Contract Administrator and the Contractor will jointly conduct a review and inspection of the Work to establish the date of Substantial Performance of the Work and/or the date of Completion of the Work.
- .09 The Contract Administrator will be, in the first instance, the interpreter of the Contract Documents and the judge of the performance thereunder by both parties to the Contract. Interpretations and decisions of the Contract Administrator shall be consistent with the intent of the Contract Documents and in making these decisions the Contract Administrator will not show partiality to either party.
- .10 The Contract Administrator will have the authority to reject part of the Work or Material which does not conform to the Contract Documents.
- .11 Defective work, whether the result of poor workmanship, use of defective material, or damage through carelessness or other act or omission of the Contractor and whether incorporated in the Work or not, which has been rejected by the Contract Administrator as failing to conform to the Contract Documents shall be removed promptly from the Work by the Contractor and replaced or re-executed promptly in accordance with the Contract Documents at no additional cost to the Owner.

- .12 Any part of the Work destroyed or damaged by such removals, replacements or re-executions shall be made good, promptly, at no additional cost to the Owner.
- .13 The Contractor shall prioritize the correction of any defective work which in the sole discretion of the Owner, adversely affects the day to day operations of the Owner
- .14 If, in the opinion of the Contract Administrator, it is not expedient to correct defective work or work not performed in accordance with the Contract Documents, the Owner may deduct from monies otherwise due to the Contractor the difference in value between the work as performed and that called for by the Contract Documents, the amount of which will be determined in the first instance by the Contract Administrator.
- .15 Notwithstanding any inspections made by the Contract Administrator or the issuance of any certificates or the making of any payment by the Owner, the failure of the Contract Administrator to reject any defective work or Material shall not constitute acceptance of defective work or Material.
- .16 The Contract Administrator will have the authority to temporarily suspend the Work for such reasonable time as may be necessary to facilitate the checking of any portion of the Contractor's construction layout or the inspection of any portion of the Work. There shall not be any extra compensation for this suspension of work.
- .17 In the case of non-compliance with the provisions of the Contract by the Contractor, the Contract Administrator, 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.

GC 3.02 Working Drawings

- .01 The Contractor shall arrange for the preparation of clearly identified and dated Working Drawings as called for by the Contract Documents.
- .02 The Contractor shall submit Working Drawings to the Contract Administrator with reasonable promptness and in orderly sequence so as to not cause delay in the Work. If either the Contractor or the Contract Administrator so requests they shall jointly prepare a schedule fixing the dates for submission and return of Working Drawings. Working Drawings shall be submitted in printed form. At the time of submission the Contractor shall notify the Contract Administrator in writing of any deviations from the Contract requirements that exist in the Working Drawings.
- .03 The Contract Administrator will review and return Working Drawings in accordance with an agreed upon schedule, or otherwise, with reasonable promptness so as not to cause delay.
- .04 The Contract Administrator's responsibility in review will be to check for conformity to the design concept and for general arrangement only and such review shall not relieve the Contractor of responsibility for errors or omissions in the Working Drawings or of responsibility for meeting all requirements of the Contract Documents unless a deviation on the Working Drawings has been approved in writing by the Contract Administrator.
- .05 The Contractor shall make any changes in Working Drawings which the Contract Administrator may require consistent with the Contract Documents and resubmit unless otherwise directed by the Contract Administrator. When resubmitting, the Contractor shall

notify the Contract Administrator in writing of any revisions other than those requested by the Contract Administrator.

- .06 Work related to the Working Drawings shall not proceed until the Working Drawings have been signed and dated by the Contract Administrator and marked with the words "Reviewed" or "Reviewed as Noted".
- .07 The Contractor shall keep one set of the reviewed Working Drawings, marked as above, at the site at all times.

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

- .01 The Contractor shall, when requested in writing, make alterations in the method, Equipment or work force at any time the Contract Administrator considers the Contractor's actions to be unsafe, or damaging to either the Work or existing facilities or the environment.
- .02 The Contractor shall, when requested in writing, alter the sequence of its operations on the Contract so as to avoid interference with work being performed by others.
- .03 Notwithstanding the foregoing, the Contractor shall ensure that all necessary safety precautions and protection are maintained throughout the Work.

GC 3.04 Emergency Situations

- .01 The Contract Administrator has the right to determine the existence of an emergency situation, and when such an emergency situation is determined to exist, the Contract Administrator may instruct the Contractor to take action to remedy the situation. If the Contractor does not take timely action, or if the Contractor is not available, the Contract Administrator may direct others to remedy the situation.
- .02 If the emergency situation was the fault of the Contractor, the remedial work shall be done at the Contractor's expense. If the emergency situation was not the fault of the Contractor, the Owner will pay for the remedial work.

GC 3.05 Not Used

GC 3.06 Working Area

- .01 The Contractor's sheds, site offices, toilets, other temporary structures and storage areas for material and equipment shall be grouped in a compact manner and maintained in a neat and orderly condition at all times.
- .02 The Contractor shall confine his construction operations to the Working Area. Should the Contractor require more space than that shown on the Contract Drawings, the Contractor shall obtain such space at no additional cost to the Owner.
- .03 The Contractor shall not enter upon or occupy any private property for any purpose, unless the Contractor has received prior written permission from the property owner.

GC 3.07 Extension of Contract Time

- .01 An application for an extension of Contract Time shall be made in writing by the Contractor to the Contract Administrator as soon as the need for such extension becomes evident and at least

15 Days prior to the expiration of the Contract Time. The application for an extension of Contract Time shall enumerate the reasons, and state the length of extension required.

- .02 Circumstances suitable for consideration of an extension of Contract Time include the following:
 - a) Delays; See subsection [GC 3.08](#).
 - b) Changes in the Work; See clause [GC 3.11.01](#).
 - c) Extra Work; See clause [GC 3.11.02](#).
 - d) Additional Work; See clause [GC 3.11.03](#).
- .03 The Contract Administrator will, in considering an application for an extension to the Contract Time, take into account whether the delays, Changes in the Work, Extra Work or Additional Work involve a Controlling Operation.
- .04 The Contract Time shall be extended for such additional time as may be recommended by the Contract Administrator and deemed fair and reasonable by the Owner.
- .05 The terms and conditions of the Contract shall continue for such extension of Contract Time.

GC 3.08 Delays

- .01 If the Contractor is delayed in the performance of the Work by,
 - a) war, blockades, and civil commotions, errors in the Contract Documents; an act or omission of the Owner or Contract Administrator, or anyone employed or engaged by them directly or indirectly, contrary to the provisions of the Contract Documents;
 - b) a stop work order issued by a court or public authority, provided that such order was not issued as the result of an act or omission of the Contractor or anyone employed or engaged by the Contractor directly or indirectly;
 - c) the Contract Administrator giving notice under subsection [GC 7.09](#), Suspension of Work;
 - d) abnormal inclement weather; or
 - e) archaeological finds in accordance with subsection [GC 3.16](#), Archaeological Finds; then the Contractor shall be reimbursed by the Owner for reasonable costs incurred by the Contractor as the result of such delay, provided that in the case of an application for an extension of Contract Time due to abnormal inclement weather, the Contractor shall, with the Contractor's application, submit evidence from Environment Canada in support of such application. Extension of Contract Time will be granted in accordance with subsection [GC 3.07](#), Extension of Contract Time.
- .02 If the Work is delayed by labour disputes, strikes or lock-outs - including lock-outs decreed or recommended to its members by a recognized contractor's association, of which the Contractor is a member or to which the Contractor is otherwise bound - which are beyond the Contractor's control, then the Contract Time shall be extended in accordance with subsection [GC 3.07](#), Extension of Contract Time. In no case shall the extension of Contract Time be less than the time lost as the result of the event causing the delay, unless a shorter extension is agreed to by the Contractor. The Contractor shall not be entitled to payment for costs incurred as the result of such delays unless such delays are the result of actions of the Owner.
- .03 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

GC3.07.01 and GC3.07.02. 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 GC3.08.03, if any, shall be in addition to amounts, if any, to which the Contractor is entitled pursuant to paragraphs GC3.07.01 and GC3.07.02.

- .04 The Owner may, by Notice of 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 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 GC3.07.01 and GC3.07.02.
- .05 Except as herein provided, the Contractor shall not be entitled to any compensation for delay that may be occasioned to his/her Work except delays caused by the failure of the Owner to provide any information or to do any act which the Contract expressly requires the Owner to provide or do, but this exception shall not apply to the supply of materials or equipment by the Owner.
- .06 Notwithstanding the time allowed for completion, should the rate of progress of construction be unsatisfactory, or should unnecessary interruption occur in the continuous prosecution of the Work, in the opinion of the Contract Administrator, the full amount of inspection costs and the cost of other supervision shall, for such period of unsatisfactory progress, be deducted from any monies due the Contractor under the Contract.

GC 3.09 Assignment of Contract

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

GC 3.10 Subcontracting by the Contractor

- .01 The Contractor may subcontract any part of the Work, subject to these General Conditions and any limitations specified in the Contract Documents.
- .02 The Contractor shall notify the Contract Administrator, in writing, of the intention to subcontract. Such notification shall identify the part of the Work, and the Subcontractor with whom it is intended.
- .03 The Contract Administrator will, within 10 Days of receipt of such notification, accept or reject the intended Subcontractor. A rejection will be in writing and will include the reasons for the rejection.
- .04 The Contractor shall not, without the written consent of the Owner, change a Subcontractor who has been engaged in accordance with this General Condition.
- .05 The Contractor shall preserve and protect the rights of the Owner under the Contract with respect to that part of the Work to be performed under subcontract and shall,
 - 1. a) enter into agreements with the intended Subcontractors to require them to perform their work in accordance with the Contract Documents; and
 - b) be as fully responsible to the Owner for acts and omissions of the Contractor's Subcontractors

and of persons directly or indirectly employed by them as for acts and omissions of persons directly employed by the Contractor.

- .06 The Owner's consent to subcontracting by the Contractor shall not be construed to relieve the Contractor from any obligation under the Contract and shall not impose any liability upon the Owner. Nothing contained in the Contract Documents shall create a contractual relationship between a Subcontractor and the Owner.
- .07 The Contractor and all associated subcontractors, shall be subject to the Owner's Fair Wage Policy, as adopted by the Owner from time to time, and any of the Owner's or legislated labour trades requirements. Failure to comply with this policy and/or these requirements, may lead to termination of the Contract, or termination or rejection of a subcontractor, as the case may be, with no recourse by the Contractor in respect of such termination or rejection.
- .08 The Contractor shall maintain good order and discipline among the Contractor's employees engaged on the Work 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 Work.

GC 3.11 Changes

GC 3.11.01 Changes in the Work

- .01 The Owner, or the Contract Administrator where so authorized, may, by order in writing, make a Change in the Work without invalidating the Contract. The Contractor shall not be required to proceed with a Change in the Work unless in receipt of a Change Directive. Upon the receipt of such Change Directive the Contractor shall proceed with the Change in the Work.
- .02 The Contractor may apply for an extension of Contract Time according to the terms of subsection [GC 3.07](#), Extension of Contract Time.
- .03 If the Changes in the Work relate solely to quantities, payment for that part of the Work will be made according to the conditions specified in clause [GC 8.01.03](#), Variations in Work Assignment RFQ Quantities. If the Changes in the Work do not solely relate to quantities, or if the Changes relate to a Lump Sum Contract, payment shall be made in accordance with:
 - a) a lump sum price or unit price agreed between the Contractor and the Contract Administrator prior to commencement of the Work, in which case the Contract Administrator shall issue a Change Order for the Work which shall state the agreed lump sum price or unit price, as applicable; or

GC 3.11.02 Extra Work

- .01 The Owner, or Contract Administrator where so authorized, may instruct the Contractor to perform Extra Work without invalidating the Contract. The Contractor shall not be required to proceed with the Extra Work unless in receipt of a Change Directive. Upon receipt of such Change Directive the Contractor shall proceed with the Extra Work.
- .02 The Contractor may apply for an extension of Contract Time according to the terms of subsection [GC 3.07](#), Extension of Contract Time.
- .03 If the Extra Work relates solely to quantities, payment for the work will be made according to the conditions in clause [GC 8.01.03](#), Variations in Work Assignment RFQ Quantities. If the

Extra Work does not relate solely to quantities, or if the Extra Work relates to a Lump Sum Contract, payment for the Extra Work may be made in accordance with:

- a) lump sum price or unit price agreed between the Contractor and the Contract Administrator prior to commencement of the work, in which case the Contract Administrator shall issue a Change Order for the work which shall state the agreed lump sum price or unit price, as applicable; or

GC 3.11.03 Additional Work

- .01 The Owner, or Contract Administrator where so authorized, may request the Contractor to perform Additional Work without invalidating the Contract. If the Contractor agrees to perform Additional Work, the Contractor shall proceed with such Additional Work upon receipt of a Change Order.
- .02 The Contractor may apply for an extension of Contract Time according to the terms of subsection [GC 3.07](#), Extension of Contract Time.
- .03 If the Additional Work relates solely to quantities, payment for the work will be made according to the conditions in clause [GC 8.01.03](#), Variations in Work Assignment RFQ Quantities. If the Additional Work does not relate solely to quantities, or if the Additional Work relates to a Lump Sum Contract, payment for the Additional Work may be made in accordance with:
 - a) a lump sum price or unit price agreed between the Contractor and the Contract Administrator prior to commencement of the work, in which case the Contract Administrator shall issue a Change Order for the work which shall state the agreed lump sum price or unit price, as applicable; or

GC 3.12 Notices

- .01 Any notice permitted or required to be given to the Contract Administrator or the Superintendent in respect of the Work shall be deemed to have been given to and received by the addressee on the date of delivery if delivered by hand or by facsimile transmission and on the fifth Day after the date of mailing if sent by mail.
- .02 The Contractor and the Owner shall provide each other with the mailing addresses, telephone numbers and facsimile terminal numbers for the Contract Administrator and the Superintendent at the commencement of the Work.
- .03 In the event of an emergency situation or other urgent matter the Contract Administrator or the Superintendent may give a verbal notice, provided that such notice is confirmed in writing within 2 Days.
- .04 Any notice permitted or required to be given to the Owner or the Contractor shall be given in accordance with the notice provision of the Contract.

GC 3.13 Use and Occupancy of the Work Prior to Substantial Performance

- .01 The use or occupancy of the Work or any part thereof by the Owner prior to Substantial Performance shall not constitute an acceptance of the Work or parts so occupied. In addition, the use or occupancy of the Work shall not relieve the Contractor or the Contractor's Surety from any liability that has arisen, or may arise, from the performance of the Work in accordance with the Contract Documents. The Owner will be responsible for any damage that occurs because of the Owner's use or occupancy. Such use or occupancy of any part of the Work by the Owner does not waive the Owner's right to charge the Contractor liquidated damages in accordance with the terms of the Contract.

GC 3.14 Claims, Negotiations, Mediation

GC 3.14.01 Continuance of the Work

- .01 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 will not jeopardize any claim it may have.

GC 3.14.02 Record Keeping

- .01 Immediately upon commencing work which 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 Contract Administrator will keep Daily Work Records to be used in assessing the Contractor's claim, all in accordance with clause [GC 8.02.06](#), Records.
- .02 The Contractor and the Contract Administrator shall reconcile their respective Daily Work Records on a daily basis, to simplify review of the claim, when submitted.
- .03 The keeping of Daily Work Records by the Contract Administrator or the reconciling of such Daily Work Records with those of the Contractor shall not be construed to be acceptance of the claim.

GC 3.14.03 Claims Procedure

- .01 The Contractor shall give verbal notice to the Contract Administrator 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 Contract Administrator 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 will form part of the claim.
- .02 Not used
- .03 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 Contract administrator.

.04 Within 30 Days of the receipt of the Contractor's detailed claim, the Contract Administrator may request the Contractor to submit any further and other particulars as the Contract Administrator considers necessary to assess the claim. The Contractor shall submit the requested information within 30 Days of receipt of such request.

.05 Within 90 Days of receipt of the detailed claim, the Owner, or if authorized by the Owner, the Contract Administrator, shall advise the Contractor, in writing, of the Owner's opinion with regard to the validity of the claim.

GC 3.14.04 Negotiations

.01 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.

.02 Should the Contractor disagree with the opinion given in paragraph [GC 3.14.03.05](#), with respect to any part of the claim, the Contract Administrator shall enter into negotiations with the Contractor to resolve the matters in dispute. Where a negotiated settlement cannot be reached, or it is agreed that payment cannot be made on a Time and Material basis, the parties may, upon mutual agreement, proceed in accordance with clause [GC 3.14.05](#), Mediation.

.03 Negotiation shall occur on three levels; first, with the Contract Administrator, 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 Contract Administrator 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.

.04 Discussions with the Contract Administrator 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 GC 3.14.03.05. Manager level discussion shall be completed as soon as possible following failed discussions with the Contract Administrator, 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.

.05 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 Contract Administrator shall notify the other properly in writing if he or she wishes to pursue an issue to the next level of negotiation.

GC 3.14.05 Mediation

.01 If a claim is not resolved satisfactorily through the negotiation process in clause [GC 3.14.04](#), , and the Contractor wishes to pursue the issue further, the parties may, upon mutual agreement, utilize the services of an independent third party mediator.

.02 The mediator shall be mutually agreed upon by the Owner and Contractor.

.03 The mediator shall be knowledgeable regarding the area of the disputed issue. The mediator shall meet with the parties together and 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.

- .04 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.

GC 3.14.06 Payment

- .01 Payment of the claim will be made no later than 30 Days after the date of resolution of the claim or dispute. Such payment will be made according to the terms of [Section GC 8.0](#), Measurement and Payment.

GC 3.14.07 Rights of Both Parties

- .01 It is agreed that no action taken under this subsection [GC 3.14](#), Claims, Negotiations, Mediation, by either party shall be construed as a renunciation or waiver of any of the rights or recourse available to the parties, provided that the requirements set out in this subsection are fulfilled. Provided further however that an agreement reached during any such Negotiations or Mediation is binding.

GC 3.15 Arbitration

GC 3.15.01 Conditions for Arbitration

- .01 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 Arbitration Act of Ontario, 1991, save as hereinafter provided, shall apply to such arbitration, including the provisions for appeal therein. Provided however, that in the case of claims for amounts of \$150,000, exclusive of G.S.T., or less, the provisions of subsection GC 3.15, Arbitration, are mandatory, and the matter shall proceed to arbitration if not resolved through the said negotiation or mediation processes.
- .02 If the Parties engage in arbitration to resolve the issue, notification to that effect shall be communicated in writing to the Contract Administrator within 30 Days of completing the negotiations referred in paragraph 3.14.04, or, if the parties proceed to mediation under paragraph 3.14.05, within 30 Days of completing that mediation.
- .03 The parties shall be bound by the decision of the arbitrator.
- .04 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 this subsection [GC 3.15](#), Arbitration.

GC 3.15.02 Arbitration Procedure

- .01 The following provisions are to be included in the agreement to arbitrate:
- a) All existing actions in respect of the matters under arbitration will be stayed pending arbitration;

- b) 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 will be arbitrated; and
- c) Before proceeding with the arbitration, the Contractor shall confirm that all matters in dispute are set out in the schedule.

GC 3.15.03 Appointment of Arbitrator

- .01 The arbitrator shall be mutually agreed upon by the Owner and Contractor to adjudicate the dispute.
- .02 Where the Owner and Contractor cannot agree on a sole arbitrator within 30 Days of the notification of arbitration noted in paragraph [GC 3.15.01.02](#), the Owner and the Contractor shall each choose an appointee with 37 Days of the notice of arbitration.
- .03 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 will select an arbitrator to adjudicate the dispute within 7 Days of being requested to do so.
- .04 The arbitrator shall not be interested financially in the Contract nor in either party's business and shall not be employed by either party.
- .05 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.
- .06 The hearing will commence within 90 Days of the appointment of the arbitrator.

GC 3.15.04 Costs

- .01 The arbitrator's fee shall be equally shared by the Owner and the Contractor.
- .02 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.
- .03 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.
- .04 The arbitrator may, in his or her discretion, award reasonable costs, related to the arbitration.

GC 3.15.05 The Decision

- .01 The reasoned decision will 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 clause [GC 3.14.06](#), Payment.

GC 3.16 Archaeological Finds

- .01 If the Contractor's operations expose any items which may indicate an archaeological find, such

as building remains, hardware, accumulations of bones, pottery, or arrowheads, the Contractor shall immediately notify the Contract Administrator and suspend operations within the area identified by the Contract Administrator. Notification may be verbal provided that such notice is confirmed in writing within 2 Days. Work shall remain suspended within that area until otherwise directed by the Contract Administrator in writing, in accordance with subsection [GC 7.09](#), Suspension of Work.

