



THE CORPORATION OF THE CITY OF VAUGHAN

REQUEST FOR TENDER - (RFT)

COVER PAGE

| | |
|--|--|
| RFT / BID NO: | T20-246 |
| RFT / BID NAME: | Construction Services for MNR Buildings Remediation |
| CLOSING TIME: | 3:00:00 p.m. EST on November 2, 2020 |
| DEADLINE FOR QUESTIONS: | 3:00:00 p.m. EST on October 26, 2020 |
| Procurement Services Department representative for this RFT ("PR"): | Name: Scott Wigmore Title: Procurement Analyst Email address: scott.wigmore@vaughan.ca |

**BIDS WILL ONLY BE SUBMITTED ONLINE USING THE CITY'S ONLINE BIDDING SYSTEM
at <https://vaughan.bidsandtenders.ca>**

**Bidders who require accommodations due to a disability should contact the PR or call the
Procurement Services main line at 905-832-8555.**

**Late Bids will not be accepted. The lowest or any Bid will not necessarily be awarded
a Contract.**

KEY DETAILS

1. Prequalification

Must Bidder be prequalified in order to submit a Bid?

- Yes, under prequalification RFPQ # [Click or tap here to enter text.](#)
- No

2. City's RFT Consultant

If the City has appointed a third-party Architect or Engineer or Contract Administrator or other third party to assist with this Bid opportunity and/or any resulting Contract, details are as follows:

Company/Person Name: Telstorm Corporation

Role: Consultant

3. Bid Bond

Required?

- Yes, in amount of: 10% of the Bid Price
- No

4. Contract Security and Holdbacks

Agreement to Bond

Required?

- Yes
- No

Performance Bond

Required?

- Yes, in amount of: 50% of the Bid Price
- No

Must Performance Bond be renewable on an annual basis?

- Yes

No

Labour & Material Bond

Required?

Yes, in amount of: 50% of the Bid Price

No

Must L&M Bond be renewable on an annual basis?

Yes

No

Irrevocable Letter of Credit

If Bidder's Bid Price is less than \$500,000, an Irrevocable Letter Of Credit equalling the aggregate dollar value of both Bonds may be provided in lieu of a Performance Bond and Labour & Material Bond.

Holdback

Unless expressly permitted elsewhere in this RFT:

- a. City does not intend to make payment of the accrued holdback on an *annual* basis as described in section 26.1 of the Construction Act.
- b. City does not intend to make payment of the accrued holdback on a phased basis (at completion of phases of an improvement) as described in section 26.2 of the Construction Act.
- c. City will be retaining holdback in the form of funds only, not in any of the forms of holdback described in section 22(4) of the Construction Act.

5. Liquidated Damages

Applicable to Work?

Yes, in an amount of: [Click or tap here to enter text.](#) per Calendar Day.

No

6. Other Attachments to this RFT

City Standard Drawings

Geotechnical Reports

- Engineering Reports
- Architectural Reports
- Construction Specifications
- City Special/Supplemental Provisions

Note: City issued Drawings and Specifications would take precedence in the event of conflict or inconsistency with any OPSS or OPSD.

7. Other:

- (a) In the event of conflict between the provisions in this RFT and the provisions in the Bidding System Terms of Use and/or the Vendor Guide to the Bidding System, the terms in the RFT shall prevail.

[End of Key Details Document]

TABLE OF CONTENTS

| | |
|---|----|
| COVER PAGE..... | 1 |
| TABLE OF CONTENTS..... | 5 |
| DOCUMENT 1 INSTRUCTIONS TO BIDDERS..... | 7 |
| 1. DEFINITIONS | 7 |
| 3. E-SUBMISSIONS | 8 |
| 4. SUBMITTING A QUESTION..... | 11 |
| 5. BLACKOUT PERIOD | 11 |
| 6. ADDENDA..... | 11 |
| 7. ERRORS AND OMISSIONS | 12 |
| 8. CONFIDENTIALITY | 12 |
| 9. NON-COLLUSION | 13 |
| 10. ANTI-LOBBYING | 13 |
| 11. EXAMINATION OF SITE | 13 |
| 12. MANDATORY meetings | 13 |
| 13. BIDDERS COST..... | 14 |
| 14. REFERENCES..... | 14 |
| 15. SUBCONTRACTORS | 14 |
| 16. CONFLICT OF INTEREST | 15 |
| 17. BID FORM AND PRICING | 15 |
| 18. UNBALANCED BIDS..... | 15 |
| 19. PRICE COMPONENTS | 16 |
| 20. EMPLOYMENT AND LABOUR LEGISLATION..... | 16 |
| 21. PAYMENT OF WORKERS | 17 |
| 22. SCHEDULE OF ITEMS AND UNIT PRICES | 17 |
| 23. PROVISIONAL ITEMS AND QUANTITIES..... | 17 |
| 24. DIGITAL BID BOND..... | 18 |
| 25. DIGITAL AGREEMENT TO BOND | 19 |
| 26. OWNERSHIP OF AND USE OF BID ONCE SUBMITTED..... | 20 |
| 27. AMENDING A BID | 20 |
| 28. WITHDRAWING A BID..... | 20 |
| 29. IRREVOCABILITY..... | 21 |