.02 Any delay in the completion of the Contract that is caused by such a suspension of Work will be considered to be beyond the Contractor's control in accordance with paragraph [GC 3.08.01](#).

.03 Any work directed or authorized in connection with an archaeological find will be considered as Extra Work in accordance with clause [GC 3.11.02](#), Extra Work.

GC 3.17 Changed Geotechnical or Subsurface Conditions

.01 The Contractor or the Contract Administrator shall promptly notify the other party in writing if the geotechnical or subsurface conditions in the Working Area appear to differ materially from those indicated in the Contract Documents. The Contract Administrator will promptly investigate the apparent changed geotechnical or subsurface conditions and make a finding. Subject to the provisions of [GC 2.01](#), if the finding is that the conditions differ materially and this would cause an increase or decrease in the Contract Price or Contract Time, then the Contract Administrator, with the Owner's approval, shall provide the Contractor with a Change Directive in accordance with the provisions of [GC 3.11.02](#), Extra Work. If the finding is that the conditions are not materially different or that no change in the Contract Price or the Contract Time is justified, the Contract Administrator shall promptly report the reasons for this finding to the Contractor and Owner in writing.

SECTION GC 4.0 OWNER'S RESPONSIBILITIES AND RIGHTS

GC 4.01 Working Area

.01 The Owner will acquire all property rights which are deemed necessary by the Owner for the construction of the Work, including temporary working easements, and will indicate the full extent of the Working Area on the Contract Drawings.

.02 The Geotechnical Report and Subsurface Report which will be provided by the Owner as part of the Work Assignment RFQ shall form part of the Contract Drawings.

GC 4.02 Approvals and Permits

.01 The Owner will pay for all building permits, and all plumbing, mechanical, electrical, drainage and site services permits, where applicable.

.02 The Owner will obtain and pay for all permits, licenses and certificates required for Project approval.

GC 4.03 Management and Disposition of Materials

- .01 The Owner will identify in the Contract Documents the materials to be moved within or removed from the Working Area, and any characteristics of those materials which will necessitate special materials management and disposition.
- .02 In accordance with regulations under the Occupational Health and Safety Act, R.S.O. 1990, c.O.1, as amended, the Owner advises that
 - a) the designated substance arsenic may be present throughout the Working Area occurring naturally, in contaminated soil or in sewage;
 - b) the designated substance asbestos is typically present throughout the Working Area in cement products, asphalt, and conduits for utilities. Exposure may occur as a result of activities by the Contractor such as cutting, grinding, drilling, blasting, breaking, crushing or removing of cement products, asphalt or conduits;
 - c) the designated substance lead may be present throughout the Working Area in contaminated soil, in sewage or in lead-containing paints, coatings, or conduits. Exposure may occur during soil excavation, or during removal or high temperature cutting/welding of paints/coatings or during cutting, grinding, drilling or removing of conduits;
 - d) the designated substance silica is typically present throughout the Working Area in cement materials. Exposure may occur as a result of activities such as sweeping, drilling, cutting, grinding, breaking or removing rock, concrete, masonry, stone or refractory materials; and
 - e) The designated substances benzene and mercury may be present throughout the Working area in sewage.
- .03 Where building records or test results indicate the presence of a designated substance, specific information on its condition and location will be provided by the Owner in the Contract Documents.
- .04 If the Owner or Contractor discovers or is advised of the presence of designated substances or hazardous materials which are in addition to those listed in paragraph [GC 4.03.02](#), or not clearly identified in the Contract Documents according to paragraph [GC 4.03.03](#), then oral notice will be provided to the other party immediately with written confirmation within 2 Days. The Contractor will stop work in the area immediately and will determine the necessary steps required to complete the Work in accordance with applicable legislation and regulations.
- .05 The Owner will be responsible for any reasonable additional costs of removing, managing and disposing of any Hazardous Materials not identified in the Contract Documents, or where conditions exist that could not have been reasonably foreseen at the time of tendering. All work under this paragraph shall be deemed to be Extra Work.
- .06 Prior to commencement of the Work, the Owner will provide to the Contractor a list of those products controlled under the Workplace Hazardous Materials Information System (WHMIS), which the Owner will supply or use on the Contract, together with copies of the Materials Safety Data Sheets for these products. The Owner will notify the Contractor in writing of changes to the list and provide relevant Material Safety Data Sheets.

GC 4.04 Construction Affecting Railway Property

- .01 The Owner will pay the costs of all flagging and other traffic control measures required and provided by a railway company unless such costs are solely a function of the Contractor's chosen method of completing the Work.

GC 4.05 Default by the Contractor

- .01 If the Contractor should be adjudged bankrupt, or makes a general assignment for the benefit of creditors because of the Contractor's insolvency, or if a receiver is appointed because of the Contractor's insolvency, the Owner may, without prejudice to any other right or remedy the Owner may have, by giving the Contractor or receiver or trustee in bankruptcy notice in writing, terminate the Contract.
- .02 If the Contractor fails to commence the Work within 14 calendar days of a formal order to commence work signed by the Contract Administrator or, upon commencement of the Work, should neglect to prosecute the Work properly or otherwise fails to comply with the requirements of the Contract and if the Contract Administrator has given a written statement to the Owner and Contractor that sufficient cause exists to justify such action, the Owner may, without prejudice to any other right or remedy the Owner may have, notify the Contractor 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.
- .03 In any of the cases described in article GC 4.05.04 hereof, if the Contract Administrator has given a written statement to the Owner and Contractor that sufficient cause exists to justify such action, the Owner may, without prejudice to any other right or remedy the Owner may have, notify the Contractor 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. Immediately following the 5 Working Days, the Owner shall have the full right and power at its discretion, without process or action at law, to take the Work or any part thereof specified in the said notice, out of the hands of the Contractor, to use the performance security, and either re-let the same to any other person or persons, with or without its being previously advertised, or may employ workers and provide material, tools, transportation and all other necessary things at the Contractor's expense, or may take such other steps as the Owner may consider necessary or advisable, in order to secure the completion of the Work to the Owners satisfaction.
- .04 The following are the cases referred to in GC 4.05.03 hereof namely if the Contractor neglects or refuses:
 - .1 to commence the Work within fourteen (14) days after the date of the Owner's order to commence;
 - .2 to execute the Work or any part thereof in a sound and workmanlike manner, and in all respects in strict conformity with the Contract in the judgement of the Contract Administrator;
 - .3 to conduct the Work, when so ordered by the Contract Administrator, forthwith so as to ensure its entire completion in the judgement of the Contract Administrator within the time stipulated;
 - .4 to complete the Work on time;
 - .5 to take down, re-build, repair, alter or amend any defective or unsatisfactory work;
 - .6 to remove any condemned material or workmanship and replace the same with proper material and workmanship;
 - .7 to comply with any reasonable order from the Contract Administrator;
 - .8 to refrain from a course of persistent violation of any provision(s) of the Contract;

Or, if the Contractor:

- .1 transfers, assigns or sublets the Contract or the Work or any part thereof, or attempts to do so without the Owner's consent, other than as contemplated in the Contract;
 - .2 becomes bankrupt or insolvent;
 - .3 compounds with his/her creditors;
 - .4 commits any act of insolvency;
 - .5 if the Work or any part thereof is not progressing continuously and in such a manner, in the judgement of the Contract Administrator, as will ensure its entire completion on time in accordance with the stipulations in that regard in the Contract;
- .05 Where the Owner takes any part of the Work out of the hands of the Contractor pursuant to GC 4.05.03 hereof:
- .1 the Contractor shall vacate possession of, and give up the Work or specified part(s) thereof peaceably to the Owner;
 - .2 the Contractor and his/her Surety shall be liable for all damages, expenditure and extra expenditure incurred by the Owner (including those for additional work thereby necessitated) by reason thereof in excess of those provided for in the Contract, together with the amount of liquidated damages from the date fixed for completion of the Work, and the same may be deducted or collected by the Owner as provided in GC 8.02.08;
 - .3 all the powers of the Owner respecting resolution of doubts, disputes and differences, and determination of any sum(s) or balance payable to or receivable from the Contractor, and otherwise concerning the Contract, shall nevertheless continue in force;
 - .4 the relative obligations of the Owner and the Contractor, and of his/her Surety, in respect of the remainder of the Work (if any) shall not be affected, nor shall the Contractor or his/her Surety be excused from performing such remainder on time;
 - .5 all material, plant, scaffolding, scantling, cofferdams, dredges, pumps and pumping machinery, fixed tackle and other erections, appliances and plant shall at the option of the Owner, remain on the work site until completion, at such rental (if any) as the Owner may deem reasonable.
- .06 The fulfilment by the Contractor of any stipulation in the Contract may be enforced by legal proceedings and judgement, or order of Court, without prejudice to any other remedy contained in the Contract.
- .07 If any balance of the Contract price, or other money payable by the Owner under the Contract remains in the hands of the Owner upon the expiration of the period of guaranteed maintenance, the same shall be payable to the Contractor or the person legally representing him/her, but neither the Owner nor any officer thereof shall be liable or accountable to the Contractor in any way for the manner in which, or the price at which the Work or any portion thereof, may have been or may be done or completed by the Owner in the event of a default by the Contractor

GC 4.06 Notification of Default

- .01 The Owner will give written notice of a default to the Contractor as soon as the Owner becomes aware of the default, but failure to give such notice in a timely way shall not constitute condonation of the default. The notice will include instructions to correct the default within 5 Working Days following receipt of such notice.

GC 4.07 Contractor's Right to Correct a Default

- .01 The Contractor shall have the right within the 5 full Working Days following the receipt of a notice of default to correct the default and provide the Owner with satisfactory proof that appropriate corrective measures have been taken.
- .02 If the correction of the default cannot be completed within the 5 full Working Days following receipt of the notice, the Contractor shall be in compliance with the Owner's instructions if the Contractor,
 - a) commences the correction of the default within the 5 full Working Days following receipt of the notice;
 - b) provides the Owner with an acceptable schedule for the progress of such correction; and
 - c) completes the correction in accordance with such schedule.

GC 4.08

GC 4.09 Owner's Right to Correct Default or Terminate the Contract

- .01 If the Contractor fails to correct the default within the time specified in subsection [GC 4.07](#), Contractor's Right to Correct a Default, or subsequently agreed upon, the Owner, without prejudice to any other right or remedy the Owner may have, may:
 - a) correct such default and deduct the cost thereof, as certified by the Contract Administrator, from any payment then or thereafter due to the Contractor; or
 - b) terminate the Contractor's right to continue the Work in whole or in part by giving written notice to the Contractor.
- .02 If the Owner terminates the Contractor's right to continue with the Work in whole or in part, the Owner will be entitled to,
 - a) take possession of the Working Area or that portion of the Working Area devoted to that part of the Work terminated;
 - b) utilize the Equipment of the Contractor and any Material within the Working Area which is intended to be incorporated into the Work, the whole subject to the right of third parties;
 - c) withhold further payments to the Contractor with respect to the Work or the portion of the Work withdrawn from the Contractor until the Work or portion thereof withdrawn is completed;
 - d) charge the Contractor the additional cost over the Contract price of completing the Work or portion thereof withdrawn from the Contractor, as certified by the Contract Administrator and any additional compensation paid to the Contract Administrator for such additional service arising from the correction of the default;
 - e) charge the Contractor a reasonable allowance, as determined by the Contract Administrator, to cover correction to the Work performed by the Contractor that may be required under subsection [GC 7.15](#), Warranty;
 - f) charge the Contractor for any damages the Owner may have sustained as a result of the default; and
 - g) charge the Contractor the amount by which the cost of corrections to the Work under subsection [GC 7.15](#), Warranty, exceeds the allowance provided for such corrections.
 - h) inform the Surety and demand that the terms and conditions of the Surety Bonds, provided in the Contract, be fulfilled.
 - i) Charge the Contractor for any damages the Owner may have sustained as a result of the default.

GC 4.10 Not Used

GC 4.11 Final Payment to Contractor

- .01 If the Owner's cost to correct and complete the Work in whole or in part is less than the amount withheld from the Contractor under subsection [GC 4.09](#), Termination of Contractor's Right to Continue the Work, the Owner will pay the balance to the Contractor as soon as the final accounting for the Contract is complete.
- .02 If the Owner elects to terminate the Contract the Owner will provide the Contractor and the trustee or receiver with a complete accounting to the date of termination.

GC 4.12 Not Used

GC 4.13 Continuation of Contractor's Obligations

- .01 The Contractor's obligation under the Contract as to quality, correction and warranty of the Work performed prior to the time of termination of the Contract or termination of the Contractor's right to continue with the Work in whole or in part shall continue to be in force after such termination.

GC 4.14 Not Used

SECTION GC 5.0 MATERIAL

GC 5.01 Supply of Material

- .01 All Material necessary for the proper completion of the Work, except that listed as being supplied by the Owner, shall be supplied by the Contractor. The Contract prices for the appropriate tender items shall be deemed to include full compensation for the supply of such Material.

GC 5.02 Quality of Material

- .01 All Material supplied by the Contractor shall be new unless otherwise specified in the Contract Documents.
- .02 Material supplied by the Contractor shall conform to the requirements of the Contract.
- .03 As specified or as requested by the Contract Administrator, the Contractor shall make available for inspection or testing a sample of any Material to be supplied by the Contractor.
- .04 The Contractor shall obtain for the Contract Administrator the right to enter upon the premises of the Material manufacturer or supplier to carry out such inspection, sampling and testing as specified or as requested by the Contract Administrator.
- .05 The Contractor shall notify the Contract Administrator of the sources of supply sufficiently in advance of the Material shipping dates to enable the Contract Administrator to perform the required inspection, sampling and testing.
- .06 The Owner will not be responsible for any delays to the Contractor's operations where the

Contractor fails to give sufficient advance notice to the Contract Administrator to enable the Contract Administrator to carry out the required inspection, sampling and testing before the scheduled shipping dates.

- .07 The Contractor shall not change the source of supply of any Material without the written authorization of the Contract Administrator.
- .08 Material which is not specified shall be of a quality best suited to the purpose required and the use of such Material shall be subject to the approval of the Contract Administrator.
- .09 All material testing is on a random sampling basis and all approvals given by the Contract Administrator for materials to be used in the Work, is on a general basis. Therefore, any approval given for Material to be used or failure to approve same shall not relieve the Contractor from the responsibility for the proper performance of the Contract or liability for failure to properly perform, including failure to adhere to any specification.

GC 5.03 Rejected Material

- .01 Rejected Material shall be removed from the Working Area expeditiously after the notification to that effect from the Contract Administrator. Where the Contractor fails to comply with such notice the Contract Administrator may cause the rejected Material to be removed from the Working Area and disposed of in what the Contract Administrator considers to be the most appropriate manner and the Contractor shall pay the costs of disposal and the appropriate overhead charges.

GC 5.04 Substitutions

- .01 Where the specifications require the Contractor to supply a Material designated by a trade or other name, the Work Assignment RFQ shall be based only upon supply of the Material so designated, which shall be regarded as the standard of quality required by the specification. After the acceptance of the Bid, the Contractor may apply to the Contract Administrator to substitute another Material identified by a different trade or other name for the Material designated as set out above. The application shall be in writing and shall state the price for the proposed substitute Material, and such other information as the Contract Administrator may require.
- .02 Rulings on a proposed substitution will not be made prior to the acceptance of the Bid. Substitutions shall not be made without the prior approval of the Contract Administrator. The approval or rejection of a proposed substitution will be made at the discretion of the Contract Administrator.

- .03 Not Used

GC 5.05 Owner Supplied Material

GC 5.05.01 Ordering of Excess Material

- .01 Where Material is supplied by the Owner and where this Material is ordered by the Contractor in excess of the amount specified to complete the Work, such excess Material shall become the property of the Contractor on completion of the Work and shall be charged to the Contractor at cost plus applicable overheads.

GC 5.05.02 Care of Material

- .01 The Contractor shall, in advance of receipt of shipments of Material supplied by the Owner, provide adequate and proper storage facilities acceptable to the Contract Administrator; and on the receipt of such Material shall promptly place it in storage except where it is to be incorporated forthwith into the Work.
- .02 The Contractor shall be responsible for acceptance of Material supplied by the Owner, at the specified delivery point and for its safe handling and storage. If such Material is damaged while under the control of the Contractor it shall be replaced or repaired by the Contractor at no expense to the Owner, and to the satisfaction of the Contract Administrator. If such Material is rejected by the Contract Administrator for reasons which are not the fault of the Contractor it shall remain in the care and at the risk of the Contractor until its disposition has been determined by the Contract Administrator.
- .03 Where Material supplied by the Owner arrives at the delivery point in a damaged condition or where there are discrepancies between the quantities received and the quantities shown on the bills of lading, the Contractor shall immediately report such damage or discrepancies to the Contract Administrator. The Contract Administrator shall arrange for an immediate inspection of the shipment and provide the Contractor with a written release from responsibility for such damage or deficiencies that are confirmed. Where damage or deficiencies are not so reported, any damage or deficiencies reported thereafter shall be made good by the Contractor at no extra cost to the Owner.
- .04 The full amount of Material supplied by the Owner in each shipment shall be accounted for by the Contractor and such Material shall be at the risk of the Contractor after taking delivery. Such Material shall not, except with the written permission of the Contract Administrator, be used by the Contractor for purposes other than the performance of the Work under the Contract.
- .05 Empty reels, crates, containers and other types of packaging from Material supplied by the Owner shall become the property of the Contractor when they are no longer required for their original purpose and shall be disposed of by the Contractor unless otherwise specified in the Contract Documents.
- .06 The Contractor shall provide the Contract Administrator, immediately upon receipt of each shipment, copies of bills of lading, or such other documentation the Contract Administrator may require to substantiate and reconcile the quantities of Material received.
- .07 Where Material supplied by the Owner is ordered and stockpiled prior to the award of the Contract, the Contractor shall, at no extra cost to the Owner, immediately upon commencement of operations, check the Material, report any damage or deficiencies to the Contract Administrator and take charge of the Material at the stockpile site. Where damage or deficiencies are not so recorded by the Contractor, any damage or deficiencies reported thereafter shall be made good by the Contractor at no extra cost to the Owner.

SECTION GC 6.0 INSURANCE, PROTECTION AND DAMAGE

GC 6.01 Protection of Work, Persons and Property

- .01 The Contractor, the Contractor's agents and all workers employed by or under the control of the Contractor, including Subcontractors, shall protect the Work, persons and property from damage or injury, and shall be responsible for all losses and damage which may arise as the result of the

Contractor's operations under the Contract unless indicated to the contrary below.

- .02 The Contractor is responsible for the full cost of any necessary temporary protective work or works and the restoration of all damage where the Contractor damages the Work or property in the performance of the Contract. If the Contractor is not responsible for the damage that occurs to the Work or property the Contractor shall restore such damage, and such work shall be administered according to these General Conditions.
- .03 The Contractor shall immediately inform the Contract Administrator of all damage and injuries which occur during the term of the Contract. The Contractor shall then investigate and report back to the Contract Administrator within 15 Days of occurrence of incident.
- .04 The Contractor shall not be responsible for loss and damage that occurs as a result of,
 - a) war;
 - b) blockades and civil commotions;
 - c) errors in the Contract Documents; or
 - d) acts or omissions of the Owner, the Contract Administrator, their agents and employees, or others not under the control of the Contractor, but within the Working Area with the Owner's permission.
- .05 The Contractor and his Surety or Sureties shall not be released from any term or provision of any responsibility, obligation or liability under the Contract or waive or impair any of the rights of the Owner except by a release duly executed by the Owner.

GC 6.02 Indemnification

- .01 The Contractor shall indemnify and hold harmless the Owner and the Contract Administrator, and each of their 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 the Contract.
- .02 The Contractor shall indemnify and hold harmless the Owner 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 Material furnished by the Contractor under the Contract.
- .03 The Owner shall indemnify and hold harmless the Contractor, his 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 the Contract which are attributable to a lack of or defect in title or an alleged lack of or defect in title to the Working Area.
- .04 The Contractor will 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 pursuant to [GC 6.01](#) and any moneys paid or payable by the Indemnitees in settlement or in discharge or on account thereof, provided that on default of 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; and the Contractor hereby authorizes and empowers the Owner or

the Contract Administrator 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 Contract Administrator, as the case may be, or their said Solicitor may deem expedient, and hereby agree to ratify and confirm all the acts of the Owner or the Contract Administrator or their Solicitor in that behalf, and to 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; Provided, however, that the Contractor, at the expense of the Contractor may take charge of and conduct the defence in the name of the Owner or the Contract Administrator, as the case may be, to any such action, suit, claim, lien, execution or demand.

- .05 The obligations of the Contractor pursuant to this [GC 6.02](#) expressly survive the termination of the Contract except if the Contract is terminated due to the default of the Owner.