| | | |
|------------|---|----|
| 30. | LATE BIDS..... | 21 |
| 31. | BID CHECKING..... | 21 |
| 32. | CLARIFICATIONS/CORRECTIONS..... | 21 |
| 33. | VERIFICATION | 21 |
| 34. | ACCURACY | 21 |
| 35. | LITIGATION | 21 |
| 36. | APPROVALS..... | 22 |
| 37. | FREEDOM OF INFORMATION | 22 |
| 38. | UNOFFICIAL TENDER RESULTS..... | 23 |
| 39. | DIGITAL CONTRACT SECURITY (BONDS OR IRREVOCABLE LETTER OF CREDIT REQUIRED AT TIME OF AGREEMENT SIGNING) | 23 |
| 40. | NOTIFICATION OF AWARD, EXECUTION OF AGREEMENT AND PROVISION OF REQUIRED DOCUMENTATION | 25 |
| 41. | DISQUALIFYING EVENTS | 26 |
| 42. | ADDITIONAL RESERVATION OF RIGHTS..... | 28 |
| 43. | APPLICABLE LAWS, ATTORNMENT | 30 |
| 44. | LIMITATION OF LIABILITY..... | 30 |
| 45. | INTERPRETATION OF RFT, severability and debriefings | 31 |
| 46. | BID DISPUTES..... | 31 |
| 47. | BIDDER’S STATEMENT OF UNDERSTANDING | 33 |
| DOCUMENT 2 | CITY GENERAL PROVISIONS..... | 35 |
| DOCUMENT 3 | CITY SUPPLEMENT TO CCDC 2 STIPULATED PRICE CONTRACT..... | 36 |
| DOCUMENT 4 | TERMS OF REFERENCE..... | 86 |
| 1. | INTENT | 86 |
| 2. | THE PRIME CONSULTANT / PROJECT MANAGER | 87 |
| 3. | PROJECT SCHEDULE..... | 87 |
| 4. | REFERENCES..... | 87 |
| 5. | NON-MANDATORY SITE VISIT..... | 87 |
| 6. | CONSTRUCTION WORK DURING COVID-19..... | 87 |
| 7. | DESCRIPTION OF APPENDICES..... | 88 |
| DOCUMENT 5 | SPECIAL PROVISIONS..... | 89 |
| DOCUMENT 6 | AGREEMENT..... | 90 |
| DOCUMENT 7 | APPENDICES | 91 |
| DOCUMENT 8 | PREVIEW ONLINE BIDDING SYSTEM SCHEDULES..... | 92 |

1. DEFINITIONS

- a. **“Addenda”** means a document made available by the City’s Procurement Services Department which amends or clarifies a Bid Document.
- b. **“Bid”** and **“Bid submission”** means a submission by a Bidder in response to the applicable City issued Request for Tender.
- c. **“Bid Documents”** is defined in section 2 below.
- d. **“Bidder”** means the entity submitting a Bid in response to this RFT.
- e. **“Bid Price”** means the Subtotal Contract Amount from ‘Schedule of Prices’ as submitted by Bidder.
- f. **“Bidding System”** means the web site/system used by the City to make Bid Documents available and receive Bids (<https://vaughanbidsandtenders.ca>).
- g. **“City”** and **“Owner”** means The Corporation of the City of Vaughan.
- h. **“Closing Time”** is identified on the Cover Page of this RFT and is subject to change by Addenda.
- i. **“Conflict of Interest”** is described in section 16 below.
- j. **“Contract”** and **“Contract Documents”** are defined in section 2 below.
- k. **“Contract Security”** is defined in the section 39 below entitled “Contract Security”.
- l. **“Contractor”** means the successful Bidder(s) (if any) who has entered into an Agreement with the City to perform the Work.
- m. **“Request for Tender”** or **“RFT”** means the RFT named and numbered on the Cover Page and includes all Bid Documents.
- n. **“Responsive Bidder”** means a Bidder that has complied in all material respects with the requirements of this RFT.
- o. **“Successful Bidder”** and **“successful Bidder”** means a Bidder who the City has sent (or Owner intends to send) a ‘Notification of Award’ pursuant to this RFT to enter into an Agreement to perform the Work.
- p. **“Work”** means all goods and services to be provided by a Contractor under and pursuant to the Contract.

- q. **“Working Day”** means Monday through Friday inclusive but excluding Saturday and Sunday and any recognized statutory holiday in the City of Vaughan.

2. GOVERNING TERMS AND CONDITIONS

- 2.1 **“Bid Documents”** are listed in the RFT Table of Contents.
- 2.2 The **“Contract”** is comprised of the Agreement and all Contract Documents.
- (a) **“Agreement”** means CCDC 2 – Stipulated Price Contract, which must be signed by a successful Bidder who receives a Notification of Award from City.
- (b) All Bid Documents form part of the Contract, and are referred to as / become **“Contract Documents”** once the Agreement is executed.
- 2.3 Implied terms are disclaimed from this RFT.
- 2.4 The provisions in each Document are in addition to and supplement the provisions in the other Documents. Conflicts between provisions shall be resolved in accordance with the applicable governing Order of Precedence, to the extent of the conflict.
- 2.5 The headings within the RFT and any Contract Document are for convenience and reference only and shall not affect or be used to interpret the provisions therein.

3. E-SUBMISSIONS

- 3.1 The City will ONLY accept Bids uploaded electronically to the City’s Bidding System. Bidders who require accommodations due to a disability should contact the Procurement Services main line at 905-832-8555. If you have problems uploading your Bid, please contact the City’s Procurement Services Department.
- 3.2 The City’s Bidding System Terms of Use Agreement forms part of this RFT.
- 3.3 Bids submitted and/or received by any other method shall be rejected, unless the City has instructed otherwise by published Addendum or a special exception has been granted by the City’s Director of Procurement Services.
- 3.4 A Bid will only be considered to have been submitted once it has been received by the City in its Bidding System. The time the Bid is received shall be determined by the City’s Bidding System web clock.
- 3.5 The Bidding System will send a confirmation email to the Bidder advising that its Bid was submitted successfully. If you do not receive a confirmation email, contact the City’s Procurement Services Dept.
- 3.6 Bidders should not consider their Bid to have been submitted until they have received the confirmation e-mail (oral confirmation will not suffice).
- 3.7 Bidders are cautioned that the time the Bid is received is based on when the Bid is RECEIVED by the Bidding System, not when a Bid is sent for transmission by a Bidder and not when Bidder system indicates Bidder uploaded/sent/transmitted the Bid, as Bid transmission can be delayed in an “Internet Traffic Jam” due to file transfer size, transmission speed, etc. Accordingly, the City recommends that Bidders allow

sufficient time to upload their Bid and attachment(s) (if applicable) and to resolve any issues that may arise.

- 3.8 Bids must be received by the Bidding System before the stipulated closing time. Late Bids will not be accepted by the Bidding System.
- 3.9 To ensure receipt of the latest information (and updates via email) regarding this procurement opportunity, or if a Bidder has obtained the RFT from a third party, the onus is on the Bidder to create a Bidding System Vendor account and register as a 'Plan Taker' for this RFT at the at <https://vaughan.bidsandtenders.ca>.
- 3.10 All Bids are subject to the terms and conditions of this RFT and by submitting a Bid, Bidders agree to the terms and conditions herein.
- 3.11 Company Contacts - Regarding having multiple company contacts on the online Vendor account:
- (a) Do not invite any additional contacts that you do not want to have access to view, edit, submit and/or withdraw or who may be in direct competition for example (a company may have two divisions that could compete for the same Bid opportunity).
 - (b) It is recommended that when creating or updating a Bidding System Vendor account to add additional company contacts to create their own login to the Bidding System. This will permit your invited contacts that have created their own login to manage (register, submit, edit and withdraw) Bids which your company is a Registered Plan Taker for.
 - (c) Vendor contacts may: act on vendor's behalf, receive Addendum notifications from the Bidding System, submit Bids electronically through the Bidding System, withdraw and/or edit and/or acknowledge Addendum/Addenda, on behalf of vendor.
 - (d) If you are an invited company contact it is required that you create your login from the link contained in the email invitation. Do NOT create a separate vendor account.

3.12 **Uploading Documents into the Bidding System**

To upload a document:

- (a) Click on the "Browse" button to locate the file/folder on your computer or network
- (b) Click on the "Upload" button.

After the file/folder has been successfully uploaded, a link to the document will appear on the screen, along with the date and time that it was uploaded.

If you need to remove an uploaded document, click on the "Remove" button next to the document name.

Documents being uploaded should:

1. be in Adobe pdf format or other format requested by the City; and

2. NOT have a security password.

It is the Bidder's sole responsibility to ensure that their uploaded document(s):

1. are not defective, corrupted or blank; and
2. can be opened and viewed by the City.

The City may reject or disqualify any Bid that contains documents that cannot be opened and verified by the City.

Bidders may only upload one (1) file/folder for each required document.

The maximum single file/folder upload size is 500 MB.

To reduce the size of a single file/folder, or to combine multiple files into a single folder for upload, Bidders should compress (zip) their file(s)/folder(s) as described below.

3.13 Compressing Zip Folders / Files

To compress (zip) a single file or folder:

- (a) Locate the file/folder that you wish to compress (zip)
 - then right-click on the file/folder
 - select "Send to"
 - then click on "Compressed (zipped) folder".
- (b) new compressed (zipped) folder will be created in the same location as the original file.
- (c) To rename the compressed (zipped) folder, right-click on it, click on "Rename" and enter the new name.
- (d) To compress (zip) multiple files into a single folder:
 1. Locate and select the files/folders that you wish to combine
 2. With all of the files selected, right-click, select "Send to", then click on "Compressed (zipped) folder".
- (e) A new compressed (zipped) folder will be created in the same location as the original files.
- (f) To rename the compressed (zipped) folder, right-click on it, click on "Rename" and enter the new name.
- (g) If you are uploading a compressed (zipped) folder containing more than one (1) document, please ensure that each document is named appropriately.

4. SUBMITTING A QUESTION

- 4.1 Bidders are responsible for seeking clarification of any matter that they consider unclear before submitting a Bid. The City is not responsible for any misunderstanding of this RFT on the part of the Bidder.
- 4.2 Bidders may submit questions through the City's Bidding System using the "Submit a Question" link associated with the RFT prior to the deadline for questions.
- 4.3 If any Bidder requires an accommodation due to a disability, requests should be directed to the City's PR referenced above.
- 4.4 The City shall not be responsible for responding to questions that are posed by any other method.

5. BLACKOUT PERIOD

- 5.1 Between the date this RFT is posted and the date it is cancelled or an Agreement has been fully executed (whichever is earlier), Bidders shall not discuss this RFT with any City employee or Councillor or Evaluation Committee member (if applicable) except as permitted or contemplated by this RFT.