GC 6.03 Contractor's Insurance

GC 6.03.01 General

- .01 Without restricting the generality of subsection [GC 6.02](#), Indemnification, the Contractor shall provide, maintain and pay for the insurance coverages listed in this General Condition under clauses [GC 6.03.02](#) and [GC 6.03.03](#). Insurance coverage in clauses [GC 6.03.04](#), [GC 6.03.05.01](#) and [GC 6.03.05.02](#) will only apply when so specified in the Contract Documents.

GC 6.03.02 General Liability Insurance

- .01 Comprehensive or Commercial General liability insurance shall be, unless otherwise required by the contract documents, in the name of the Contractor, with the Owner and the Contract Administrator named as additional insureds, with limits of not less than 2 million dollars inclusive per occurrence for bodily injury, death, and damage to property including loss of use thereof, with a property damage deductible of not more than \$5000. The form of this insurance shall be as required by the City's Treasurer, and no less than the coverage granted under the Insurance Bureau of Canada Form IBC 2100, dated 8-87.
- .02 Another form of insurance equal to or better than that required by the City's Treasurer may be used, provided all the requirements listed in the Contract are included. Approval of this insurance will be conditional upon the Contractor obtaining the services of an insurer licensed to underwrite insurance in the Province of Ontario and obtaining the insurer's certificate of equivalency to the required insurance.
- .03 The insurance shall be maintained continuously from the commencement of the Work until final acceptance of the Work. Prior to commencement of the work and upon placement, renewal, amendment or extension of all or any part of the insurance, the contractor shall promptly provide the Owner with confirmation or coverage on the Owner's certificate of insurance form and, if required, by the Contract Administrator, a certified true copy of the policies certified by an authorized representative of the insurer together with copies of any amending endorsements.
- .04 The Contractor shall submit annually to the Owner, proof of continuation of the completed operations coverage and if the Contractor fails to do so, the limitation period for claiming indemnity described in paragraph [GC 6.02.03](#) will not be binding on the Owner.
- .05 Should the Contractor decide not to employ Subcontractors for operations requiring the use of explosives for blasting, or pile driving or caisson work, or removal or weakening of support of

property building or land, the form of insurance shall include the appropriate endorsements.

.06 The policies shall be endorsed to provide the Owner with not less than 30 Days' written notice in advance of cancellation, change or amendment restricting coverage.

.07 "Claims Made" insurance policies will not be permitted.

GC 6.03.03 Automobile Liability Insurance

.01 Automobile liability insurance in respect of licensed vehicles shall, unless otherwise required by the contract documents, have limits of not less than 1 million dollars inclusive per occurrence for bodily injury, death and damage to property, in the following forms endorsed to provide the Owner with not less than 30 Days' written notice in advance of any cancellation, change or amendment restricting coverage:

- a) standard non-owned automobile policy including standard contractual liability endorsement; and
- b) standard owner's form automobile policy providing third party liability and accident benefits insurance and covering licensed vehicles owned or operated by the Contractor.

GC 6.03.04 Aircraft and Watercraft Liability Insurance

.01 Aircraft and watercraft liability insurance with respect to owned or non-owned aircraft and watercraft if used directly or indirectly in the performance of the Work, including use of additional premises, shall be subject to limits of not less than 5 million dollars inclusive per occurrence for bodily injury, death, and damage to property including loss of use thereof, and limits of not less than 5 million dollars for aircraft passenger hazard. Such insurance shall be in a form acceptable to the Owner. The policies shall be endorsed to provide the Owner with not less than 30 Days' written notice in advance of cancellation, change or amendment restricting coverage.

GC 6.03.05 Property and Boiler Insurance

GC 6.03.05.01 Property Insurance

.01 All risks property insurance, including flood and earthquake, shall be in the name of the Contractor, with the Owner and the Contract Administrator named as additional insureds and loss payee, insuring not less than the sum of the amount of the Contract price and the full value, as may be stated in the Contract Documents, of Material that is specified to be provided by the Owner for incorporation into the Work, with a deductible not exceeding 1% of the amount insured at the site of the Work. This insurance shall be in a form acceptable to the Owner and shall be maintained continuously until 10 Days after the date of Final Acceptance of the Work, as set out in the Final Acceptance Certificate.

GC 6.03.05.02 Boiler Insurance

.01 Boiler insurance insuring the interests of the Contractor, the Owner and the Contract Administrator for not less than the replacement value of boilers and pressure vessels forming part of the Work, shall be in a form acceptable to the Owner. This insurance shall be maintained

continuously from commencement of use or operation of the property insured until 10 Days after the date of Final Acceptance of the Work, as set out in the Final Acceptance Certificate.

GC 6.03.05.03 Use and Occupancy of the Work Prior to Completion

- .01 Should the Owner wish to use or occupy part or all of the Work prior to Substantial Performance, 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.
- .02 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 Contract Administrator may decide in consultation with the Contractor.

GC 6.03.05.04 Payment for Loss or Damage

- .01 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 [Section GC 8.0](#), Measurement and Payment. 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.
- .02 The Contractor shall be responsible for deductible amounts under the policies except where such amounts may be excluded from the Contractor's responsibility by the terms of this Contract.
- .03 In the event of a loss or damage to the Work arising from the action or omission of the Owner or others, the Owner shall pay the Contractor the cost of restoring the Work as the restoration of the Work proceeds and in accordance with the requirements of [Section GC 8.0](#), Measurement and Payment.

GC 6.03.06 Contractor's Equipment Insurance

- .01 All risks Contractor's equipment insurance covering construction machinery and equipment used by the Contractor for the performance of the Work, including boiler insurance on temporary boilers and pressure vessels, shall be in a form acceptable to the Owner and shall not allow subrogation claims by the insurer against the Owner. The policies shall be endorsed to provide the Owner with not less than 30 Days' written notice in advance of cancellation, change or amendment restricting coverage. Subject to satisfactory proof of financial capability by the

Contractor for self-insurance of the Contractor's Equipment, the Owner agrees to waive the equipment insurance requirement, and for the purpose of this Contract, the Contractor shall be deemed to be insured. This policy shall be amended to provide permission for the Contractor to grant prior releases with respect to damage to the Contractor's Equipment.

GC 6.03.07 Insurance Requirements and Duration

- .01 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.
- .02 The Contractor shall provide the Owner, on a form acceptable to the Owner, proof of insurance prior to commencement of the Work, and signed by an officer of the Contractor and either the underwriter or the broker.
- .03 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 by an officer of the Contractor and in addition, a signature by an officer of the insurer or the underwriter or the broker.
- .04 Where a policy is renewed the Contractor shall provide the Owner, on a form acceptable to the Owner, renewed proof of insurance immediately following completion of renewal.
- .05 Unless specified otherwise the Contractor shall be responsible for the payment of deductible amounts under the policies.
- .06 If the Contractor fails to provide or maintain insurance as required in this General Condition or elsewhere in the Contract Documents, then the Owner will have the right to provide and maintain such insurance and give evidence thereof to the Contractor. The Owner's cost thereof shall be payable by the Contractor to the Owner on demand.
- .07 If the Contractor fails to pay the cost of the insurance placed by the Owner within 30 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.

GC 6.04 Bonding

- .01 The Contractor shall provide the Owner with the surety bonds, addressed to the correct obligee, in the amount and for the duration, required by the Work Assignment RFQ.
- .02 Such bonds shall be issued by a Surety and shall be maintained in good standing until the fulfillment of the Contract.

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

GC 7.01 General

- .01 The Contractor warrants that the site of the Work has been visited during the preparation of the Bid and the character of the Work and all local conditions which may affect the performance of the Work are known.

- .02 The Contractor shall not commence the Work nor deliver anything to the Working Area until the Contractor has received a Purchase Order from the Owner.
- .03 The Contractor shall have complete control of the Work and shall effectively direct and supervise the Work so as to ensure conformity with the Contract Documents. The Contractor shall be responsible for construction means, methods, techniques, sequences and procedures and for coordinating the various parts of the Work.
- .04 The Contractor shall have the sole responsibility for the design, erection, operation, maintenance and removal of temporary structures and other temporary facilities and the design and execution of construction methods required in their use.
- .05 Notwithstanding paragraph [GC 7.01.04](#), where the Contract Documents include designs for temporary structures and other temporary facilities or specify a method of construction in whole or part, such facilities and methods shall be considered to be part of the design of the Work, and the Contractor shall not be held responsible for that part of the design or the specified method of construction. The Contractor shall, however, be responsible for the execution of such design or specified method of construction in the same manner that the Contractor is responsible for the execution of the Work.
- .06 The Contractor shall execute the terms of the Contract in strict compliance with the requirements of the Occupational Health and Safety Act, R.S.O. 1990, c. O.1 (the “Act”) and Ontario Regulation 213/91 (which regulates Construction Projects) and any other regulations under the Act (the “Regulations”) which may affect the performance of the Work, as the “constructor” or “employer”, as defined by the Act, as the case may be. The Contractor shall ensure that:
- a) worker safety is given first priority in planning, pricing and performing the Work;
 - b) its officers and supervisory employees have a working knowledge of the duties of a “constructor” and “employer” as defined by the Act and the provisions of the Regulations applicable to the Work, and a personal commitment to comply with them;
 - c) a copy of the most current version of the Act and the Regulations are available at the Contractor’s office within the Working Area, or, in the absence of an office, in the possession of the supervisor responsible for the performance of the Work;
 - d) workers employed to carry out the Work possess the knowledge, skills and protective devices required by law or recommended for use by a recognized industry association to allow them to work in safety;
 - e) its supervisory employees are Competent Persons as defined in the Occupational Health and Safety Act, and carry out their duties in a diligent and responsible manner with due consideration for the health and safety of the workers; and
 - f) all Subcontractors and their employees are properly protected from injury while they are at the work place.
 - g) The competent person shall not be changed without prior written authorization of the Owner
- .07 The Contractor when requested shall provide the Owner with a copy of its health and safety policy and program at the pre-start meeting, and shall respond promptly to requests from the Owner for confirmation that its methods and procedures for carrying out the Work comply with the Act and Regulations. The Contractor shall cooperate with representatives of the Owner and inspectors appointed to enforce the Act and the Regulations in any investigations of worker health and safety in the performance of the Work. The Contractor shall indemnify and save the Owner harmless from any additional expense which the Owner may incur to have the Work performed or in respect of any fine incurred or claim made as a result of the Contractor’s failure to comply with the requirements of the Act and the Regulations.

- .08 Prior to commencement of the Work the Contractor shall provide to the Contract Administrator a list of those products controlled under the Workplace Hazardous Materials Information System or WHMIS, which the Contractor expects to use on the Contract. Related Materials Safety Data Sheets shall accompany the submission. All containers used in the application of products controlled under WHMIS shall be labeled. The Contractor shall notify the Contract Administrator of changes in writing and provide relevant Material Safety Data Sheets.
- .09 The Contractor shall furnish competent and adequate staff, who shall be in attendance at the place of Work at all times, as necessary, for the proper administration, supervision and superintendence of the Work; organize the procurement of all Material 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.
- .10 Prior to commencement of the Work, the Contractor shall select a competent and experience full time Project Manager (the "Project Manager") who shall be in attendance at the place of Work or on the road and engaged in the Work at all times, and a competent and experienced full time site supervisor (the Site Superintendent) who shall be in attendance at the place of 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 the Contract. The Project Manager and the Site Superintendent 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.
- .11 The Project Manager and the Site Superintendent shall represent the Contractor at the place of Work and notices and instructions given to the Project Manager and /or the Site Superintendent shall be held to have been received by the Contractor
- .12 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 detrimental to the Project.
- .13 The Contractor shall have a Site Superintendent on the site while any work is being performed, to act for or on the Contractor's behalf. Prior to commencement of construction, the Contractor shall notify the Contract Administrator of the names, addresses, positions and telephone numbers of the Superintendent, Project Manager and any other responsible field persons who may be contacted at any time for emergency and other reasons to deal with matters relating to the Contract during non-working hours. The Contractor shall have on the Work site(s) at all times while Work is being performed, a competent Superintendent who is capable of reading and thoroughly understanding the plans and Specifications, and thoroughly experienced in the type of Work being performed, who shall supervise and direct all subcontractors, if any are used.

The Superintendent shall not be changed except for valid reason and upon the approval of the Owner. The Superintendent shall represent the Contractor at the site and notices and instructions given to the Superintendent by the Owner and/or the Contract Administrator shall be held to have been received by the Contractor

- .14 The Contractor shall, at no additional cost to the Owner, furnish all reasonable aid, facilities and assistance required by the Contract Administrator for the proper inspection and examination of the Work or the taking of measurements for the purpose of payment.
- .15 The Contractor shall prepare, and update as required, a construction schedule indicating the

sequence of construction and the timing of the major and critical path activities of the Work. The schedule shall be designed to ensure conformity with the specified Contract Time. The schedule must clearly show, in weekly intervals, the logic and timing of major activities, proposed start dates and estimated duration for activities. The schedule shall be submitted to the Contract Administrator within 7 Days from the date of the Contract award, unless otherwise required by the Contract. The Owner shall at its sole discretion be entitled to decide to not issue an order to commence work, until such a schedule has been received.

- .16 Where the Contractor finds any errors, discrepancies, inconsistency in and/ or omission relating to the Contract or relating to the utility stake outs, the Contractor shall promptly report it to the Contract Administrator and shall not proceed with the activity affected until receiving written advice from the Contract Administrator. Neither the Owner nor the Contract Administrator will be responsible for verbal instructions.
- .17 The Contractor shall arrange with the appropriate utility authorities for the stake out of all underground utilities and service connections which may be affected by the Work. The Contractor shall be responsible for any damage done to the underground utilities and service connections by the Contractor's forces during construction. The Contractor shall observe the location of the stake outs, prior to commencing the Work, and in the event that there is a discrepancy between the location of the stake outs and the locations shown on the Contract Documents, that may affect the Work, the Contractor shall immediately notify the Contract Administrator and the affected utility companies, in order to resolve the discrepancy.
- .18 It is understood that the Contractor has, by careful examination, satisfied himself/herself as to the nature and location of the Work, the conformation of the ground, the character, quality and quantity of the materials to be encountered, the character of equipment and facilities needed preliminary to and during the prosecution of the Work, the general and local conditions, and all other matters which can in any way affect the Work under the Contract. The Contractor shall execute the Work strictly in accordance with the Contract Documents.
- .19 Any Work or material not expressly called for in the Contract Documents but which may be fairly taken to be implicitly included in the Work or obviously necessary for its proper completion, shall be done or furnished by the Contractor as if such Work or material had been called for in detail.
- .20 The Contractor shall be responsible for and shall give adequate attention to the prosecution and completion of the Work in accordance with the terms of the Contract, and shall supply all necessary labour, materials and equipment and engage and co-ordinate the services of the various trades at the Work site(s).
- .21 The Contractor shall:
 - .1 carefully examine the location of the Work;
 - .2 make special enquiry of the commissions, companies or individuals owning, controlling or operating any utilities, pipes, conduits, tracks, and other structures that would affect or be affected by the Work, and inspect the public records of the City and of any municipal departments having cognisance and control of such structures, to determine to his/her own satisfaction the character, size, position, and length thereof;
 - .3 make further personal inspection and investigation as he/she may deem proper, to determine the correctness of the information so obtained.
- .22 The Owner does not ensure the accuracy of information obtained pursuant to article 7.01.21.2 hereof, other than information about utilities, pipes, conduits, tracks, and other structures owned or operated by the City, and any information in the Plans and Drawings or other material supplied by the Owner prior to the issuance of the Work Assignment RFQ or as part of the Contract Documents or otherwise, relating to non-City utilities, pipes, conduits, tracks or other structures, shall be taken as an unverified supposition for which the Owner assumes no responsibility and

whose presence in that material shall not relieve the Contractor from compliance with article 7.01.17 hereof.

- .23 In the event that information obtained pursuant to of article 7.01.17 hereof is inaccurate (other than as a result of misdirection, misunderstanding or erroneous transcription on the part of the Contractor or any person acting for the Contractor) so as to substantially increase the cost of performing the Work, the Contractor shall be entitled to an adjustment in the time of completion, the amount of which shall be as nearly as possible equivalent to the time delayed, and to make a claim as provided in GC3.11 Changes in the Work.
- .24 The Contractor shall perform, or cause to be performed, the Work in a good and worker-like manner and in compliance with all applicable federal, provincial, municipal or other governmental laws, statutes, ordinances, regulations, by-laws and policies either in effect or coming into effect at any time up to and including the date of substantial completion of the Work.
- .25 The Contractor shall give all required notices and comply with all laws, ordinances, rules, regulations, codes and orders of all authorities having jurisdiction relating to the Work, to the preservation of the public health and to construction safety which are or become in force during the performance of the Work.
- .26 The Contractor shall not be responsible for verifying that the Contract is in compliance with the applicable laws, ordinances, rules, regulations and codes relating to the Work and if any part of the Contract is at variance therewith, or changes which require modification to the Contract are made to any of the laws, ordinances, rules, regulations and codes by the authorities having jurisdiction subsequent to the date of the Contract, any resulting increase or decrease in costs for the Contractor shall be dealt with by issuance of a Change Order in accordance with GC3.11, Changes in the Work.
- .27 The Contractor shall notify the Contract Administrator and Owner in writing expeditiously and request direction from the Owner after becoming aware of any variance or change referred to in foregoing article 7.01.26.
- .28 If the Contractor fails to notify the Owner in writing and obtain its direction pursuant to the foregoing article 7.01.26 and performs any part of the Work knowing same to be in breach of any laws, by-laws, ordinances, rules, regulations, codes and orders of any authority having jurisdiction, the Contractor shall be responsible for and shall correct each such breach and shall bear all costs, expense and damages attributable thereto.
- .29 The whole Work and every portion and detail thereof shall, during construction, be protected by the Contractor from damage from any cause whatsoever, and shall at time of completion, be put and left by the Contractor in good and satisfactory condition, finished in all respects, and at that time, must be fully up to the requirements of the Contract in every particular.

GC 7.02 Layout

Where the Contract Documents provide for the Contractor to layout the Work, subclauses .01 to [.07](#), below, shall apply.

Layout by Contractor:

- .01 Prior to commencement of construction, the Contract Administrator and the Contractor will locate on site those property bars, baselines and benchmarks which are necessary to delineate the Working Area and to lay out the Work, all as shown on the Contract Drawings.
- .02 The Contractor shall be responsible for the preservation of all property bars while the Work is in progress, except those property bars which must be removed to facilitate the Work. Any other

property bars disturbed, damaged or removed by the Contractor's operations shall be replaced by an Ontario Land Surveyor, at the Contractor's expense.

- .03 At no extra cost to the Owner, the Contractor shall provide the Contract Administrator with such materials and devices as may be necessary to lay out the baseline and benchmarks, and as may be necessary for the inspection of the Work.
- .04 The Contractor shall provide qualified personnel to lay out and establish all lines and grades necessary for construction. The Contractor shall notify the Contract Administrator of any layout work carried out, so that the same may be checked by the Contract Administrator.
- .05 The Contractor shall install and maintain substantial alignment markers and secondary benchmarks as may be required for the proper execution and inspection of the Work. The Contractor shall supply one copy of all alignment and grade sheets to the Contract Administrator.
- .06 The Contractor shall assume full responsibility for alignment, elevations and dimensions of each and all parts of the Work, regardless of whether the Contractor's layout work has been checked by the Contract Administrator.
- .07 All stakes, marks and reference points provided by the Contract Administrator shall be carefully preserved by the Contractor. In the case of their destruction or removal as a result of the Contractor's operations, such stakes, marks and reference points will be replaced by the Contract Administrator at the Contractor's expense.

GC 7.03 Damage by Vehicles or Other Equipment

- .01 If at any time, in the opinion of the Contract Administrator, damage is being done or is likely to be done to any Roadway or any improvement thereon, outside the Working Area, by the Contractor's vehicles or other equipment, whether licensed or unlicensed equipment, the Contractor shall, on the direction of the Contract Administrator, and at no extra cost to the Owner, make changes or substitutions for such vehicles or equipment, and shall alter loadings, or in some other manner, remove the cause of such damage to the satisfaction of the Contract Administrator.

GC 7.04 Excess Loading of Motor Vehicles

- .01 Where a vehicle is hauling Material for use on the Work, in whole or in part upon a Highway, and where motor vehicle registration is required for such vehicle, the Contractor shall not cause or permit such vehicle to be loaded beyond the legal limit specified in the Highway Traffic Act, R.S.O. 1990, c.H.8, as amended, whether such vehicle is registered in the name of the Contractor or otherwise, except where there are designated areas within the Working Area where overloading is permitted. The Contractor shall bear the onus of weighing disputed loads.

GC 7.05 Condition of the Working Area

- .01 The Contractor shall maintain the Working Area in a tidy condition and free from the accumulation of debris, other than that caused by the Owner or others.