6. ADDENDA

- 6.1 The City may issue Addenda from time-to-time during this procurement process, amending or clarifying any Bid Document.
- 6.2 All Addenda will be posted on the Bidding System. Addenda form part of the RFT.
- 6.3 Bid Documents may only be changed by Addenda posted online on the Bidding System. It is the Bidder's sole responsibility to check the Bidding System for Addendum(s) prior to submitting their Bid.
- 6.4 No oral interpretation or clarification provided to a Bidder will be effective to modify any provisions of the Bid Documents.
- 6.5 Any additional information and/or changes to the Bid Documents will be issued in the form an Addendum.
- 6.6 The City will notify Bidders of the issuance of Addenda via e-mail; however, it is the Bidder's responsibility to ensure that it has downloaded all Addenda prior to submitting its Bid. Bidders should check the Bidding System prior to submitting their Bid and up until the Bid closing time and date in the event additional Addendums are issued.
- 6.7 The City will not be liable for any misdirected notices of Addenda resulting from a Bidders failure to update its contact information in the Bidding System and/or Bidders failing to check for Addenda prior to submitting their Bid.
- 6.8 Bidders shall check a box for each Addendum/Addenda and any applicable attachments that have been issued, before a Bidder can successfully submit their Bid.
- 6.9 Bids that do not contain evidence of receipt of all Addenda will be deemed to be "incomplete" and will not be accepted in the Bidding System.

- 6.10 In the event that an Addendum is issued after a Bidder has submitted its Bid, the Bidding System will change the status of the Bid to “incomplete” and the Bidder will be required to acknowledge the Addendum and resubmit its Bid prior to the bid closing date and time.
- 6.11 For greater certainty, if a Bidder submits its Bid prior to the bid closing time and an Addendum/Addenda is later issued by the Owner, the Bidding System shall
- WITHDRAW the Bid submission and change the Bid submission to an INCOMPLETE STATUS (NOT accepted by the Owner) and the Withdrawn Bid can be viewed by the Bidder in their “MY BIDS” section of the Bidding System. The Bidder is solely responsible to:
- (a) make any required adjustments to their Bid; and
 - (b) acknowledge the Addendum/Addenda; and
 - (c) ensure the re-submitted bid is RECEIVED by the Bidding System no later than 3:00:00 p.m. EST (15:00:00 hours) local time, on the Bid closing date.

7. ERRORS AND OMISSIONS

- 7.1 Subject to Section 47 (i) the City shall not be held liable for any errors or omissions in any part of this RFT.
- 7.2 While the City has used considerable effort to ensure an accurate representation of information in this RFT, the information contained in the RFT is supplied solely as a guideline for Bidders. The information is not guaranteed or warranted to be accurate by the City, nor is it necessarily comprehensive or exhaustive.
- 7.3 Nothing in the RFT is intended to relieve the Bidders from forming their own opinions and conclusions with respect to the matters addressed in the RFT.

8. CONFIDENTIALITY

- 8.1 Bidders shall not disclose any Bid Document to any third party without the prior express written consent of the City or as permitted in subsection (8.2) directly below.
- 8.2 Bidders may only disclose the Bid Documents to its employees and consultants and potential subcontractors on a need-to-know basis who have agreed in writing to maintain such in confidence and only use for the limited purposes of helping Bidder consider or prepare a Bid.
- 8.3 Bidders shall not communicate any matters concerning the contents of this RFT to any member of the public or any news medium, whether the press or radio or television, without the prior consent of the PR.
- 8.4 The City reserves the right to disqualify from the RFT process a Bidder who in the City’s opinion has breached this requirement for confidentiality.

9. NON-COLLUSION

- 9.1 A Bidder shall not discuss or communicate about the preparation of their Bid with the contractors currently performing the Work or with any other Bidder without the prior consent of the City.
- 9.2 Each Bidder shall ensure that its participation in this RFT process is conducted without collusion or fraud.
- 9.3 Bidders, by submitting their Bid, declare that the Bid is not made in connection with any other Bidder submitting an offer for the same Work and is, in all respects, fair and without collusion or fraud.

10. ANTI-LOBBYING

- 10.1 Any attempt on the Bidder's part to improperly influence the evaluation and selection process may result in disqualification of the Bidder.

11. EXAMINATION OF SITE

- 11.1 Bidders are required to satisfy themselves by personal visitation and examination of each site for the Work and of the existing conditions which may be encountered on or adjacent to the site, including without limitation, all underground/overhead utilities locations, surface and sub-surface conditions, existing structures on or adjacent to the sites, access routes and other conditions which may affect performance of the Work.
- 11.2 The submission of a Bid shall be deemed proof that the Bidder has satisfied itself as to all the provisions of the Bid Documents and of all the conditions which may be encountered at each Work site, except any condition that may not be reasonably inferred from any geotechnical evidence provided to the Bidders or observable on a proper visual inspection or any other matter which may affect performance of the Work.

12. MANDATORY MEETINGS

- 12.1 Lateness, at the sole discretion of the Procurement Representative, and/or failure to attend a mandatory meeting shall result in Bid disqualification and/or rejection.
- 12.2 All Bidders must sign in on the official meeting attendance sheet provided by the Procurement Division.
- 12.3 A representative attending the mandatory meeting on behalf of a Bidder must indicate the Bidder's name on the sign in sheet.
- 12.4 Bidders who have not signed in prior to the commencement of the meeting will be considered late and will be required to leave resulting in disqualification from the RFT process.
- 12.5 At mandatory Work site meetings, each Bidder shall examine the surroundings and adjacent public and private properties for existing conditions including, but not limited to, the rights and interests of other parties that may be interfered with during completion of the Work. No Bidder shall claim, at any time after the Closing Deadline that there was any misunderstanding about the terms and conditions of the Contract relating to site conditions. No adjustment to the schedule or to the Contract will be made for

difficulties encountered during completion of the Work due to conditions, features and peculiarities of the site that were evident at the time of the Closing Deadline.