GC 7.06 Maintaining Roadways and Detours

- .01 Where an existing Roadway is affected by construction, it shall be kept open to traffic, and the Contractor shall, except as otherwise provided in this subsection, be responsible for providing and maintaining for the duration of the Work, a road through the Working Area, whether along an existing Highway, including the road under construction, or on detours within or adjacent to the

Highway, in accordance with the MUTCD.

- .02 The Contractor shall not be required to maintain a road through the Working Area until such time as the Contractor has commenced operations or during seasonal shut down or on any part of the Contract that has been accepted in accordance with these General Conditions. The Contractor shall not be required to apply de-icing chemicals or abrasives or carry out snowplowing.
- .03 Where localized and separated sections of the Highway only are affected by the Contractor's operations, the Contractor will not be required to maintain intervening sections of the Highway until such times as these sections are located within the limits of the Highway affected by the Contractor's general operations under the Contract.
- .04 Where the Contract Documents provide for, or the Contract Administrator requires, detours at specific locations, payment for the construction of the detours, and if required, for the subsequent removal of the detours, will be made at the Contract prices appropriate to such work.
- .05 The Contractor shall maintain, in a satisfactory condition for traffic, a road through the Working Area, at the Owner's expense. The road through the Working Area will include any detour constructed in accordance with the Contract Documents or required by the Contract Administrator. Compensation for all labour, equipment and materials to do this work shall be at the Contract prices appropriate to the work and, where there are no such prices, at negotiated prices. Notwithstanding the foregoing, the cost of blading required to maintain the surface of such roads and detours shall be deemed to be included in the prices bid for the various tender items and no additional payment will be made.
- .06 Where work under the Contract is discontinued for any extended period including seasonal shutdown, the Contractor shall, when directed by the Contract Administrator, open and place the Roadway and detours in a passable, safe and satisfactory condition for public travel.
- .07 Where the Contractor constructs a detour which is not specifically provided for in the Contract Document, or required by the Contract Administrator, the construction of the detour and, if required, the subsequent removal shall be performed at the Contractor's expense. The detour shall be constructed and maintained to structural and geometric standards approved by the Contract Administrator. Removal and site restoration shall be performed as directed by the Contract Administrator.
- .08 Where, with the prior written approval of the Contract Administrator, the Highway is closed and the traffic diverted entirely off the Highway to any other Highway, the Contractor shall, at no extra cost to the Owner, supply, erect and maintain traffic control devices in accordance with the MUTCD.
- .09 Compliance with the foregoing provisions shall in no way relieve the Contractor of obligations under subsection [GC 6.01](#), Protection of Work, Persons and Property, dealing with the Contractor's responsibility for damage claims, except for claims arising on sections of Highway within the Working Area that are being maintained by others.

GC 7.07 Access to Properties Adjoining the Work and Interruption of Utility Services

- .01 The Contractor shall provide at all times, and at no extra cost to the Owner,
 - a) adequate pedestrian and vehicular access; and
 - b) continuity of Utility services to properties adjoining the Working Area.
- .02 The Contractor shall provide at all times and at no extra cost to the Owner access to fire hydrants,

and water and gas valves located in the Working Area.

- .03 Where any interruptions in the supply of Utility services are required and are authorized by the Contract Administrator, the Contractor shall give the affected property owners notice in accordance with subsection [GC 7.11](#), Notices by the Contractor, and shall arrange such interruptions so as to create a minimum of interference to those affected.

GC 7.08 Approvals and Permits

- .01 Except as specified in subsection [GC 4.02](#), Approval and Permits, the Contractor shall obtain and pay for any permits, licenses, and certificates which at the date of Work Assignment RFQ closing, are required for the performance of the Work.
- .02 The Contractor shall arrange for all necessary inspections required by the approvals and permits specified in paragraph [GC 7.08.01](#).

GC 7.09 Suspension of Work

- .01 The Contractor shall, upon written notice from the Contract Administrator, discontinue or delay any or all of the Work and work shall not be resumed until the Contract Administrator so directs in writing. Delays, in these circumstances, will be administered according to subsection [GC 3.08](#), Delays.

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

- .01 If the Owner is adjudged bankrupt or makes a general assignment for the benefit of creditors because of insolvency or if a receiver is appointed because of insolvency, the Contractor may, without prejudice to any other right or remedy the Contractor may have, by giving the Owner or receiver or trustee in bankruptcy written notice, terminate the Contract.
- .02 If the Work is stopped or otherwise delayed for a period of 30 Days or more under an order of a court or other public authority and provided that such order was not issued as the result of an act or fault of the Contractor or of anyone directly employed or engaged by the Contractor, the Contractor may, without prejudice to any other right or remedy the Contractor may have, by giving the Owner written notice, terminate the Contract.
- .03 The Contractor may notify the Owner in writing, with a copy to the Contract Administrator, that the Owner is in default of contractual obligations if,
 - a) the Contract Administrator fails to issue certificates in accordance with the provisions of [Section GC 8.0](#) Measurement and Payment;
 - b) the Owner fails to pay the Contractor, within 30 Days of the due dates identified in clause [GC 8.02.03](#), Certification and Payment, the amounts certified by the Contract Administrator or within 30 Days of an award by an arbitrator or court; or
 - c) the Owner violates the requirements of the Contract.
- .04 The Contractor's written notice to the Owner shall advise that if the default is not corrected in the 7 Days immediately following the receipt of the written notice the Contractor may, without prejudice to any other right or remedy the Contractor may have, stop the Work or terminate the Contract.
- .05 If the Contractor terminates the Contract under the conditions set out in this subsection, the Contractor shall be entitled to be paid for all work performed according to the Contract Documents and for any losses or damage as the Contractor may sustain as a result of the

termination of the Contract.

GC 7.11 Notices by the Contractor

- .01 Before work is carried out which may affect the property or operations of any Ministry or agency of government or any person, company, partnership or corporation, including a municipal corporation or any board or commission thereof, and in addition to such notices of the commencement of specified operations as are prescribed elsewhere in the Contract Documents, the Contractor shall give at least 48 hours' advance written notice of the date of commencement of such work to the person, company, partnership, corporation, board, or commission so affected.
- .02 In the case of spills, as defined in section 79, Ontario Environmental Protection Act, or successor legislation, or damage to, or interference with any utilities, pole lines, pipe lines, conduits, farm tiles, or other public or privately owned works or property, the Contractor shall immediately notify the Owner and the Contract Administrator of the location and details of such spill, damage or interference. In the case of spills, the Contractor shall also, immediately, report the spill to the MOE.

GC 7.12 Obstructions

- .01 Except as otherwise noted in these General Conditions, the Contractor assumes all the risks and responsibilities arising out of any obstruction encountered in the performance of the Work and any traffic conditions, including traffic conditions on any Highway or road giving access to the Working Area caused by such obstructions, and the Contractor shall not make any claim against the Owner for any loss, damage or expense occasioned thereby.
- .02 Where the obstruction is a Utility or other man-made object, the Contractor shall not be required to assume the risks and responsibilities arising out of such obstruction, unless the location of the obstruction is shown on the plans or described in the specifications and the location so shown is within the tolerance specified in paragraph [GC 2.01.01,a](#)) or unless the presence and location of the obstruction has otherwise been made known to the Contractor or could have been determined by the visual site investigation made by the Contractor in accordance with these General Conditions.
- .03 During the course of the Contract, it is the Contractor's responsibility to consult with Utility companies or other appropriate authorities for further information in regard to the exact location of these Utilities, to exercise the necessary care in construction operations, and to take such other precautions as are necessary to safeguard the Utility from damage.

GC 7.13 Limitations of Operations

- .01 Except for such work as may be required by the Contract Administrator to maintain the Work in a safe and satisfactory condition, the Contractor shall not carry on operations under the Contract on days other than Working Days without permission in writing from the Contract Administrator, except as otherwise required by the Contract.
- .02 The Contractor shall cooperate with other Contractors, Utility companies and the Owner and they shall be allowed access to their work or plant at all reasonable times.

GC 7.14 Cleaning Up Before Acceptance

- .01 Upon attaining Substantial Performance of the Work, the Contractor shall remove surplus materials, tools, construction machinery and equipment not required for the performance of the remaining Work. The Contractor shall also remove all temporary works and debris other than

that caused by the Owner, or others and leave the Work and Working Area clean and suitable for occupancy by the Owner unless otherwise specified.

- .02 The Work shall not be deemed to have reached Completion until the Contractor has removed surplus materials, tools, construction machinery and equipment. The Contractor shall also have removed debris, other than that caused by the Owner, or others.

GC 7.15 Warranty

- .01 The Contractor shall be responsible for the proper performance of the Work only to the extent that the design and specifications permit such performance.
- .02 Subject to the previous paragraph the Contractor shall correct promptly, at no additional cost to the Owner, defects or deficiencies in the Work which appear, prior to and during the period of 12 months after the date of Substantial Performance or such longer or shorter periods as may be specified elsewhere in the Contract documents for certain equipment, materials or components of work. The Contract Administrator will promptly give the Contractor written notice of observed defects or deficiencies.
- .03 The Contractor shall correct or pay for damage resulting from corrections made under the requirements of paragraph [GC 7.15.02](#).
- .04 The Contractor's warranty obligations shall apply as well to any further labour and/or material provided by the Contractor in fulfilment of those obligations, but only for the balance of the applicable warranty period.
- .05 The warranty given pursuant to this article shall not limit extended warranties on any items of equipment or material called for in the Specifications.
- .06 The Contractor shall, to the extent permitted by the manufacturer/supplier of any item or material as part of the Work, assign to the Owner the benefit of any warranty by such manufacturer/supplier in addition to the warranty as provided in paragraph 7.15.02 hereof.

GC 7.16 Character of workers

- .01 The Contractor shall employ only orderly, competent and skillful workers to do the Work and whenever the Contract Administrator shall inform the Contractor in writing that any worker or workers involved in the Work are, in the opinion of the Contract Administrator, incompetent, or disorderly such worker or workers shall be removed from the work and shall not again be employed on the work without the consent in writing of the Contract Administrator.

GC 7.17 Resident or property owner complaints or claims

- .01 The Contractor shall immediately upon becoming aware of a complaint or claim made by a resident or property owner, inform the Contract Administrator.

GC 7.18 Contractor's responsibility for drainage

- .01 The Contractor shall keep all portions of the Work well, properly and efficiently drained, to at least the same degree as that of the existing drainage conditions, during construction and until the Work is completed. The Contractor shall be solely responsible for all damages caused by or resulting from water backing up or flowing over, under, through, from, on or along any part of the works or which any of his operations may cause to flow elsewhere and shall bear such costs, make such provisions and provide such indemnity as required in the Contract Documents, in default of which the same remedies shall be available to the Owner as are stipulated in the

Contract Documents. It is understood that in the case where the contractor has complied with the above requirements and that the damages were a result of rare and severe weather conditions, beyond the ability of the existing drainage system, the contractor shall not be held responsible.

GC 7.19 Blasting

- .01 The Contractor shall not carry out any blasting operation except with the written consent of the Contract Administrator, provided that any consent so granted shall not under any circumstances relieve the Contractor of the liabilities and obligations assumed by him under this Contract.
- .02 The Contractor shall comply with all laws and regulations respecting the handling, storage and use of explosives.

SECTION GC 8.0 MEASUREMENT AND PAYMENT

GC 8.01.01 Not Used

GC 8.01.02 Not Used

GC 8.01.03 Variations in Work Assignment RFQ Quantities

- .01 Where it appears that the quantity of work to be done and/or Material to be supplied by the Contractor under a unit price Work Assignment RFQ item will exceed or be less than the Work Assignment RFQ quantity, the Contractor shall proceed to do the work and/or supply the Material required to complete the Work Assignment RFQ item and payment will be made for the actual amount of Work done and/or Materials supplied at the unit prices stated in the Work Assignment RFQ except as provided below:
 - a) In the case of a Major Item where the quantity of Work performed and/or Material supplied by the Contractor exceeds the tender quantity by more than 15%, either party to the Contract may make a written request to the other party to negotiate a revised unit price for that portion of the Work performed and/or Material supplied which exceeds 15% of the tender quantity. The negotiation shall be carried out as soon as reasonably possible. Any revision of the unit price shall be based on the reasonable cost of doing the work and/or supplying the Material under the tender item plus a reasonable allowance for profit and applicable overhead.
 - b) In the case of a Major Item where the quantity of work performed and/or material supplied by the Contractor is less than 85% of the tender quantity, the Contractor may make a written request to negotiate for the portion of the actual overheads and fixed costs applicable to the amount of the underrun in excess of 15% of the tender quantity. For purposes of the negotiation, the overheads and fixed costs applicable to the item are deemed to have been prorated uniformly over 100% of the tender quantity for the item. Overhead costs shall be confirmed by a statement certified by the Contractor's senior financial officer or auditor and may be audited by the Owner. Alternatively, where both parties agree, an allowance equal to 10% of the unit price on the amount of the underrun in excess of 15% of the tender quantity will be paid.

Written requests for compensation must be received no later than 30 Days after the issuance of the Completion Certificate.

GC 8.02 Payment

GC 8.02.01 Price for Work

- .01 Prices for the Work shall be full compensation for all labour, Equipment and Material required in its performance. The term "all labour, Equipment and Material" shall include Hand Tools, supplies and other incidentals.
- .02 Payment for work not specifically detailed as part of any one item and without specified details of payment will be deemed to be included in the items with which it is associated.

GC 8.02.02 Advance Payments for Material

- .01 The Owner may make advance payments for Material intended for incorporation in the Work upon the written request of the Contractor and according to the following terms and conditions:
 - a) The Contractor shall, in advance of receipt of the shipment of the Material, arrange for adequate and proper storage facilities and notify the Contract Administrator of their locations.
 - b) The value of aggregates, processed and stockpiled, shall be assessed by the following procedure:
 - i. Sources Other Than Commercial:
 - i. Granular 'A', 'B' and 'M' shall be assessed at the rate of 60% of the Contract price.
 - ii. Coarse and fine aggregates for hot mix asphaltic concrete, surface treatment and Portland cement concrete shall be assessed at the rate of 25% of the Contract price for each aggregate stockpiled.
 - ii. Commercial Sources:
 - i. Payment for separated coarse and fine aggregates will be considered at the above rate when such materials are stockpiled at a commercial source where further processing is to be carried out before incorporating such materials into a final product. Advance payments for other materials located at a commercial source will not be made.
 - c) Payment for all other materials, unless otherwise specified elsewhere in the Contract, shall be based on the invoice price, and the Contractor shall submit proof of cost to the Contract Administrator before payment can be made by the Owner.
 - d) Materials shall be prorated against the appropriate tender item by paying for sufficient units of the item to cover the value of the material. Such payment shall not exceed 80% of the Contract price for the item.
 - e) All Materials for which the Contractor wishes to receive advance payment shall be placed in the designated storage location immediately upon receipt of the material and shall thenceforth be held by the Contractor in trust for the Owner as collateral security for any monies advanced by the Owner and for the due completion of the Work. The Contractor shall not exercise any act of ownership inconsistent with such security, or remove any Material from the storage locations, except for inclusion in the Work, without the consent, in writing, of the Contract Administrator.
 - f) Such materials shall remain at the risk of the Contractor who shall be responsible for any loss, damage, theft, improper use or destruction of the material however caused.
- .02 Where the Owner makes advance payments subject to the conditions listed in paragraph [GC 8.02.02.01](#), such payment shall not constitute acceptance of the Material by the Owner. Acceptance shall only be determined when the material meets the requirements of the appropriate specifications.

GC 8.02.03 Certification and Payment

GC 8.02.03.01 Progress Payment Certificate

- .01 Applications for payment on account may be made monthly as the Work progresses.
- .02 Application for payment shall be dated the last day of the agreed monthly payment period and the amount claimed shall be for value, proportionate to the amount of the Contract, of Work performed at that date.
- .03 The Contractor shall submit to the Contract Administrator, at least 14 days before the first application for payment, a schedule of values for the parts of the Work, aggregating the total amount of the Contract Price, so as to facilitate the evaluation of applications for payment.
- .04 The schedule of values shall be made out in such form and supported by such evidence as the Contract Administrator may reasonably direct and when accepted by the Contract Administrator, shall be used as the basis for application for payment, unless it is found to be in error.
- .05 The Contractor shall include a statement based on the schedule of values with each application for payment. The application for payment will show:
 - a) the quantities of Work performed;
 - b) the value of Work performed;
 - c) any advanced payment for Materials;
 - d) the amount of statutory holdback, liens, Owner's set-off;
 - e) the amount of HST as applicable; and
 - f) the amount due the Contractor.
- .06 With each application for payment the Contractor shall submit a Certificate of Clearance from the Workplace Safety and Insurance Board (WSIB). With each application after the first, the Contractor shall submit a Statutory Declaration of Progress Payment Distribution, verifying payment to subcontractors and suppliers.
- .07 The Contract Administrator will issue to the Owner, no later than 10 Working Days after receipt, an application for payment from the Contractor. If the Contract Administrator amends the application, the Contract Administrator will promptly notify the Contractor in writing giving reasons for the amendment.
- .08 The Owner shall make payment to the Contractor no later than 30 Working Days after the date of the certificate for payment issued by the Contract Administrator.
- .09 When payment is made to the Contractor on a Progress Payment Certificate, the Contractor shall promptly pay to every Sub-Contractor employed by him/her any amount properly due such sub-contractor on account of Work covered by such Certificate.
- .10 No progress or interim estimate or certificate shall release the Contractor or his/her surety from any responsibility, or be taken as evidence of any such release, or as an acceptance of any Work or material, or as a waiver of any condition of the Contract.

GC 8.02.03.02 Not Used

GC 8.02.03.03 Not Used

GC 8.02.03.04 Certification of Substantial Performance

- .01 When the Contractor considers that the Work is substantially performed, or if permitted by the lien legislation applicable to the place if Work a designated portion thereof which the Owner agrees to accept separately is substantially performed, the Contractor shall prepare and submit to the Contract Administrator a comprehensive list of items to be completed or corrected and apply for a review by the Contract Administrator to establish Substantial Performance of the Work or substantial performance of the designated portion of the Work. Failure to include an item on the list does not alter the responsibility of the Contractor to complete the Contract.
- .02 No later than 10 days after receipt of the Contractor's list and application, the Contract Administrator will review the Work to verify the validity of the application, and no later than 7 days after completing the review, will notify the Contractor whether the Work or the designated portion of the Work is substantially performed.
- .03 Immediately prior to the issuance of the certificate of Substantial Performance of the Work, the Contractor, in consultation with the Contract Administrator, 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.
- .04 Prior to submitting its written application for Substantial Performance of the Work, the Contractor shall submit to the Contract Administrator all:
 - .1 guaranteed;
 - .2 warranties;
 - .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 Work;
 - .11 Shop drawings and marked up Drawings;
 - .12 completed as-built drawings in the latest edition of a computer assisted design drawings 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 Contract Administrator that the Work has been substantially performed in conformance with the requirements of municipal, governmental and utility authorities having jurisdiction in the place of Work.

- .05 Where the Contractor is unable to deliver the documents and materials described in paragraph GC 8.02.03.04.04, 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 Contract Administrator 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 GC 8.02.03.04.04.7, or completed as-built drawings as required in GC 8.02.03.04.04.12. Any documents or materials not delivered in accordance with paragraph GC 8.02.03.04.04 shall be delivered as provided in paragraph GC 8.02.03.07.01.

- .06 Upon application by the Contractor and where the Contract has been substantially performed the Contract Administrator will issue a Certificate of Substantial Performance.
- .07 The Contract Administrator will set out in the Certificate of Substantial Performance the date on which the Contract was substantially performed and within 7 Days after signing the said certificate the Contract Administrator will provide a copy to the Contractor.
- .08 Upon receipt of a copy of the Certificate of Substantial Performance, the Contractor shall forthwith, as required by Section 32(1) Paragraph 5 of the Construction Lien Act, R.S.O. 1990, c.C.30, as amended, publish a copy of the certificate in a construction trade newspaper. Such publication shall include placement in the Daily Commercial News.
- .09 Where the Contractor fails to publish a copy of the Certificate of Substantial Performance as required above within 7 Days after receiving a copy of the certificate signed by the Contract Administrator, the Owner may publish a copy of the certificate at the Contractor's expense.
- .10 Except as otherwise provided for in Section 31 of the Construction Lien Act, the 45-day lien period prior to the release of holdback as referred to in clause [GC 8.02.03.05](#), Substantial Performance Payment and Statutory Holdback Release Payment Certificates, shall commence from the date of publication of the Certificate of Substantial Performance as provided for above.

GC 8.02.03.05 Substantial Performance Payment and Substantial Performance Statutory Holdback Release Payment Certificates

- .01 When the Contract Administrator issues the Certificate of Substantial Performance the Contract Administrator will also issue the Substantial Performance Payment Certificate and the Substantial Performance Statutory Holdback Release Payment Certificate or where appropriate, a combined payment certificate.
- .02 The Substantial Performance Payment Certificate will show,
 - a) the value of Work performed to the date of Substantial Performance;
 - b) the value of outstanding or incomplete Work; the amount of the statutory holdback, allowing for any previous releases of statutory holdback to the Contractor in respect of completed subcontracts and deliveries of pre-selected equipment;
 - c) the amount of maintenance security required; and
 - d) the amount due the Contractor.
- .03 Payment of the amount certified will be made within 30 Days of the date of issuance of the payment certificate.
- .04 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. Payment of such statutory holdback shall be due 46 Days after the date of publication of the Certificate of Substantial Performance but subject to the provisions of the Construction Lien Act and the submission by the Contractor of the following documents:
 - a) a Release and Waiver form by the Contractor in a form satisfactory to the Contract Administrator releasing the Owner from all further claims relating to the Contract, qualified by stated exceptions such as outstanding work or matters arising out of subsection [GC 3.14](#), Claims, Negotiations, Mediation;
 - b) a statutory declaration in a form satisfactory to the Contract Administrator that all liabilities

- incurred by the Contractor and the Contractor's Subcontractors in carrying out the Contract have been discharged except for statutory holdbacks properly retained;
- c) a satisfactory Certificate of Clearance from the Workplace Safety and Insurance Board (WSIB); and
 - d) proof of publication of the Certificate of Substantial Performance.

GC 8.02.03.06 Certification of Completion

- .01 Upon application by the Contractor, and when the Contract reaches Completion, the Contract Administrator will issue a Completion Certificate.
- .02 The Contract Administrator will set out in the Completion Certificate the date on which the Work was completed and within 7 Days of signing the said certificate the Contract Administrator will provide a copy to the Contractor.

GC 8.02.03.07 Completion Payment and Completion Statutory Holdback Release Payment Certificates

- .01 The Contractor's application for final payment shall be accompanied by any documents or materials not yet delivered pursuant to paragraph GC 8.02.03.04.04. 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 Contract Administrator.
- .02 When the Contract Administrator issues the Completion Certificate, the Contract Administrator will also issue the Completion Payment Certificate and the Completion Statutory Holdback Release Payment Certificate or where appropriate, a combined payment certificate.
- .03 The Completion Payment Certificate will show,
 - a) measurement and value of Work at Completion;
 - b) the amount of the further statutory holdback based on the value of further work completed over and above the value of work completed shown in the Substantial Performance Payment Certificate referred to above; and
 - c) the amount due the Contractor.
- .04 The Completion Statutory Holdback Release Payment Certificate will be a payment certificate releasing to the Contractor the further statutory holdback. Payment of such statutory holdback shall be due 46 Days after the date of Completion of the Work as established by the Completion Certificate but subject to the provisions of the Construction Lien Act and the submission by the Contractor of the following documents:
 - a) a Release and Waiver form by the Contractor in a form satisfactory to the Contract Administrator releasing the Owner from all further claims relating to the Contract, qualified by stated exceptions where appropriate;
 - b) a statutory declaration in a form satisfactory to the Contract Administrator that all liabilities incurred by the Contractor and the Contractor's Subcontractors in carrying out the Contract have been discharged, qualified by stated exceptions where appropriate; and
 - c) a satisfactory Certificate of Clearance from the Workplace Safety and Insurance Board.

GC 8.02.03.08 Not Used

GC 8.02.03.09 Not Used

GC 8.02.03.10 Not Used

GC 8.02.03.11 Owner's Set-off

- .01 Pursuant to Section 12 of the Construction Lien Act, the Owner may retain from monies owing to the Contractor under this Contract any sums required by law to satisfy any liens against the Work and 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 which have not been determined in writing by the Contractor's insurer, undetermined claims by the Owner, any assessment due the Workplace Safety and Insurance Board and any monies to be paid to the workers in accordance with clause [GC 8.02.05](#), Payment of Workers.
- .02 Under these circumstances the Owner will give the Contractor appropriate notice of such action.

GC 8.02.03.12 Not Used

GC 8.02.04 Not Used

GC 8.02.05 Payment of Workers

- .01 The Contractor shall, in addition to any fringe benefits, pay the workers employed on the Work in accordance with the labour conditions set out in the Contract and at intervals of not less than twice a month.
- .02 The Contractor shall require each Subcontractor doing any part of the Work to pay the workers employed by the Subcontractor on the Work in accordance with paragraph [GC 8.02.05.01](#).
- .03 Where any person employed by the Contractor or any Subcontractor or other person on the Work is paid less than the amount required to be paid under the Contract, the Owner may set off monies in accordance with clause [GC 8.02.03.11](#), Owner's Set-off.

GC 8.02.06 Records

- .01 The Contractor shall maintain and keep accurate Records relating to the Work, Changes in the Work, Extra Work and claims arising therefrom. Such Records shall be of sufficient detail to support the total cost of the Work, Changes in the Work, and Extra Work. The Contractor shall preserve all such original Records until 12 months after the Final Acceptance Certificate is issued or until all claims have been settled, whichever is longer. The Contractor shall require that Subcontractors employed by the Contractor preserve all original Records pertaining to the Work, Changes in the Work, Extra Work and claims arising therefrom for a similar period of time.
- .02 If, in the opinion of the Contract Administrator, Daily Work Records are required, such records shall report the labour and Equipment employed and the Material used on any specific portion of the Work. The Daily Work Records shall be reconciled with and signed by the Contractor's representative each day.
- .03 The Owner may inspect and audit the Contractor's Records relating to the Work, Extra Work and

Changes in the Work at any time during the period of the Contract. The Contractor shall supply certified copies of any part of its Records required whenever requested by the Owner.

GC 8.02.07 Taxes and Duties

- .01 Where a change in Canadian Federal or Provincial taxes occurs after the date of the Work Assignment RFQ closing for this Contract, and this change could not have been anticipated at the time of bidding, the Owner will increase or decrease Contract payments to account for the exact amount of tax change involved.
- .02 Claims for compensation for additional tax cost shall be submitted by the Contractor to the Contract Administrator on forms provided by the Contract Administrator to the Contractor. Such claims for additional tax costs shall be submitted not less than 30 Days after the date of Final Acceptance.
- .03 Where the Contractor benefits from a change in Canadian Federal or Provincial taxes, the Contractor shall submit to the Contract Administrator, on forms provided by the Contract Administrator, a statement of such benefits. This statement shall be submitted not later than 30 Days after Final Acceptance.
- .04 Changes in Canadian Federal or Provincial taxes which impact upon commodities, which when left in place form part of the finished Work, or the provision of services, where such services form part of the Work and where the manufacture or supply of such commodities or the provision of such services is carried out by the Contractor or a Subcontractor, are subject to a claim or benefit as detailed above. Services in the latter context means the supply and operation of equipment, the provision of labour and the supply of commodities, which do not form part of the Work.

GC 8.02.08 Liquidated Damages

- .01 It is agreed by the parties to the Contract that if all the work called for under the Contract is not completed within the time specified or any extension thereof by the Contract Administrator, damage will be sustained by the owner, and that it is and will be impracticable and extremely difficult to ascertain and determine the actual damage which the Owner will sustain in the event of and by reason of such delay and the parties hereto agree that the Contractor will pay to the Owner Five Hundred Dollars (\$500.00), or as otherwise indicated in the Contract Documents, for liquidated damages for each and every Working Day's delay in finishing the Work beyond the date of completion or number of days prescribed. It is agreed that this amount is an estimate of actual damage to the City which will accrue during the period in excess of the prescribed date of completion, and is not a penalty.

The Owner may deduct any amount under this paragraph from any monies that may be due or payable to the Contractor on any account with respect to the same Contract. The liquidated damages payable under this paragraph are in addition to and without prejudice to any other remedy action or other alternative that may be available to the Owner.

PART 2 – SPECIFIC TERMS AND CONDITIONS

1. OCCUPATIONAL HEALTH AND SAFETY ACT

- 1.1 Nothing in this section shall be deemed or construed as making the City the "employer" of any workers employed or engaged by the Contractor to perform the Work and/or supply services to the project, including any part thereof, or the "constructor", either instead of or jointly with the Contractor. "Employer" and "constructor" shall have the same meaning as in section 1 of the Occupational Health and Safety Act, R.S.O. 1990, Chapter O.1, as amended from time to time, including any regulations thereunder and successor legislation (hereinafter collectively referred to as the "OHSA").
- 1.2 Unless specifically advised otherwise in writing by the Consultant or otherwise directed by the Ministry of Labour, where the Work consists of or includes construction, the Contractor shall for the purposes of the OHSA be deemed, construed and designated as the "constructor" for the project comprising the Work and shall:
- (a) assume all of the responsibilities of that constructor as set out in the OHSA and its regulations including, without restricting the generality of the foregoing,
 - (i) registration as a constructor with the Director of the Construction Health and Safety Branch in accordance with the OHSA and, in particular section 5 of Regulation 213/91 or any successor provision;
 - (ii) posting/compliance with any applicable notice-filing and notice-posting/availability requirements of the OHSA and, in particular section 6 of Regulation 213/91 under or any successor provision;
 - (b) provide the City with adequate written proof of the registration referred to in subsection (a) (i) of this section before commencing the Work; and
 - (c) where the notice requirements referred to in subsection (a) (ii) of this section are applicable, provide a copy of such notice to the City concurrently with the filing thereof pursuant to the OHSA.
- 1.3 In accordance with the OHSA, as amended, a list of designated substances found at the project site is appended to hereto under Section 4 – Scope of Work and forms part of this Contract.
- 1.4 The Contractor shall ensure that each prospective subcontractor engaged by the Contractor for the project has received a copy of the list of designated substances that are present at the site, provided to the Contractor by the City, before each prospective subcontractor enters into a binding contract for the supply of Work on the project, and the Contractor shall perform all other obligations as the constructor under the Contract and for the project.
- 1.5 The Contractor shall conform to and enforce strict compliance with the OHSA including, without restricting the generality of the foregoing, the Contractor's duties and obligations as an "employer" under section 25 and 26 thereof, and OHSA regulations with respect to construction, designated substances and asbestos. "Designated substance" and "hazardous material" shall have the same meaning as in the OHSA.
- 1.6 The Contractor shall:
- (a) ensure that no work will commence, and that those engaged by the Contractor are aware of and comply with the requirements of the OHSA and shall not commence work, without first reporting their arrival and intent at the Work site on the first day to the Consultant;
 - (b) establish and maintain at each Work site, in a manner easily available to all workers, other staff and authorized City staff, a copy of all relevant Material Data Safety Sheets ("MSDS");
 - (c) deliver to the Consultant a list of all designated substances and a copy of the MSDS for each hazardous material, both as defined in the OHSA, that will be brought to the Project site and/or used in the performance of the Work, no later than Five (5) working days following execution of the Contract and at least Ten (10) working days prior to commencement of the Work;
 - (d) not bring onto the Work site any designated substance or hazardous material without the prior written authorization of the Consultant;
 - (e) strictly conform to and comply with, all applicable laws, statutes, regulations, orders, directives and rulings from any federal, provincial or municipal governmental authority pertaining to lead and any

other designated substance(s) or hazardous material(s), including without limitation, the OHSA and all regulations thereunder, and also cause its subcontractors to do so;

- (f) submit to the Consultant a copy of the Notice of Project issued to the Ministry of Labour;
- (g) should the Contractor be issued a notice/directive as either an "order to comply" or a "stop work order", immediate corrective measures shall be taken by the Contractor. A copy of the notice/directive shall be delivered to the Consultant immediately.
- (h) promptly report to the Consultant all accidents involving personal injury or property damage that occur in connection with the work; and
- (i) take all steps necessary to prevent the spread of lead-containing dust/particles and any other designated substance(s) or hazardous material(s) from the Work site when performing Work involving, but not limited to, lead-containing paint, and to protect the Contractor, those engaged by the Contractor in performance of the Work, City employees and all others, including the general public, likely to be at or near the Work site.

1.7 Where the Work includes removal of asbestos, the Contractor shall:

- (a) conform to and enforce strict compliance with all applicable laws, statutes, regulations, orders, directives and rulings from any federal, provincial or municipal governmental authority governing workplace safety or asbestos on construction projects and in building and repair operations with respect to the removal of asbestos, air testing and removal of barriers, including without limitation, OHSA Reg. 278/05 (Designated Substance --- Asbestos on Construction Projects and in Buildings and Repairs Operations), hereinafter referred to as the "Asbestos Regulation", as may be amended from time to time;
- (b) ensure, through appropriate air testing and such other measures as may be appropriate and necessary, that the Work site and adjacent areas not been contaminated with asbestos during the performance of the Work; and
- (c) prior to dismantling any barriers erected to contain asbestos and asbestos-containing materials, the Contractor shall provide written confirmation to the Consultant that, after conducting proper air testing and other due diligence measures, the area is safe in accordance with the requirements of the OHSA.

1.8 Asbestos

1.8.1 If, during the course of the Work, the Contractor or any of the subcontractors or suppliers engaged by the Contractor, disturb material that is believed to be asbestos containing material, separate and apart from asbestos abatement work forming part of the Contract, the Contractor shall act in strict compliance with the OHSA, including but not limited to the Asbestos Regulation, and without limiting the generality of the foregoing, shall:

- (a) Stop work and evacuate the area where the asbestos containing material is believed to have been disturbed and take all precautions or actions mandated by the OHSA and notify the City immediately;
- (b) Notify the Consultant via telephone, with written notification to follow as soon as possible; and
- (c) Refrain from entering the work area for any reason whatsoever until safe to do so, in accordance with the requirements of the OHSA and, prior to re-entry, notify the Consultant for approval to recommence Work.

1.8.2 The Contractor shall ensure that all employees, including the employees of any subcontractors, are trained on the City's asbestos management program (the "Program") prior to the commencement of the work. The training will include the specific requirements of the Program and the record containing the City's inventory report, including,

- (a) the location of all asbestos containing material described in the record for the work location, including drawings, plans and specifications;
- (b) whether the material is friable or non-friable;
- (c) a description of the condition of the material.

1.8.3 Prior to the commencement of the Work, the Contractor shall confirm to the City in writing that the training described in section 1.8.2 has been completed.

- 1.8.4 The Contractor shall ensure that all employees, including the employees of any subcontractors, are trained on the City's asbestos report prepared in accordance with section 10 of the Asbestos Regulation. The training shall include the specific requirements of the report including,
- (a) the location of all asbestos containing material described in the record for the work location, including drawings, plans and specifications;
 - (b) whether the material is friable or non-friable;
 - (c) a description of the condition of the material.
- 1.8.5 Prior to the commencement of the work, the Contractor shall confirm to the City in writing that the training described in paragraph 1.8.4 has been completed.
- 1.9 The Contractor shall use all reasonable and due care to avoid spilling or disturbing any designated substance(s) or hazardous material(s) of which the City notifies the Contractor are or may be on the site; and shall not remove or interfere with any designated substance(s) or hazardous material(s) except in full compliance with the OHSA and, after notifying the Consultant, being authorized to do so by the Consultant. The Contractor shall, following discovery that any designated substance or hazardous material has been removed or interfered with other than in compliance with this subsection, forthwith report same to the Consultant and ensure that no further such non-complying removal or interference occurs.
- 1.10 Where the Contractor encounters designated substance(s) or hazardous material(s) at the site or has reasonable grounds to believe that designated substance(s) or hazardous material(s) are or may be present at the site, the Contractor shall take all reasonable steps as deemed necessary to comply with the OHSA, including stopping the Work, to ensure that no person suffers injury, sickness, or death and that no property is injured or destroyed as a result of exposure to or the presence of such substance(s) or material(s), and immediately report the circumstances to the Consultant and any other appropriate authority, in writing. Where there is a delay by reason of so doing, the Contractor shall be entitled to its reasonable costs, to the extent directly incurred by reason of that delay and directly related to designated substance(s) or hazardous material(s) which existed at the site prior to the commencement of the Work which were not disclosed by the City.
- 1.11 Authorized representatives of the City shall, at all times, have access to the Work site to monitor the Contractor's compliance with the terms of the Contract.
- 1.12 During the course of the Work, the Contractor shall furnish forthwith to the City of Toronto Health and Safety Manager, via the Consultant, a copy of all correspondence, reports, compliance orders or charges arising from or issued in respect to the requirements of the OHSA which are received or which come to the notice of the Contractor that apply or are relevant to any of the Work or activities conducted under the terms of the Contract.
- 1.13 Without limiting any other right, remedy or privilege of the City under this Contract or otherwise provided by law, statute or in equity, where the Contractor has failed to strictly comply with the OHSA or any other health and safety duty, obligation or requirement of the Contractor, whether express or implied, the City shall have the right to:
- (a) Require the Contractor to remedy such default, by the removal of any workers from the Work that fail to comply with the OHSA (or any other health and safety plan, policy or program requirement of the Contract) or the taking of such other measures as may be necessary to remedy such default;
 - (b) Suspend or Stop the Work;
 - (c) Cancel or Terminate the Contract; and/or
 - (d) Exercise any other right, remedy or privilege available to the City for default or breach of this Contract available under the terms of this Contract, or may be available in law, by statute or in equity.
- 1.14 In the event that the City exercises the right to suspend or stop the Work or an affected part thereof, as a result of the failure by the Contractor to strictly comply with the OHSA or any other health and safety duty, obligation or requirement of the Contractor, such Work or part thereof shall not resume until any such violation has been completely rectified to the satisfaction of the Consultant.
- 1.15 The Contractor shall be responsible for any delay in the progress of the Work as a result of any violation of a health and safety requirements of any federal, provincial or municipal governmental authority, it being understood that no such delay shall be deemed or construed as an "Unavoidable

Delay" for the purposes of extending the time for performance for the Work or entitling the Contractor to additional compensation whatsoever, and the Contractor shall take all necessary steps to avoid delay in the final completion of the Work without additional cost to the City. The City shall not be responsible for any compensation, expense or liability resulting from any such delay.

- 1.16 Nothing in this Contract shall be construed as requiring the City to monitor or approve the workplace health and safety practices of the Contractor. The City shall not be liable to any person by reason of a breach by the Contractor or any subcontractor of any applicable health and safety standard or requirement.

2. WORKPLACE SAFETY AND INSURANCE ACT

Before commencing Work the Contractor shall provide the City with a valid clearance certificate from the Workplace Safety & Insurance Board (WSIB), and shall continue to provide valid clearance certificates from the WSIB for the duration of the Contract. Prior to the release of final monies owing by the City of Toronto, the Contractor will be required to produce a certificate issued by the Board to the effect that she/he and her/his subcontractors have paid in full their assessment based on a true statement of the amount of payrolls. If such a certificate cannot be provided because the Contractor is considered by WSIB to be an independent operator without coverage, a letter to this effect from the WSIB shall be provided by the Contractor.

3. ORGANIZATION OF WORK AND WORK RESTRICTIONS

The Contractor shall be attentive to the needs of pedestrians that are visually or physically impaired, and the Contractor must be prepared at all times to assist in the safe and comfortable passage of these pedestrians.

The Contractor shall, from time to time, adopt such approved construction or operating methods in carrying out the work as may be called for due to changing conditions that may be encountered during the progress thereof

4. PRE-CONSTRUCTION SURVEY AND LAYOUT

4.1 Pre-Construction Survey

The Contractor shall perform a pre-construction survey to identify property bars, and to establish baselines and benchmarks necessary for the delineation of Working Area and layout of the Works.

4.2 Layout by Contractor

Prior to commencement of construction, the Consultant and the Contractor will locate on site those property bars, baselines and benchmarks which are necessary to delineate the Place of the Work and to lay out the Work, all as shown on the Contract Drawings.

The Contractor shall be responsible for the preservation of all property bars while the Work is in progress, except those property bars which must be removed to facilitate the Work. Any other property bars disturbed, damaged or removed by the Contractor's operations shall be replaced by an Ontario Land Surveyor, at the Contractor's expense.

At no extra cost to the Owner, the Contractor shall provide the Consultant with such materials and devices as may be necessary to lay out the baseline and benchmarks, and as may be necessary for the inspection of the Work.

The Contractor shall provide qualified personnel to lay out and establish all lines and grades necessary for construction. The Contractor shall notify the Consultant of any layout work carried out, so that the same may be checked by the Consultant.

The Contractor shall install and maintain substantial alignment markers and secondary benchmarks as may be required for the proper execution and inspection of the Work. The Contractor shall supply one copy of all alignment and grade sheets to the Consultant.

The Contractor shall assume full responsibility for alignment, elevations and dimensions of each and all parts of the Work, regardless of whether the Contractor's layout work has been checked by the Consultant.