- 12.6 Any new information or changes provided at the site meeting will be summarized and circulated electronically to all attendees after the meeting.

13. BIDDERS COST

- 13.1 Subject to Section 47(i), in no event shall the City have any liability for costs incurred by Bidder to prepare its Bid.

- 13.2 For certainty, the City is not liable to pay such costs and expenses or to reimburse or compensate Bidders, or persons connected with the Bidder, under any circumstances,

including the rejection of any or all Bids, the cancellation of the RFT, changes to the RFT schedule, issuance of Addenda, or the failure to enter into an Agreement with any Bidder.

14. REFERENCES

- 14.1 References (if required) shall be submitted as part of your Bid using the Bidding System.

15. SUBCONTRACTORS

- 15.1 Bidders shall ensure that all Subcontractors selected and proposed have experience in the subcontracted Work described and that they shall execute their Work with competence and within the required time frame.

- 15.2 Bidders shall ensure that all Subcontractors included in a Bid shall be actively engaged in Work of the type described and shall be able to show proof upon request by the Owner of previous Work of similar nature performed by them.

- 15.3 Bidders shall not show "Own Forces" in their list of Subcontractors, except where the Bidder's intent is to employ the Bidder's own qualified on-staff personnel to perform such work.

- 15.4 Bidders shall not indicate "TBD" (To Be Determined) or "TBA" (To Be Announced) or similar wording and shall not indicate multiple choices of Subcontractor names for any Subcontractor category in their list of Subcontractors. One Subcontractor name shall be indicated for each Subcontractor category.

- 15.5 Bidders shall list in their list of Subcontractors, all of the Subcontractors who shall perform work under the Contract.

- 15.6 No names, either of Subcontractors or "Own Forces" may be changed after submission of the list of the Subcontractors unless prior written approval is received from the Owner. Such approval shall only be considered after receipt by the Owner of a written request for the change by the Bidder or Contractor with a full explanation of the reasons for the requested change with no consequences to Owner.

- 15.7 The Owner reserves the right to reject a proposed Subcontractor for reasonable cause. Upon such rejection, the Bidder shall be required to propose an alternate Subcontractor without resulting change to the Bid.

16. CONFLICT OF INTEREST

- 16.1 In order to protect the integrity of the procurement process, Bidders are advised that Owner may reject a Bid in the following circumstances:
- a. if the Bidder, any of its subcontractors, any of their respective employees or former employees was involved in any manner in the preparation of this RFT;
 - b. if the Bidder, any of its subcontractors, any of their respective employees or former employees had access to information related to this RFT that was not available to other Bidders and that would, in Owner's opinion, give the Bidder an unfair advantage.
- 16.2 The experience acquired by a Bidder who is providing or has previously provided the goods and/or services described in this RFT (or similar goods and/or services) will not, in itself, be considered by Owner as conferring an unfair advantage or creating a conflict of interest. This Bidder remains however subject to the criteria established above.
- 16.3 By submitting a Bid, the Bidder represents that (except as may be disclosed in the Bid Form) it does not consider itself to be in conflict of interest nor to have an unfair advantage. The Bidder acknowledges that it is within Owner's sole discretion to determine whether a conflict of interest or unfair advantage exists.
- 16.4 The City may, in its sole discretion waive any and all actual, potential, or perceived conflicts of interest, on such terms and conditions the City, in its sole discretion, considers to be required to satisfy itself that any actual, potential or perceived conflict of interest has been appropriately managed, mitigated and minimized. In this regard, the City may require the Bidder to implement measures or take other steps to manage or mitigate the impact of any actual, potential or perceived conflict of interest.

17. BID FORM AND PRICING

- 17.1 The Bid Form available on the Bidding System is to be properly completed and submitted, including the fields available to input unit prices, Bid price, provisional item pricing etc.
- 17.2 All Bid prices submitted shall be in Canadian dollars (CAD) excluding H.S.T.

18. UNBALANCED BIDS

- 18.1 For the purpose of this provision, "unbalanced" means the price submitted, whether it be the Bid Price or a price for an item, part, section or division, does not reflect reasonable, anticipated costs for the required labour, equipment and materials, plus a reasonable proportionate share of the Bidder's anticipated overhead and profit.

18.2 If the City receives a Bid from a Bidder with a price that is abnormally lower than the prices in other submitted Bids or is otherwise determined by the City to be “unbalanced”, the City may verify with the Bidder that the Bidder satisfies the conditions for participation and the Bidder is capable of fulfilling the terms of the Contract. If the City determined that they are not, then the Bid will be deemed non-compliant and rejected

19. PRICE COMPONENTS

19.1 Taxes

- (a) The Owner is subject to the payment of Provincial sales taxes and Federal taxes (including G.S.T. / H.S.T. excise and customs duties) imposed by the Provincial and Federal Governments.
- (b) Should there be any approved variation in any tax or duty imposed by the Province of Ontario or the Government of Canada which becomes directly applicable to the goods/services to be purchased or provided during the term of the Contract, the Bidder and the Owner mutually agree that the Bid Price will be adjusted proportionately to reflect any such variation.
- (c) The onus is on the Bidder to bring to the Owner's attention any such variations and positions published by the Canada Revenue Agency which are relevant to any variances.
- (d) The Bidder shall not include HST in its unit cost(s) or lump sum cost(s), but shall include all other taxes and duties, as well as any reduction in the Contractor's operating costs due to rebating of any sales taxes. The Bidder agrees that all work performed under the Contract will be subject to HST only.