All stakes, marks and reference points provided by the Consultant shall be carefully preserved by the Contractor. In the case of their destruction or removal as a result of the Contractor's operations, such stakes, marks and reference points will be replaced by the Consultant at the Contractor's expense.

5. DISPOSAL OF SURPLUS EXCAVATED MATERIAL AND REMOVALS

All surplus excavated materials, removals, grindings and all other debris, including that from sewer flushing and catch basin cleaning, shall be disposed of, off site. No separate payment shall be made for the costs associated with this work.

The City of Toronto will not make arrangements for the disposal of surplus materials or supply bills of lading.

The Contractor shall assume full ownership of the surplus excavated material and shall be solely responsible for its removal and disposal. The Contractor shall indemnify and hold harmless the City and each of its elected officials, officers, employees and agents from and against all claims, demands, actions, suits or proceeding which may arise in connection with the excavated material and the handling and disposal thereof.

Stockpiling of excavated material within the City street allowance is not permitted. The Contractor shall dispose of all excavated material off site immediately upon removal. No additional payment will be made for costs incurred as a result of this requirement.

6. SMOG ALERT PROPOSAL PLANS

The Contractor, when notified by the Consultant that the City's Smog Alert Proposal Plan has been implemented, shall, where applicable:

- suspend use of oil based products except for roadway line painting required to address safety concerns or to reduce traffic congestion;
- suspend all pesticide spraying;
- suspend grass cutting operations;
- not allow refuelling during daytime hours;
- not permit equipment and vehicle idling;
- curtail the use of two-stroke engines as much as practical;
- suspend normal street sweeping of all roadways during daytime hours except where there is an urgent need for clean-up, i.e. following a special event such as Caribana;
- suspend the operation of loop cutting tar pots; and
- suspend any non-essential planned traffic control device installation or modification work which will require lane closures or require complete deactivation of the traffic control device. Work that is required to address safety concerns or to reduce traffic congestion may continue.

Asphalt paving operations using SS-1 tack coat (water based) may continue.

A Smog Alert may be preceded by a Smog Watch. A Smog Watch is issued when there is a 50 percent chance that a smog day is coming within the next three (3) days. The Contractor shall not be entitled to any additional payment or extension of Contract Time due to the implementation of the Smog Alert Proposal Plans.

Notwithstanding the above, if it is necessary and the Consultant ordered the suspension of paving operations, payment and/or extension of the Contract for the suspension of asphalt paving operations shall only be made if notification by the Executive Director or General Manager to suspend work is made in less than four hours prior to starting of such operations, and if such suspension has detrimentally impacted on the Contractor's work schedule. The Contractor shall provide supporting documentation identifying the

impact and associated fair and reasonable costs and any delay in accordance with the General Conditions of Contract 3.08 Delays, as amended by the Supplementary Conditions.

Payment for this work, at actual costs incurred, shall be made under the appropriate provisional item(s) identified in the Pricing Form and in accordance with the General Conditions of Contract 8.0 Measurement and Payment.

7. SECURITY

The Contractor shall be responsible for the security of the work of this Contract from the time the job site is turned over to him until all work has been completed.

The Contractor shall take all necessary precautions to ensure that the construction site does not pose a hazard to the public for the duration of the project. Appropriate safety and warning signs must be posted. All such site security measures shall be removed from the site at the completion of the project.

The Contractor shall install a Parks, Forestry & Recreation construction site sign that shall be posted in a prominent area. The sign, conforming to the current sign protocol and which will list a contact number, will be provided by the City at no cost to the Contractor for installation by the Contractor.

No additional separate payment will be made for such work and provisions.

8. MATERIAL AND TRUCK WEIGHING

The City reserves the right to randomly verify the quantity of materials supplied in connection with this Contract. Prior to unloading of materials that are priced on a unit weight basis ("unit weight materials"), the weight tickets must be provided to the Consultant (or in his/her absence, the City's inspector). Material weight tickets that are not provided to the Consultant or the City's inspector prior to unloading will not be accepted later for payment.

When directed by the Consultant or the City's inspector, trucks carrying unit weight materials shall proceed immediately to a City's weighing facility as specified by the Contractor Administrator or the inspector. After passing through the City's weight scale and unloading the materials, the empty truck shall return to the same facility to verify the vehicle tare if so directed by the Consultant or the City's inspector.

Should the weight verification show that the verified weight of the material is less than what is shown on the Contractor's weight ticket by more than 1.0%, the payment for the affected load shall be made based on the weight measured by the City's weighing facility.

City staff will also adjust the method of measurement for all following loads that are not weight-verified but have been delivered to the site before a new weight verification process can prove the Contractor had rectified the weight inconsistency. The weight of the following loads will be adjusted based on an adjustment factor determined from the most recently weight-verified load

The City will not compensate contractors for any cost associated with the weight verification process.

9. NOISE REGULATIONS

The Contractor shall comply with all City noise bylaws. In addition, the Contractor shall ensure the following:

- Equipment shall be maintained in an operating condition that prevents unnecessary noise, including but not limited to proper muffler systems, properly secured components and the lubrication of all moving parts; and
- Idling of equipment shall be restricted to the minimum necessary for the proper performance of the specified work.

10. FAIR WAGE AND LABOUR TRADES POLICY

Fair Wage and Labour Trades Policy apply to this Contract as set out in RFSQ 3717-18-5013.

11. LIQUIDATED DAMAGES

The Contractor recognizes and agrees that the City will suffer financial loss if substantial performance of the Contract is not achieved within the time specified in this Contract. The Contractor also recognizes the delays, expenses and difficulties involved in proving the actual loss suffered by the City if substantial performance of the Contract is not achieved 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 City the sum of \$200.00 (TWO HUNDRED DOLLARS) per day as liquidated damages for each and every calendar day's delay from the specified time for the achievement of substantial performance of the Contract until substantial performance of the Contract is achieved, 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 City due to any failure to complete the Work within the time required by this Contract;
- (b) the City 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; and,
- (c) the liquidated damages provided for in this section shall be without prejudice to any other remedy to which the City is entitled at law or in equity.

12. SPILLS REPORTING

Spills or discharges of pollutants or contaminants under the control of the Contractor, and spills or discharges of pollutants or contaminants that are a result of the Contractor's operations that cause or are likely to cause adverse effects shall forthwith be reported to the Consultant. Spills or discharges and their adverse effects shall be as defined in the Environmental Protection Act R.S.O. 1990, c. E.19, as may be amended.

All spills or discharges of liquid, other than accumulated rain water, from luminaries, internally illuminated signs, lamps, and liquid type transformers under the control of the Contractor, and all spills or discharges from this equipment that are a result of the Contractor's operations shall, unless otherwise indicated in the Contract, be assumed to contain PCBs and shall forthwith be reported to the Consultant.

This reporting will not relieve the Contractor of his legislated responsibilities regarding such spills or discharges.

13. NO ADDITIONAL PAYMENT FOR INCREASED COSTS

The Contract Price shall not be increased or decreased by reason of any increase or decrease in the cost of the Work brought about by any increase or decrease in the cost of plant, equipment, labour, materials or the wage rates called for by the Contract Documents.

14. PROTECTION OF WORK AND PROPERTY

Until the Owner accepts the Work, the Contractor shall at the Work site:

- .1 provide adequate protection satisfactory to the Consultant for all individuals and property by taking whatever measures are necessary and required by the Occupational Health and Safety Act including but not limited to: (temporary hoardings, flexible or solid drop or suspended sheeting, tarpaulins and so on) to minimize the areas/spaces over/onto/through which effects (including, without restricting the generality of the foregoing, fragments, particles, dust, gases, odours and noise) resulting from the Work fall, pervade or intrude;
- .2 protect existing buildings, walls, floors, ceilings, furnishings, equipment, plant materials, lawns and other areas from the risk of damage resulting from the Work;
- .3 protect the Work from damage from any cause;
- .4 protect and be responsible for all new finished and unfinished parts of the Work which are exposed and susceptible to vandalism or theft;

- .5 include in the work necessary methods, materials and labour to ensure that no damage or harm occurs to the work, materials, property and persons resulting from the performance of this contract;
- .6 protect existing mechanical, electrical, telephone and similar services from damage. If necessary, relocate active services to ensure that they function continuously in safety without risk of damage;
- .7 provide adequate protection of materials and work from damage and staining by weather and other causes. Protect adjacent materials and work of other trades, to prevent damage. Make good any damage;
- .8 have final responsibility for all portions of the building affected by the work, and all damage, soiling and staining occurring during the progress of the work, and, until the work is completed, will be required to be made good at no additional cost to the Owner;
- .9 protect adjoining properties from all damage, soiling and staining during constructions period, and during any period when the work is closed down for any cause;
- .10 design temporary Work to prevent the overloading of any part of the structure or other temporary Work;
- .11 protect from damage due to construction activities and the elements all existing finishes, services, utilities, structural elements and equipment to remain. Make good damage at no expense to Owner;
- .12 provide for the protection and safety of all workmen, pedestrian and vehicles in and around the work area. Provide, install and maintain barricades, signs, guardrails, etc., as required. At the conclusion of each day's work, provide all precautions necessary for the protection and safety of pedestrians and vehicles. Conform to the Ministry of Labour regulations during the Work;
- .13 do not close or obstruct nor store materials in roadways, sidewalks or passageways with put prior approval from Owner. Do not interfere with the use of the safe passage to and from the buildings and adjacent public sidewalks and roads;
- .14 provide and pay for storage and removal of garbage, if interrupted by the Work, and obtain approval of storage location (s) from the Owner prior to commencement of Work;
- .15 provide and arrange for traffic control, where necessary, for delivery of materials, removal of garbage, etc., as required by the laws, ordinances, rules and regulations relating to the Work;
- .16 take the necessary precautions to keep dust, dirt and noise to an acceptable level, as directed by the Owner. Comply with the laws, ordinances, rules and regulations relating to the Work in connection with the above;
- .17 provide all safety data sheets with materials used and ensure that users are given instructions on the proper use of the materials and safety precautions required; and
- .18 protect all services against damage or interruption and notify Owner at least 48 hours in advance of any necessary interruption. Any claims resulting from damage shall be the Contractor's responsibility and shall be immediately corrected by the Contractor.

15. PUBLIC CONVENIENCE AND SAFETY

- .1 The Contractor shall at all times carry on the Work in a manner that will create the least interference with or inconvenience to the public consistent with the faithful performance of the Work and employ such watchmen or flagmen as are necessary in order to ensure the safety of the public and of those engaged on the Work. If at any time the Contractor fails to carry out the above requirements, the Owner may correct such an unsatisfactory condition and the cost of such correction shall be deducted from any monies due or to become due to the Contractor on any account but in any event the Contractor shall remain responsible under the said requirements. The Contractor shall at his own expense take all proper precautions and provide, erect and maintain, to the satisfaction of the Contact Administrator, all requisite barriers, fences, notices, signs and electric light.

- .2 Any trench that is part of the Work, such as a sewer or water main trench, and that is near any public conveyance stop for the taking on or discharging of passengers, must be protected so that passengers may safely alight.

16. CONVENIENCE

- .1 It shall be the responsibility of the Contractor to arrange and pay for all temporary metered water, electrical power, heating and telephone services, necessary for the Work.
- .2 The Owner shall permit the Contractor to make use of the water and hydro facilities at the Work site, but the Contractor shall:
 - .1 under the direction of the Consultant, make all necessary temporary connections, at its own expense and in accordance with all applicable laws, by-laws, ordinances, rules, regulations, codes and orders;
 - .2 provide separate meters to record and pay for the use of the site services;
 - .3 remove all such temporary connections on the completion of the Work and make good all finishes and services to the satisfaction of the Consultant; and
 - .4 satisfy the Consultant that all accounts for water and site services have been paid before final payment is made by the Owner.
- .3 The Contractor shall provide, and properly maintain in clean condition, modern and convenient privy or water closet accommodation for his/her workers so that they shall not be a source of inconvenience, complaint or nuisance to the public, or to residents in the vicinity of the Work.

17. INTERFERENCE

- .1 The Contractor shall arrange all Work activities so as to permit the maintenance of normal building operation and traffic flow at the Work site, with a minimum of inconvenience to the users and staff of the facility or park where the Work is being carried out.
- .2 The Contractor shall ensure that no essential services such as electric power and domestic hot water supply are interrupted at the Work site for more than one (1) continuous Hour, and no longer than three (3) consecutive Hours for the heating system during the heating season except with the prior written permission of the Owner.
- .3 The Contractor shall in every case where an interruption of service is to occur, make prior arrangements with the Owner.

18. PROJECT CLOSE OUT SYSTEM DEMONSTRATIONS

The Contractor shall with respect to all installations resulting from the Work demonstrate the operation of all equipment and systems to the Owner's staff and any consultants of the Owner, and instruct such staff in the operation, adjustment and maintenance of such systems and equipment.

19. FIRE PROTECTION

- .1 The Owner shall not, in any manner, be answerable or accountable for any loss or damage by fire or otherwise that shall or may happen to the work or any part or parts thereof respectively or for any of the materials or other things used and employed in finishing and completing the work, or for any injury to any person or persons, including workers and the public, or for damage to adjoining property, against all of which injuries and damages to persons or property the Contractor shall properly guard, and make good all damage of whatsoever nature or origin which may arise out of, or be occasioned by any cause connected with the Contractor, or the work done by the Contractor, and shall indemnify and keep indemnified the Owner against same until the completion of all the work hereunder, as to which completion, the final certificate of the Consultant shall be the only evidence.
- .2 The Contractor shall also:

- .1 prior to commencing work, locate all sprinkler systems and protective or alarm systems;
- .2 provide and maintain fire extinguishers as required on the site for the protection of the building;
- .3 provide personnel performing work with open flame, volatile materials or other hazardous work with all fire protection equipment necessary for the safe operation of this equipment and the performance of the work;
- .4 all fire protection measures shall obtain required approvals and comply with all applicable laws.

20. ORDER OF PRECEDENCE

The listed documents, in order of precedence, are as follows:

- a) any amendment to the Roster Agreement between the Owner and the Contractor,
- b) the Roster Agreement between the Owner and the Contractor
- c) any addenda to the Tender Submission Package (RFSQ 3717-18-5013) for the Contract,
- d) Tender Submission Package (RFSQ 3717-18-5013) for the Contract,
- e) any addenda to the Work Assignment RFQ,
- f) the Work Assignment RFQ,
- g) the Definitions,
- h) Specific Conditions (Appendix D – Part 2),
- i) Supplementary Conditions,
- j) the General Conditions (Appendix D – Part 1),
- k) Division 1 of the Specifications,
- l) Technical Specifications,
- m) Material and finishing schedules,
- n) the Drawings.

PART 3

Tree Protection Policy and Specifications for Construction Near Trees

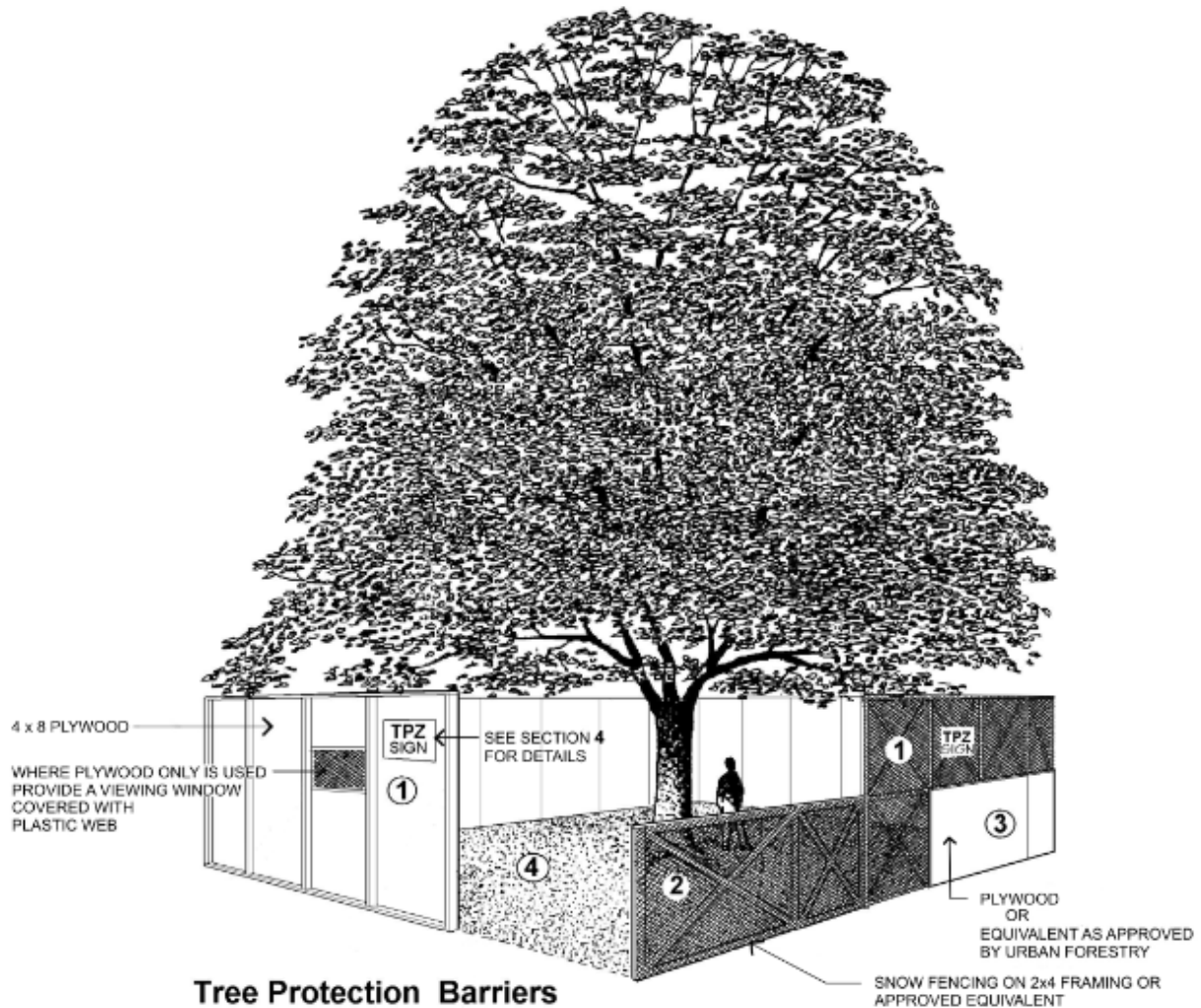


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1. Introduction

Maintenance, growth and enhancement of the urban forest are important goals of the City of Toronto. Preserving and protecting healthy trees can help the City to achieve these goals. Considering tree protection in the initial stages of construction planning may mean the difference between preserving a healthy tree and having to remove it. Plans created with tree protection in mind help protect the city's urban forest.

The tree protection policy and specifications outlined below reflect the policy of Toronto City Council. Anyone failing to adhere to the tree protection policy and specifications will be financially responsible for any resulting damage to trees and may be charged under the provisions of the applicable City of Toronto tree by-law or subject to orders to comply.

Prior to commencing with any demolition or construction activity it is important that an arborist¹ determines the location, species, size and condition of trees on the property and surrounding properties and becomes familiar with the tree protection by-laws that could impact the proposal.

The following by-laws protect trees in the City of Toronto:

- [Street Tree By-law](#), City of Toronto Municipal Code Chapter 813, Article II, protects all trees situated on City streets.
- [Private Tree By-law](#), Article III, Chapter 813 of the City of Toronto Municipal Code protects trees on private property with diameter of 30cm or more and trees of any diameter that were planted as a condition of a permit issued under this bylaw or a site plan agreement.
- The [Ravine & Natural Feature Protection By-law](#), Chapter 658 of the City of Toronto Municipal Code prohibits and regulates the injury and destruction of trees, as well as filling, grading and dumping within designated areas of the City. There is no minimum diameter for a tree to qualify for protection under the Ravine and Natural Feature Protection By-law. Trees of any size located in the designated areas qualify for protection.
- The [Parks By-law](#), Municipal Code Chapter 608, Article VII protects all trees located in a City park.

All above noted by-laws are implemented by Urban Forestry under the authority of the General Manager, Parks, Forestry and Recreation. City of Toronto's tree protection by-laws can be found at www.toronto.ca/trees.

Types of Tree Damage

Physical injury to the trunk, crown and roots of a tree will occur if construction equipment is permitted close to trees or if structures are built into the growing space of a tree. Inappropriate pruning may also result in tree injury. Physical injuries are permanent and can be fatal.

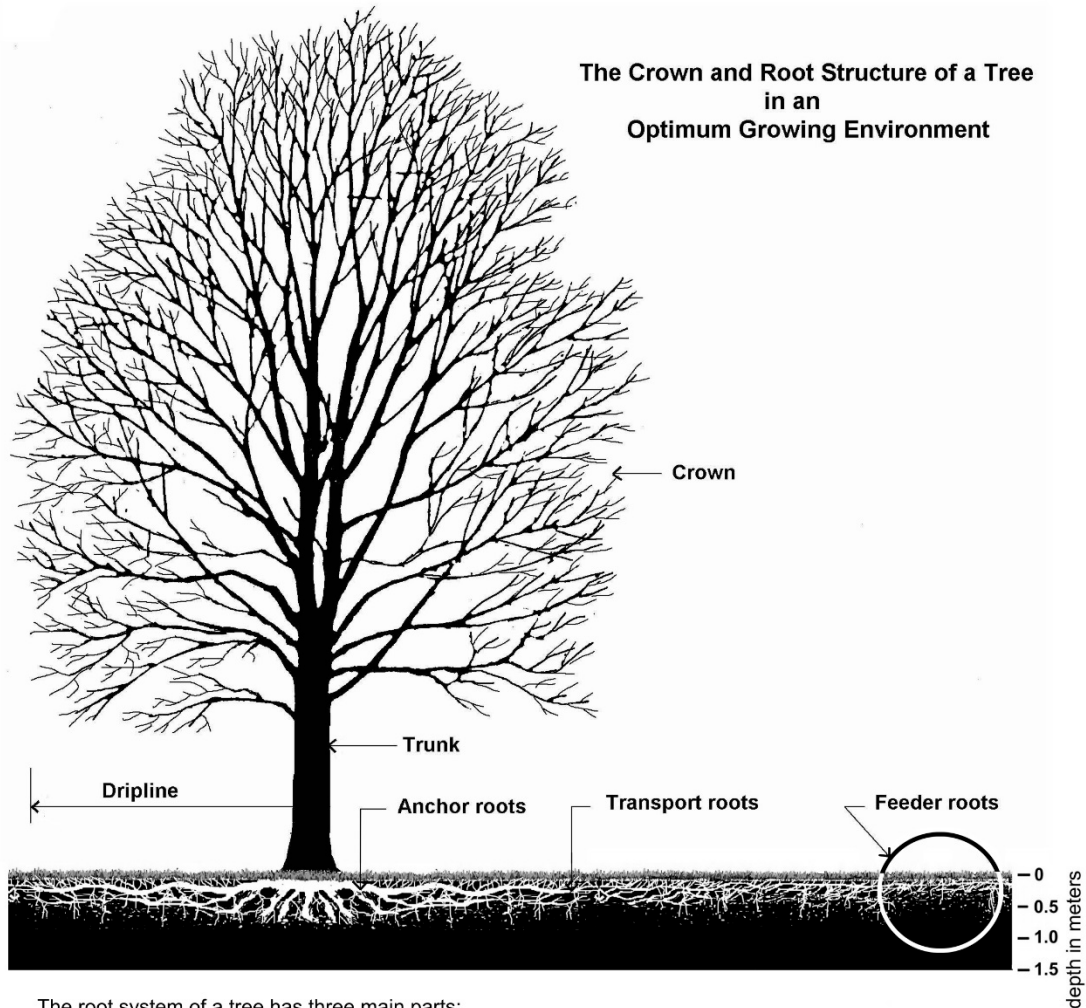
¹ Arborist – An expert in the care and maintenance of trees including an arborist qualified by the Ontario Training and Adjustment Board Apprenticeship and Client Services Branch, a certified arborist qualified by the International Society of Arboriculture, a consulting arborist registered with the American Society of Consulting Arborists, a registered professional forester or a person with other similar qualifications as approved by the General Manager, Parks, Forestry and Recreation.

Root cutting is another type of physical injury that can significantly impact the health of a tree. The majority of tree roots are found in the upper 30 to 60 cm of soil. Excavation for foundations or utility installation may cut roots if the excavation is too close to trees. Trees can become destabilized and may fall over if anchor roots are severed.

Compaction of the soil in the tree root zone is one of the leading causes of tree decline in Toronto's urban forest. Soil compaction occurs primarily from vehicles and equipment moving across the root zones. Piling or storing materials or debris on top of the root system can also result in soil compaction. Soil compaction causes the pore spaces in the soil, which contains air and water necessary for root growth, to be reduced. Without space available for oxygen and water, tree roots will suffocate and tree decline will follow. With rutting, a form of intense compaction, roots are severed by the tires of equipment. Root destruction can also be caused by changes to the existing grade. Adding soil on top of tree roots can smother them by reducing the amount of oxygen and water they can receive. Only a few centimetres of added soil can have a detrimental impact on tree health.

The structural elements of a tree in an optimal growing environment are shown on Figure 1. This figure illustrates the terms used in this policy.

The Crown and Root Structure of a Tree
in an
Optimum Growing Environment

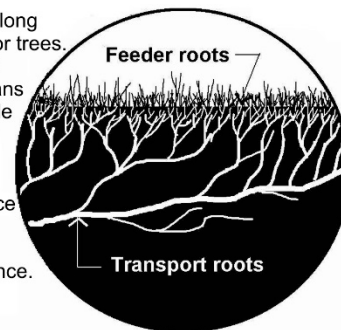


The root system of a tree has three main parts:

Forming the base of the tree are large **anchor roots** from which extend long **transport roots** which together provide the main structural framework for trees. From the transport roots extend a complex network of **feeder roots** that grow outward and upward. These non-woody roots branch out to form fans of thousands of slender roots with fine root hairs. These tiny roots provide the surface where the absorption of air, water and nutrients takes place that sustains the life of the tree.

The root system of a tree grows mainly within the top 60 cm of the surface of good quality, well drained and uncompacted soil.

The root system can extend to more than 2 to 3 times the **dripline** distance.



Urban Forestry

Parks, Forestry and Recreation

November 2015 **Detail TP - 3**

Figure 1: Urban Forestry Detail TP-3

2. Protecting Trees

There are a number of steps that can be taken to protect trees prior to, during and after any construction project. Hiring an arborist should be the first step. An arborist can advise on current tree maintenance requirements and determine the impact the proposal will have on trees and the surrounding natural environment.

An inventory of trees on subject and adjacent properties that may be impacted by the proposed work should be prepared in accordance with the City tree by-laws so that the project can be designed with tree protection in mind. A tree protection plan prepared by an arborist will identify the location, species, size and condition of all trees within the area of consideration, identify the extent of injury where applicable and outline proposed tree protection measures for the trees identified for protection.

The **area of consideration** for trees protected under the Private Tree By-law (Municipal Code, Chapter 813, Article III) includes the entire area of site disturbance, including construction related traffic and material storage, and extends 6m beyond the limit of site disturbance. For trees protected under Ravine and Natural Feature Protection By-law (Municipal Code, Chapter 658), the area of consideration includes the area of site disturbance and 12m area beyond.

The following chart provides the required distances for determining a **minimum tree protection zone (TPZ)** for trees located on a City street, in parks and on private property subject to Private Tree By-law and for trees located in areas regulated under the Ravine and Natural Feature Protection By-law. The minimum tree protection zones are based on the diameter of the tree. While these guidelines provide minimum protection distances for the anchor and transport roots of a tree, there can still be significant loss of the feeder roots beyond the established tree protection zone. Feeder roots are responsible for water and nutrient absorption and gas exchange. **For this reason, Urban Forestry may require a TPZ larger than the minimum, depending on the tree and the surrounding environment.**

Trunk Diameter (DBH) ¹	Minimum Protection Distances Required ² City-owned and Private Trees	Minimum Protection Distances Required Trees in Areas Protected by the Ravine and Natural Feature Protection By-law
		Whichever of the two is greater:
<10cm	1.2 m	The drip line ⁴ or 1.2 m
10- 29 cm	1.8 m	The drip line or 3.6 m
30 ³ – 40 cm	2.4 m	The drip line or 4.8 m
41 – 50 cm	3.0 m	The drip line or 6.0 m
51 – 60 cm	3.6 m	The drip line or 7.2 m
61 – 70cm	4.2 m	The drip line or 8.4 m
71 – 80cm	4.8 m	The drip line or 9.6 m
81 – 90 cm	5.4 m	The drip line or 10.8 m
91 – 100 cm	6.0 m	The drip line or 12.0 m
>100 cm	6 cm protection for each 1 cm diameter	12cm protection for each 1 cm diameter or the drip line ⁵

Table 1: Minimum Tree Protection Zone (TPZ) Determination

¹Diameter at breast height (DBH) measurement of tree stem taken at 1.4 metres (m) above the ground.

²Minimum Tree Protection Zone distances are to be measured from the outside edge of the tree base.

³Diameter (**30 cm**) at which trees qualify for protection under the Private Tree By-law.

⁴The drip line is defined as the area beneath the outer most branch tips of a tree.

⁵Converted from ISA Arborists' Certification Study Guide, general guideline for tree protection barriers of 1 foot of diameter from the stem for each inch of stem diameter.

The diagram below shows how the TPZ is determined:

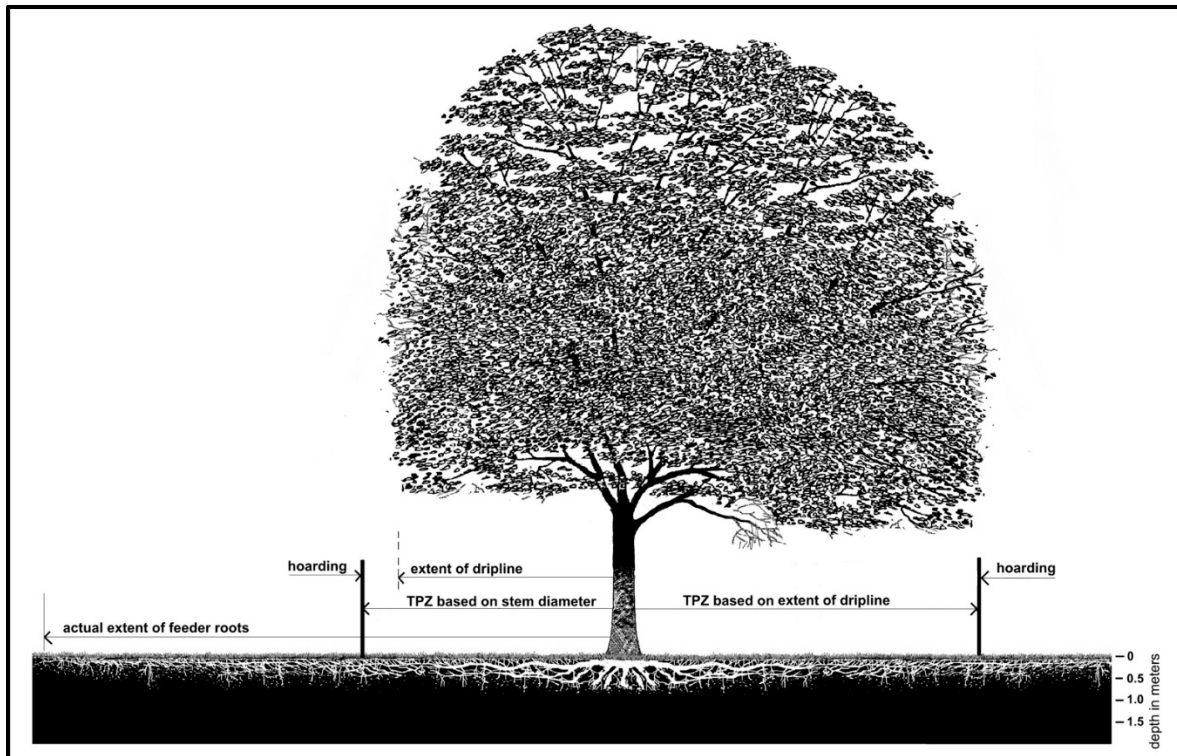


Figure 2: Minimum Tree Protection Zone (TPZ) Determination

In some cases, disturbances in the TPZ may be unavoidable, in which case, the TPZ must be adjusted in consultation with the arborist and Urban Forestry. In these situations, it may be necessary to implement other tree protection measures such as horizontal root protection as noted in section 3 of this document.

In addition to establishing and creating tree protection zones, it may be necessary to implement other protective measures, such as adding mulch to the root zone, aeration of the soil, pruning for deadwood or removing limbs that may be impacted by construction activity. This is also the time to determine the location where new trees can be planted to compliment the construction project and help with the renewal and growth of the urban forest.

Prior to commencing with any excavation, roots approved for pruning by Urban Forestry must first be exposed using pneumatic (air) excavation, by hand digging or by using a low pressure hydraulic (water) excavation. This **exploratory excavation** must be undertaken by an experienced operator under the supervision of a qualified and experienced arborist. The water pressure for hydraulic excavation must be low enough that root bark is not damaged or

removed. This will allow a proper pruning cut and minimize tearing of the roots. The arborist retained to carry out root pruning must contact Urban Forestry no less than three (3) working days prior to conducting any specified work.

Exploratory excavation may also be required for open face cuts outside the minimum tree protection zone (TPZ).

Communication between owners and their designated agents, arborists, contractors and sub-contractors throughout the construction process is critical to ensure that everyone involved is aware of the issues surrounding tree protection, and fully understands the tree protection methodology. Construction damage to trees is often irreversible.

Prohibited Activities Within a TPZ

Except where authorized by Urban Forestry, any activity which could result in injury or destruction of a protected tree or natural feature, or alteration of grade within a Ravine and Natural Feature Protection (RNFP) area, is prohibited within a TPZ, including, but not limited to, any of the following examples:

- demolition, construction, replacement or alteration of permanent or temporary buildings or structures, parking pads, driveways, sidewalks, walkways, paths, trails, dog runs, pools, retaining walls, patios, decks, terraces, sheds or raised gardens
- installation of large stones or boulders
- altering grade by adding or removing soil or fill, excavating, trenching, topsoil or fill scraping, compacting soil or fill, dumping or disturbance of any kind
- storage of construction materials, equipment, wood, branches, leaves, soil or fill, construction waste or debris of any sort
- application, discharge or disposal of any substance or chemical that may adversely affect the health of a tree e.g. concrete sludge, gas, oil, paint, pool water or backwash water from a swimming pool
- causing or allowing water or discharge, to flow over slopes or through natural areas
- access, parking or movement of vehicles, equipment or pedestrians
- cutting, breaking, tearing, crushing, exposing or stripping tree's roots, trunk and branches.
- nailing or stapling into a tree, including attachment of fences, electrical wires or signs
- stringing of cables or installing lights on trees
- soil remediation, removal of contaminated fill
- excavating for directional or micro-tunnelling and boring entering shafts

The above mentioned prohibitions are for area(s) designated as a TPZ. If possible, these prohibitions should also be implemented outside the TPZ in areas where tree roots are located. The roots of a tree can extend from the trunk to approximately 2-3 times the distance of the dripline.

3. Tree and Site Protection Measures

The following are examples of specific tree and site protection measures that may be required by Urban Forestry:

- Plywood tree protection hoarding (minimum 19mm or ¾"), or equivalent barriers, as approved by Urban Forestry, shall be installed in locations as detailed in an Urban Forestry approved Tree Protection Plan. Tree protection barriers must be made of 2.4m (8ft) high plywood hoarding or equivalent as approved by Urban Forestry. Height of hoarding may be less than 2.4m (8ft), to accommodate tree branches that may be lower, or as approved by Urban Forestry. Within a City road allowance where visibility is a consideration, 1.2m (4ft) high orange plastic web snow fencing on a 38 x 89mm (2"x 4") frame should be used. The detail on tree protection barrier construction is shown on Figure 4 in section 7 of this document
- In specific situations where the required full minimum tree protection zone (TPZ) cannot be provided, a **horizontal** (on grade) **root protection**, designed by a qualified professional such as arborist or landscape architect, may be considered, subject to approval by Urban Forestry. Urban Forestry's objective is zero soil compaction within the tree protection zone, therefore best efforts must be made to achieve this objective using materials and best practices available that minimize the vertical loading and spread the loading horizontally.
- Any area designated for stockpiling of excavated soil must be outside of TPZs and be enclosed with sediment control fencing. Sediment control fencing shall be installed in the locations as indicated in an Urban Forestry approved Tree Protection Plan. The sediment control fencing must be installed to Ontario Provincial Standards (OPSD-219.130 – see Section 7, Figure 5) and to the satisfaction of Urban Forestry. When feasible, the sediment control fencing can be attached to the tree protection barrier as shown in Figure 6. Sediment control fencing near trees shall be constructed as per detail shown on Figure 6 of this document

4. Tree Protection Signage

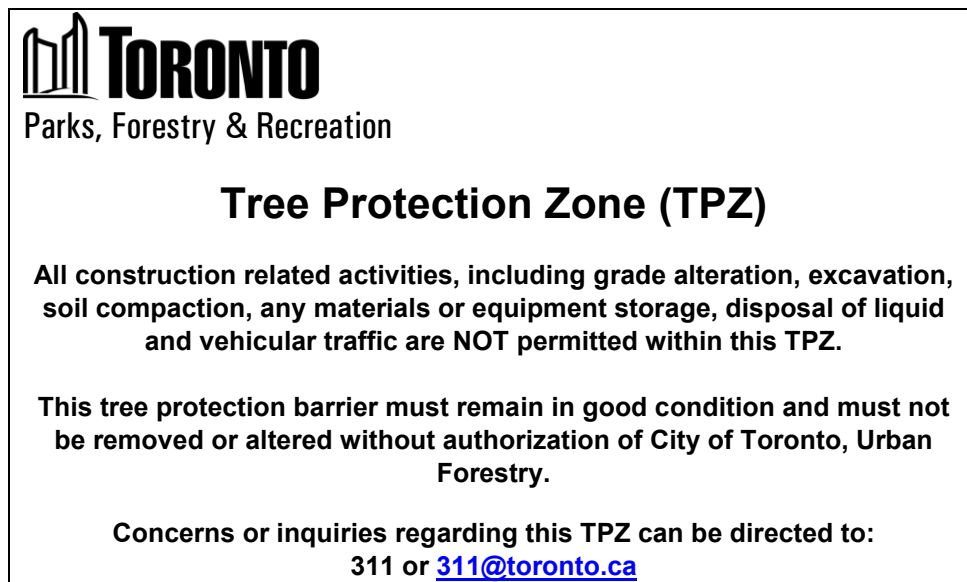


Figure 3: Tree Protection Sign

A sign that is similar to the illustration above may be required to be mounted on all sides of a tree protection barrier for trees protected by the Street Tree By-law and the Private Tree By-law. The sign should be a minimum of 40cm x 60cm and made of white corrugated plastic board or equivalent material. The sign may also be acquired from Urban Forestry Tree Protection and Plan Review (TPPR) district service counters.

5. Tree Protection Plan

All construction related applications must include a Tree Protection Plan that shows details of tree protection, prepared in conjunction with an arborist report or in consultation with an arborist, when protected trees are in proximity to the proposed work. All Tree Protection Plans must be legible, prepared at a usable metric scale and include the following information:

- Show all existing buildings, structures, hard surfaces and all existing trees within the area of consideration (as defined in Section 2 of this document). Depending on the extent of site disturbance, trees on neighbouring properties may need to be included. Note that area of disturbance must include all areas that will be disturbed by the proposed work, including the areas required for over-dig, stockpiling, construction traffic, vehicular access and construction staging
- The extent of the crown (drip line) or the extent of minimum tree protection zone TPZ (whichever is greater) of each existing tree
- Proposed changes on site, including all proposed structures, services, hard surfaces and grade changes
- Indicate vehicular access and construction staging areas. Areas proposed for temporary stockpiling of fill or excavated material shall be fenced with sediment control to prevent sediment runoff
- Indicate location of any excavation that requires root pruning
- Indicate trees proposed to be removed and/or injured
- Highlight and label tree protection barriers and the proposed tree protection zones. (See Table 1 to determine size of tree protection zone. Distances are to be measured from base of tree)
- The extent of proposed tree injury, where applicable.
- Include a comprehensive legend

See Section 6, Tree Protection Plan Notes, and Section 7, Tree Protection Plan Details, for further information.