19.2 Transportation and Delivery Charges

- (a) Prices submitted by Bidder within the Bid Documents shall be net prices including transportation and delivery charges fully prepaid by the Bidder.
- (b) For certainty, in furtherance of the provisions in (19.1) directly above, G.S.T / H.S.T. or other taxes or duties which would be payable by Bidder on transportation costs shall not be included in the Bid Price or unit costs where the Bidder can receive input tax credits or refunds.

20. EMPLOYMENT AND LABOUR LEGISLATION

20.1 In submitting its Bid, Bidder represents that is has considered the Making Ontario Open for Business Act, 2018 , and any impacts of this and other applicable legislation have been reflected in its Bid Price and any applicable unit prices. Bidders are advised that the City will not entertain requests to change submitted id prices based on changes to the minimum wage or other legislative amendments made under any statute. It is the Bidder's obligation to operate accordance with all applicable law at all times.

21. PAYMENT OF WORKERS

21.1 Further to the provisions in section 20 above, Bidders are hereby notified that the following shall provisions form part of any Contract awarded under this RFT, and Bid Prices should be established accordingly:

The Contractor shall pay or cause to be paid to every ‘worker’ (which includes independent contractors) employed in the execution of the Contract, wages at not less than the following rates:

(a) *For workers employed in the execution of the Contract, who are in contractual relationship with a union, the minimum rate of wages shall be the union rate of wages in the particular district or locality in which the work is undertaken;*

Or

(b) *For workers employed in the execution of the Contract, who are not in contractual relationship with a union the minimum rate of wages shall be in accordance with any Fair Wage Schedules established by the Director of Government Contract Wages under the Government Contract Wages Act and applicable to the City Vaughan, once established (revisions made to such Schedules during the course of the Contract shall apply from the effective date of such revisions and any additional resultant costs shall be borne by the Contractor).*

Prior to applicable Fair Wage Schedules being established (as contemplated in the paragraph directly above), the minimum rate of wages for workers employed in the execution of the Contract who are not in a contractual relationship with a union shall be the hourly wage, usual benefits and overtime, paid to the majority of similarly-employed workers within York Region.

22. SCHEDULE OF ITEMS AND UNIT PRICES

22.1 Bidders also understand and accept that any quantities shown provided by Owner within the Bid Documents are approximate estimates only and are subject to increase, decrease or deletion entirely if found not to be required.

23. PROVISIONAL ITEMS AND QUANTITIES

23.1 Items listed in the RFT as “*Provisional Items*” may or may not be required for completion of the Work.

23.2 If a Contract were awarded, the necessity for and/or actual quantities of these items will be determined by the Owner as the Work progresses.

23.3 Should any of these items be required, the Contractor will be compensated on the basis of the unit prices(s) quoted.

23.4 In the event that any or all of these items are found not to be required, the Contractor shall not claim extra payment for loss of anticipated profits or impact costs in relation thereto.

24. DIGITAL BID BOND

- 24.1 Bid Bonds, among other things, provide security for the execution and delivery of the Contract and the provision of the required bonds, insurance and other documents required to be provided by a successful Bidder.
- 24.2 This section applies when provision of a digital Bid Bond is an RFT submission requirement.
- 24.3 To be considered valid, the Bid Bond shall be:
- (a) submitted at time of Bid submission;
 - (b) in the amount of 10% of the Bid Price;
 - (c) made payable to 'The Corporation of the City of Vaughan'.
 - (d) in an acceptable, digital format;
 - (e) from a recognized guarantee or surety company acceptable to the City and authorized by law to do business in the Province of Ontario;
 - (f) Verifiable/Enforceable – The bond shall include assurances that the document was duly executed by the parties identified and that it is enforceable in law (this requires the use of a third-party digital service provider);
 - (g) Digitally Executed - the bond must contain digital signatures and digital seals (**A SCANNED COPY OF A PAPER BOND IS NOT AN ACCEPTABLE DIGITAL BOND**); and
 - (h) in a form and content otherwise acceptable to the City, acting reasonably, such as the City Standard Form of Bid Bond or CCDC 220. The City Standard Form can be found on the City's website (<https://www.vaughan.ca/cityhall/departments/ps>) under 'Vendor Information';
 - (i) and shall also include a method of authentication that confirms 'Integrity of Content' – The bond shall include assurances that the document received is the true document executed and the content has not been changed or altered (all instructions for accessing authentication shall be included with the uploaded bonds).
- 24.4 Failure to provide a compliant digital Bid Bond shall result in Bid rejection and/or disqualification.
- 24.5 If you receive your digital 'Bid Bond' and 'Undertaking to Bond' (or equivalent documents) in one .pdf document you should upload the complete document in both the Bid Bond field and the Undertaking to Bond field on the Bonding tab. DO NOT split the document into two separate documents.
- 24.6 The Bidder and it's Surety Company should refer to the e-bonding information on the Surety Association of Canada's website which includes:

- (a) A Checklist of Industry Requirements for e-Bonding Solutions which sets out the requirements for digital bonds.
- (b) A list of third parties that provide on-line surety digital bond services such as Mobile Bonds or Xenex Enterprises. The City does not endorse or promote any third party digital service provider.

25. DIGITAL AGREEMENT TO BOND

25.1 If stated as an RFT submission requirement, Bid submissions must also include (at time of submission) a digital Agreement to Bond or Undertaking to Bond or Consent of Surety ("**Agreement to Bond**") issued by a surety licensed in the Province of Ontario which states the Bidder has:

- (a) the bonding capacity for a Performance Bond in the required amount; and
- (b) the bonding capacity for a Labour and Material Payment Bond in the required amount.

25.2 The Agreement to Bond must be:

- (a) for the benefit of the City;
- (b) in an acceptable, digital format;
- (c) from a recognized guarantee or surety company acceptable to the City and authorized by law to do business in the Province of Ontario;
- (d) Verifiable/Enforceable – The bond shall include assurances that the document was duly executed by the parties identified and that it is enforceable in law (this requires the use of a third party digital service provider);
- (e) Digitally Executed - The bond must contain digital signatures and digital seals (a scanned copy of a paper bond is not an acceptable digital bond);
- (f) in the form and with content acceptable to the City, acting reasonably. The City Standard Undertaking to Bond Form can be found on the City's website (<https://www.vaughan.ca/cityhall/departments/ps>) under 'Vendor Information'; and also
- (g) include a method of authentication that confirms 'Integrity of Content' – The bond shall include assurances that the document received is the true document executed and the content has not been changed or altered. All instructions for accessing authentication shall be included with the uploaded bonds.

25.3 A Bid submission that is not accompanied by a valid **digital** Agreement to Bond shall be disqualified and/or rejected.

25.4 If you receive your digital 'Bid Bond' and 'Agreement to Bond' in one .pdf document you should upload the complete document in both the Bid Bond field and the Undertaking to Bond field on the Bonding tab. DO NOT split the document into two separate documents.

25.5 The Bidder and its Surety Company should refer to the e-bonding information on the Surety Association of Canada's website which includes:

- (a) A Checklist of Industry Requirements for e-Bonding Solutions which sets out the requirements for digital bonds.
- (b) A list of third parties that provide on-line surety digital bond services such as Mobile Bonds or Xenex Enterprises. The City does not endorse or promote any third party digital service provider.

26. OWNERSHIP OF AND USE OF BID ONCE SUBMITTED

26.1 Bids become City property once received.

26.2 City may disclose any Bid and other information provided by a Bidder under this RFT process to the Evaluation Committee, City Council and otherwise in any of the following circumstances:

- (a) as reasonably required to facilitate this RFT process;
- (b) in accordance with its ordinary business practices; and/or
- (c) as may be required in relation to access to information requests under applicable privacy legislation.

27. AMENDING A BID

27.1 In the event that a Bidder wishes to revise its Bid after it has been submitted, the Bidder must withdraw its Bid, make the necessary changes, and resubmit its Bid, prior to the closing time.

27.2 To withdraw then amend a Bid which has already been submitted:

1. Goto the 'My Bids' page on the Bidding System
2. Click on 'Manage My Submissions' beside the applicable bid opportunity
3. Click on "Edit or Withdraw my Submission"
4. Click on "Edit Submission" (**by clicking the 'Edit Submission' tab you are withdrawing your submission and will not have a registered submission with the City**)

27.3 The Bidder is solely responsible to ensure the re-submitted bid is RECEIVED by the Bidding System no later than 3:00:00 p.m. EST (15:00:00 hours) local time, on the bid closing date.

28. WITHDRAWING A BID

28.1 To withdraw a Bid which has been submitted:

1. Goto the 'My Bids' page on the Bidding System
2. Click on 'Manage My Submissions' beside the applicable bid opportunity
3. Click on "Edit or Withdraw my Submission"

4. Click on "Withdraw Submission" (**by clicking the 'Withdraw Submission' tab you are withdrawing your submission and will not have a registered submission with the City**)

28.2 Bids may only be withdrawn prior to the Closing Time.

29. IRREVOCABILITY

29.1 Unless properly withdrawn, Bids are irrevocable for a sixty (60) Working Day period, starting on the RFT Closing Date.

29.2 If for any reason a Contract with a successful Bidder is not executed within sixty (60) Working Days from the Bid closing time, City may (without notice or liability) award that Contract to another Bidder.

30. LATE BIDS

30.1 Late Bids will not be accepted.

31. BID CHECKING

31.1 City reserves the right to reject or disqualify a Bid at any time if it notices a non-compliance not detected by the Bidding System.

31.2 Where there is an obvious error in the extended price the unit price stipulated shall govern and shall be calculated accordingly with the estimate quantity.

31.3 Where there is an obvious calculation error in the addition of individual lump sum prices into a subtotal price, the Owner may make the appropriate mathematical correction to the subtotal price and/or subtotal contract price, as the case may be, so that the calculation is correct.

32. CLARIFICATIONS/CORRECTIONS

32.1 City reserves the right to seek clarification from Bidders about any aspect of their Bid.

33. VERIFICATION

33.1 The City may, if deemed necessary, verify any information provided in any Bid.

34. ACCURACY

34.1 It is clearly understood that if there is any evidence of misleading or false information having been given, the City may, in its sole discretion, disqualify the Bid or terminate any resulting Contract.