6. Tree Protection Plan Notes

The following notes are to be included on tree protection plans submitted for construction related applications:

General Notes

- It is the applicants' responsibility to discuss potential impacts to trees located near or wholly on adjacent properties or on shared boundary lines with their neighbours. Should such trees be injured to the point of instability or death the applicant may be held

responsible through civil action. The applicant would also be required to replace such trees to the satisfaction of Urban Forestry

- Tree protection barriers shall be installed to standards as detailed in this document and to the satisfaction of Urban Forestry
- Tree protection barriers must be installed using plywood clad hoarding (minimum 19mm or ¾" thick) or an equivalent approved by Urban Forestry
- Where required, signs as specified in Section 4, Tree Protection Signage must be attached to all sides of the barrier
- Prior to the commencement of any site activity such as site alteration, demolition or construction, the tree protection measures specified on this plan must be installed to the satisfaction of Urban Forestry
- Once all tree/site protection measures have been installed, Urban Forestry staff must be contacted to arrange for an inspection of the site and approval of the tree/site protection requirements. Photographs that clearly show the installed tree/site protection shall be provided for Urban Forestry review
- Where changes to the location of the approved TPZ or sediment control or where temporary access to the TPZ is proposed, Urban Forestry must be contacted to obtain approval prior to alteration
- Tree protection barriers must remain in place and in good condition during demolition, construction and/or site disturbance, including landscaping, and must not be altered, moved or removed until authorized by Urban Forestry
- No construction activities including grade changes, surface treatments or excavation of any kind are permitted within the area identified on the Tree Protection Plan or Site Plan as a minimum tree protection zone (TPZ). No root cutting is permitted. No storage of materials or fill is permitted within the TPZ. No movement or storage of vehicles or equipment is permitted within the TPZ. The area(s) identified as a TPZ must be protected and remain undisturbed at all times
- All additional tree protection or preservation requirements, above and beyond the installation of tree protection barriers, must be undertaken or implemented as detailed in the Urban Forestry approved arborist report and/or the approved tree protection plan and to the satisfaction of Urban Forestry
- If the minimum tree protection zone (TPZ) must be reduced to facilitate construction access, the tree protection barriers must be maintained at a lesser distance and the exposed portion of TPZ must be protected using a horizontal root protection method approved by Urban Forestry
- Any roots or branches indicated on this plan which require pruning, as approved by Urban Forestry, must be pruned by an arborist. All pruning of tree roots and branches must be in accordance with good arboricultural practice. Roots that have received approval from Urban Forestry to be pruned must first be exposed using pneumatic (air) excavation, by hand digging or by a using low pressure hydraulic (water) excavation. The water pressure for hydraulic excavation must be low enough that root bark is not damaged or removed. This will allow a proper pruning cut and minimize tearing of the roots. The arborist retained to carry out crown or root pruning must contact Urban Forestry no less than three working days prior to conducting any specified work
- The applicant/owner shall protect all by-law regulated trees in the area of consideration that have not been approved for removal throughout development works to the satisfaction of Urban Forestry

- Convictions of offences respecting the regulations in the Street Tree By-law and Private Tree By-law are subject to fines. A person convicted of an offence under these by-laws is liable to a minimum fine of \$500 and a maximum fine of \$100,000 per tree, and /or a Special Fine of \$100,000. The landowner may be ordered by the City to stop the contravening activity or ordered to undertake work to correct the contravention
- Prior to site disturbance the owner must confirm that no migratory birds are making use of the site for nesting. The owner must ensure that the works are in conformance with the Migratory Bird Convention Act and that no migratory bird nests will be impacted by the proposed work

The following additional notes shall be added on plans for properties regulated by the Ravine and Natural Feature Protection Bylaw:

- Ravine and Natural Feature Protection By-law (RNFP) note:

Ravine & Natural Feature Protection By-law

The Ravine & Natural Feature Protection By-law, Chapter 658 of the City of Toronto Municipal Code, regulates the injury and destruction of trees, dumping of refuse and changes to grade within protected areas.

Under this by-law protected trees may not be removed, injured or destroyed, and protected grades may not be altered, without written authorisation from Urban Forestry Ravine & Natural Feature Protection, on behalf of the General Manager of Parks, Forestry & Recreation.

Convictions of offences respecting the regulations in the Ravine and Natural Feature Protection By-law are subject to fines, and the landowner may be ordered by the court to restore the area to the satisfaction of the City. A person convicted of an offence under this Bylaw is liable to a minimum fine of \$500 and a maximum fine of \$100,000 for each tree destroyed, a maximum fine of \$100,000 for any other offence committed under this chapter, and /or a Special Fine of \$100,000. A person convicted of a continuing offence, including failure to comply with ravine permit conditions is liable to a maximum fine of not more than \$10,000 for each day or a part of a day that the offence continues.

- The exact location of the limit of the RNFP area must be shown on all pertinent plans including Tree Protection Plan. The applicant/owner shall have this limit marked on their survey or other plans drawn to a suitable scale. This service costs \$72.37 plus tax and can be requested by contacting the City of Toronto, Information and Technology, Geospatial Competency Centre, Map Service Counter at 416-392-2506 or mapsales@toronto.ca. This line may then be transferred onto other plans to be submitted.
- Sediment control fencing shall be installed in the locations as indicated in the Urban Forestry approved sediment control plan. The sediment control fencing must be installed to Ontario Provincial Standards (OPSD-219.130, see Section 7, Figure 5) and to the satisfaction of Urban Forestry. Sediment control near trees and over root zones shall be installed as shown on Figure 6 of this document and to the satisfaction of Urban Forestry.

7. Tree Protection Plan Details

The following diagrams provide details for tree protection barriers and sediment protection barriers:

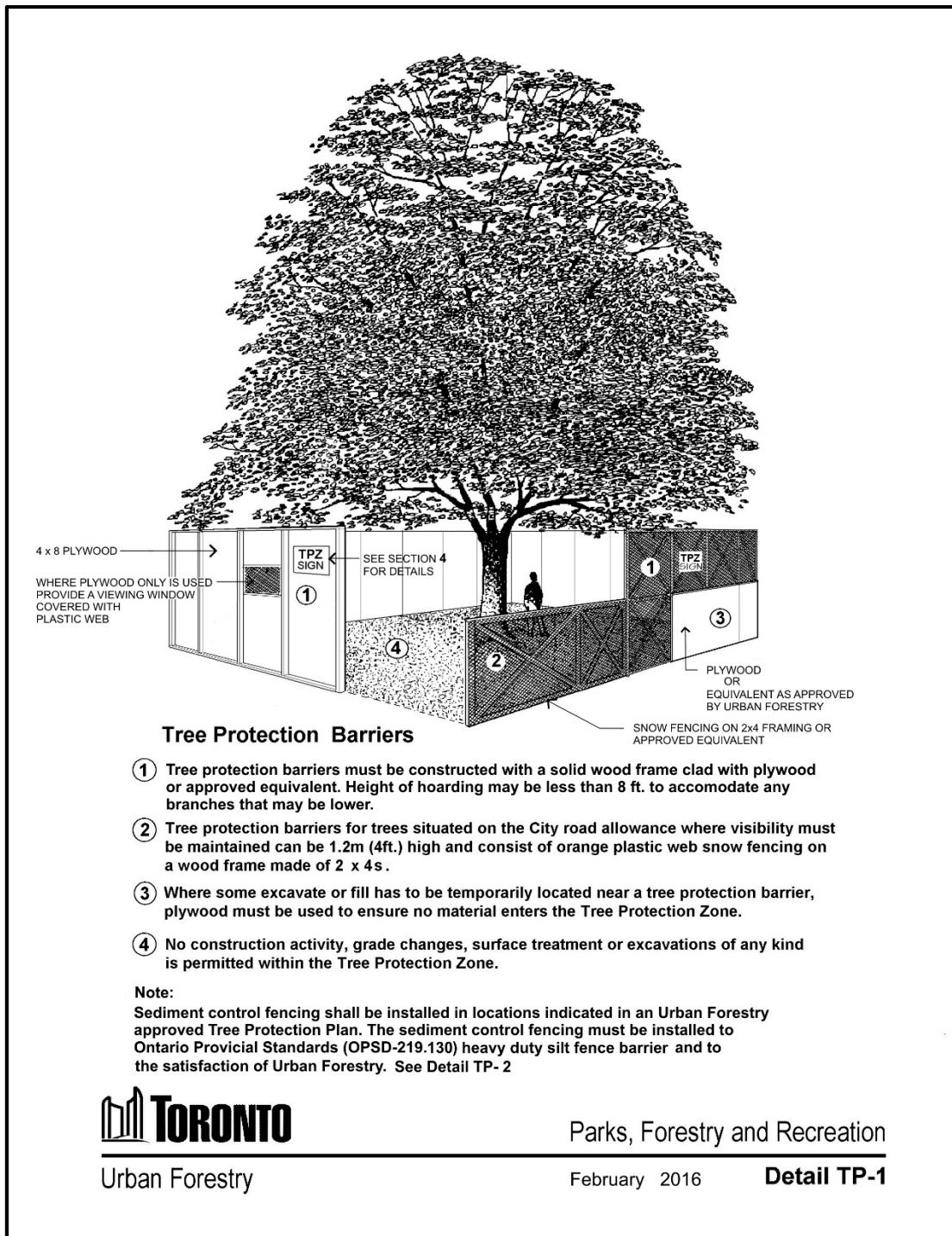


Figure 4: Urban Forestry Detail TP-1

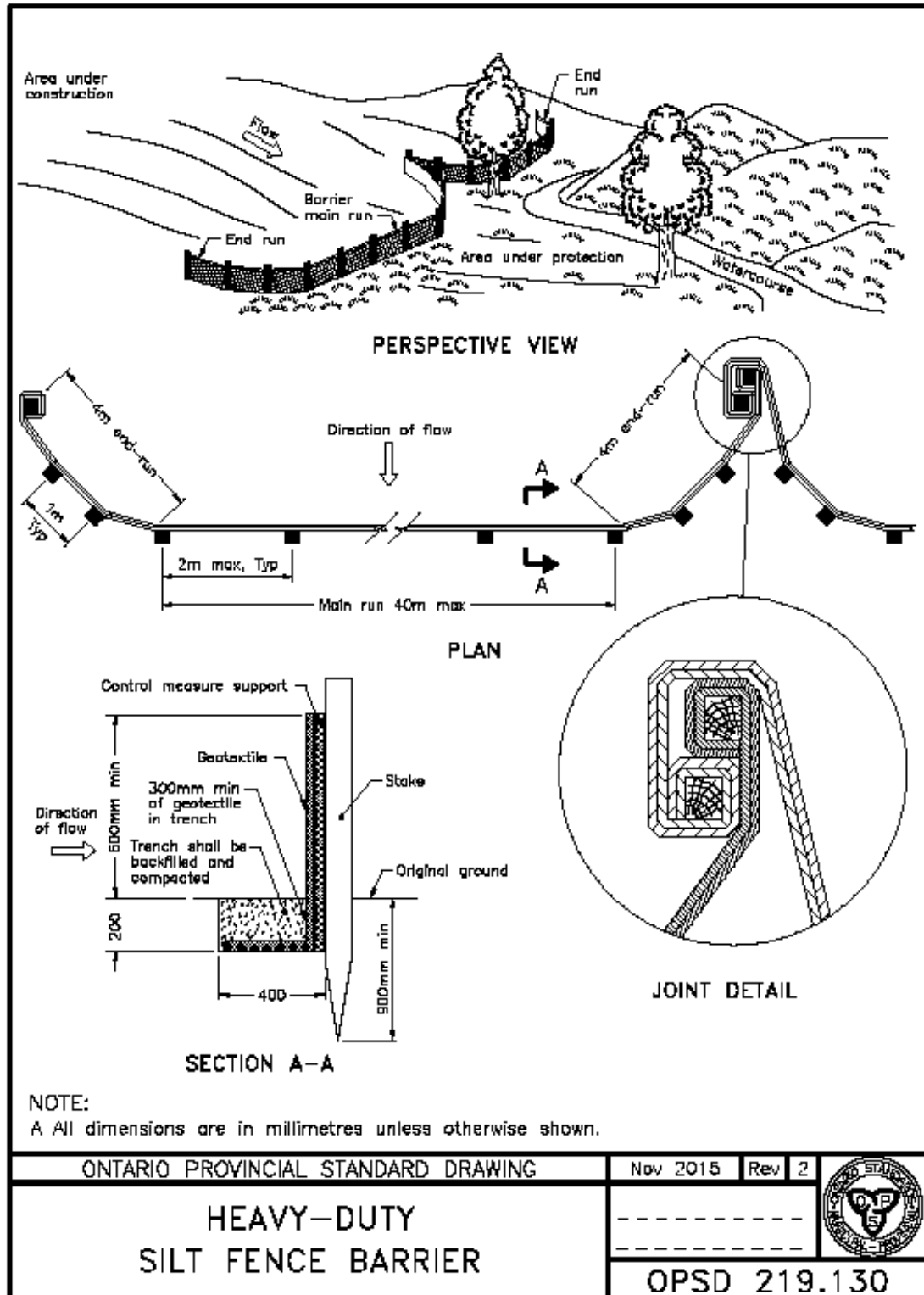


Figure 5: OPSD Detail for Heavy Duty Silt Fence Barrier

The following detail shall be used when constructing sediment protection fencing near trees.

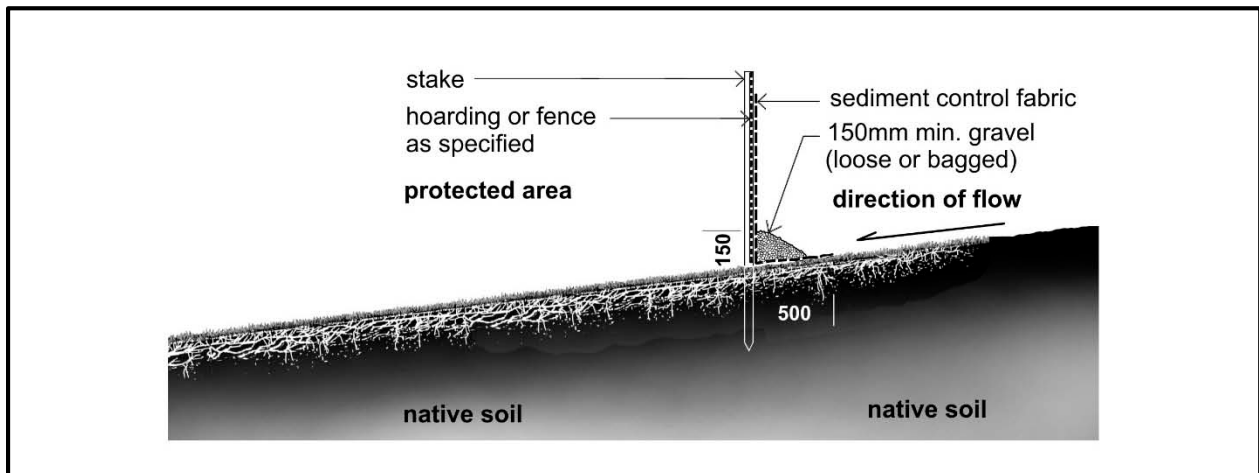


Figure 6: Sediment control barriers for use over tree root zone

8. Permits for Tree Removal or Injury

If the full minimum tree protection zone (TPZ) as identified in Section 2 cannot be provided, a permit to injure the tree must be obtained.

Any requests for removal or injury of a tree protected by City by-laws must be made on the appropriate application forms and submitted to Urban Forestry at the appropriate address. [Permit application forms](#) are available at www.toronto.ca/trees. Any requests for tree relocation will be considered as a tree injury.

If approval is granted for removal of a City-owned tree, applicants will assume all costs involved, which include appraised tree value, removal, and tree replacement costs. If approval is granted for removal of private trees or trees in ravine and natural feature protected areas, the permit will be subject to conditions, including tree replacement. If approval is granted for injury of City-owned, private trees or trees in ravine and natural feature protected areas, the permit will be subject to conditions, including implementation of a Tree Protection Plan, as determined by Urban Forestry.

In some instances, where the tree is healthy and the management of the tree or forest cover has not been addressed to the satisfaction of Urban Forestry, requests received by Urban Forestry may be forwarded to a Community Council and City Council for approval.

Urban Forestry does not have the authority to issue a permit to injure or remove a heritage tree². Such requests would be forwarded to a Community Council and/or City Council for approval.

Butternut (*Juglans cinerea*, L.) is an endangered species. Butternuts and their habitat are protected under [Endangered Species Act](#) (S.O. 2007, c.6) available on the Government of Ontario website at <http://www.ontario.ca/laws/statute/07e06/v1>. A permit to injure or remove a butternut tree must be obtained from the [Ministry of Natural Resources and Forestry Ontario](#).

² Heritage Tree – A tree that has been designated under Part IV of the Ontario Heritage Act or trees recognized as heritage trees by the Ontario Heritage Tree Program of Trees Ontario.

Any person who contravenes any provision of the City's tree protection by-law is guilty of an offence.

More information on tree protection and permit application forms for tree removal and injury are available on Urban Forestry web page at www.toronto.ca/trees.

For additional information regarding the removal or injury of trees protected under City by-laws, please call 311.

9. Tree Guarantee Deposits

Tree Protection Guarantee

Urban Forestry may request a **tree protection guarantee** to secure the protection of trees that may be impacted by work on city streets, or to secure the satisfaction of all conditions of permit issuance. Tree protection guarantees held by the City shall only be released by the City provided that all construction activities are complete, compliance with all permit terms and conditions has been verified, there has been no encroachment into the minimum tree protection zone (TPZ) and the trees are healthy and in a state of vigorous growth.

Where Urban Forestry has confirmed an unauthorized encroachment into the TPZ or the terms and conditions of a permit have not been complied with, Urban Forestry will retain the guarantee until satisfactory compliance.

It is the applicant's responsibility to submit a written request to Urban Forestry for the refund of the tree protection guarantee deposit as soon as construction and landscaping is completed.

Tree Planting Security

Urban Forestry may request a **tree planting security deposit** in an amount equal to the cost of planting and maintenance for two (2) years in order to ensure compliance with approved landscape or replanting plans. The security deposit may be held by the City after the planting of the trees for a period of two (2) years and shall be released by the City provided that the trees have been maintained, are healthy and in a state of vigorous growth upon inspection, two (2) years after planting. It is the applicant's responsibility to advise Urban Forestry that trees have been planted in accordance with approved plans, in order that the two (2) year maintenance period begin.

Prior to release by the City, any dead/dying trees must be replaced, deadwood and sucker growth should be pruned, and mulch should be topped up where necessary. If stakes and ties were used, they must be removed within one (1) year. Any encroachments are to be removed prior to assumption, including walkways, timbers or bricks that result in increased height of soil or mulch around the trees, and lights in trees.

It is the applicant's responsibility to submit a written request to Urban Forestry for the refund of a Tree Guarantee Deposit, two (2) years after the completion of all construction activity and/or two (2) years after tree planting. This request should be made during the growing season, not while

the trees are dormant, so that a site inspection can be arranged to confirm the trees are acceptable. The City will not release security deposits where trees are not in good condition, or if there are encroachments.

Financial securities must be in the form of a certified cheque, letter of credit or an alternative acceptable to Urban Forestry, with amounts payable to the Treasurer, City of Toronto.

10. Emergency Repairs to Utilities

The utility company is responsible for notifying Urban Forestry by calling 311 as soon as possible when by-law regulated trees are involved, so that an inspector can be dispatched. Urban Forestry staff may be contacted after hours by calling 311, and requesting the assistance of an on-call Urban Forestry inspector.

11. Tree Species that are Intolerant of Construction Disturbance

The following tree species are intolerant of construction disturbance, and tree protection plans must take this into account. The tree protection zones required by these species may need to be quite extensive to avoid damage to the roots and crown associated with compaction, excavation or construction above grade that will impact the branches.

Acer rubrum (red maple)
Acer saccharum (sugar maple)
Betula papyrifera (paper birch)
Carya glabra (pignut hickory)
Fagus grandifolia (American beech)
Liriodendron tulipifera (tulip tree)
Ostrya virginiana (ironwood)
Pinus resinosa (red pine)
Pinus strobus (white pine)
Prunus serotina (black cherry)
Quercus alba (white oak)
Quercus velutina (black oak)
Tsuga canadensis (eastern hemlock)
Tilia americana (basswood)

12. Contact Information

Tree Protection and Plan Review (City-owned and Private Trees)

North York District

5100 Yonge Street, 3rd Floor
Toronto, ON, M2N 5V7
Telephone: 416-395-6670
Fax: 416-395-7886
tpprnorth@toronto.ca

Etobicoke York District

399 The West Mall, Main Floor, North Block
Toronto, ON, M9C 2Y2
Telephone: 416-338-6596
Fax: 416-394-8935
tpprwest@toronto.ca

Scarborough District

150 Borough Drive, 5th Floor
Toronto, ON, M1P 4N7
Telephone: 416-338-5566
Fax: 416-396-4170
tppreast@toronto.ca

Toronto and East York District

50 Booth Avenue, 2nd Floor
Toronto, ON, M4M 2M2
Telephone: 416-392-7391
Fax: 416-392-7277
tpprsouth@toronto.ca

Ravine and Natural Feature Protection

General Enquiries

Telephone: 416-392-2513
Fax: 416-392-1915
Email: rnfp@toronto.ca

Office Location

18 Dyas Road, 1st Floor
Toronto, ON, M3B 1V5

Areas regulated under Ravine and Natural Feature Protection By-law can be viewed using the [City's mapping tool](#) available at www.toronto.ca/trees.