35. LITIGATION

35.1 If a Bidder (including any related or affiliated entity and any principal thereof) is engaged in Unresolved Litigation with the City:

- (a) City may reject the Bidder's Bid;

- (b) City may disqualify Bidder from this procurement process at any time; and
- (c) City further reserves the right to not award a Contract to such a Bidder.

35.2 As used above, "Unresolved Litigation" means any unresolved dispute between the City and any other party adverse in interest, including third party and cross-claims, where either a legal proceeding has been commenced for an injunction, a mandatory order, a declaration or the recovery of money or payment of damages or other amounts.

35.3 Further, if a Bidder (including any related or affiliated entity and any principal thereof):

- (a) is the subject of legal proceedings in respect of Vaughan's Property Standards By-law or Zoning By-laws; or

- (b) has been convicted of being in violation of any City Vaughan's Property Standards By-law or Zoning By-law and the contravention remains,

the City reserves the right, at its election and in its sole and absolute discretion, to reject the Bidder's Bid or disqualify the Bidder at any time.

36. APPROVALS

36.1 Bidders acknowledge that Contract award may be subject to the City securing budget approval, certain permits, authorizations, licenses, easements, land lease agreements, cost sharing agreements and/or other third party or City Council approvals and arrangements ("**Approval(s)**").

36.2 In the event, and to the extent, any such Approval(s) is/are not obtained in order to permit Contract award or commencement/continuation of the Work, the Owner reserves the right to:

- (a) not award a Contract and cancel this RFT;

- (b) award a Contract in whole or in part, subject the right of the Owner to cancel all or part of the Contract at any time after award in the event any required Approval(s) cannot be obtained or maintained; and/or

- (c) delay the consideration of the award of the Contract until such time as the required Approvals have been obtained.

37. FREEDOM OF INFORMATION

37.1 In accordance with the *Municipal Freedom of Information and Protection of Privacy Act* ("**MFIPPA**"), any personal information Bidders provide in submitting a Bid is collected under the authority of the Municipal Act (Ontario) and will be used exclusively in the Bid review process.

37.2 All Bids and associated documentation submitted become the property of the Owner upon receipt.

37.3 Pursuant to MFIPPA, the Owner may be required to disclose any such information in response to an access request.

37.4 To assist Owner in responding to an access request, Bidders are advised to identify in their Bids any specific scientific, technical, commercial, proprietary, or similar confidential information, and explain why the disclosure of such information would cause them harm.

37.5 Complete Bids are not to be identified as confidential.

38. UNOFFICIAL TENDER RESULTS

38.1 Unofficial tender results may be posted on Bidding System website after the Closing Time.

38.2 All Bids received are unofficial until they have been reviewed by the City for compliance; therefore, the lowest Bid listed on the Bidding System website may not be the lowest Responsive Bid for the purpose of awarding a Contract.

39. DIGITAL CONTRACT SECURITY (BONDS OR IRREVOCABLE LETTER OF CREDIT REQUIRED AT TIME OF AGREEMENT SIGNING)

39.1 Between Notification of Award and Agreement execution, a successful Bidder must provide City with the required 'Contract Security'.

39.2 Contract Security shall be kept in force throughout the duration of the Contract including any guarantee, warranty or maintenance period of the Contract and/or until the Contract is deemed complete by the Owner in a satisfactory manner, as determined by the Owner.

39.3 All bonds shall be:

- (a) issued by an insurer licensed under the Insurance Act to write surety and fidelity insurance;
- (b) verifiable and enforceable - All bonds shall include assurances that the document was duly executed by the parties identified and that it is enforceable in law (this requires the use of a third-party electronic signature service provider);
- (c) digitally executed - All bonds shall be electronically signed and sealed and must include a method of authentication that confirms the 'integrity of content' of the bond. All bonds shall include assurances that the document received is the true document executed and the content has not been changed or altered. Instructions for accessing authentication shall be included with the uploaded bonds (**Note: A SCANNED COPY OF A PAPER BOND IS NOT AN ACCEPTABLE DIGITAL BOND.**);
- (d) for the required amounts (i.e. proper % of Bid Price);
- (e) for the benefit of the City;
- (f) renewable (as/if required);
- (g) be in good standing and in full force and effect until the fulfilment of the Contract including the entire term of the Contract including renewals and extensions and the warranty period;

- (h) on the required/allowable Form (e.g. complies with any applicable *Construction Act (Ontario)* Form requirements);
- (i) and, with respect to Labour and Material Bonds, extend protection to subcontractors and persons supplying labour or materials to the improvement.

39.4 If you receive your digital 'Performance Bond' and 'Labour & Material Bond' in one .pdf document you should upload the complete document as the Performance Bond and Labour & Material Bond within the contract module of the City's Bidding System. DO NOT split the document into two separate documents.

39.5 The Bidder and its Surety Company should refer to the e-bonding information on the Surety Association of Canada's website which includes:

- (a) a Checklist of Industry Requirements for e-Bonding Solutions setting out requirements for electronic bonds; and,
- (b) a list of third parties that provide on-line surety electronic bond services. The City does not endorse or promote any particular third-party digital service provider.

39.6 Irrevocable Letters of Credit must:

- (a) be printed on letterhead from the issuing financial institution;
- (b) be denominated in Canadian dollars equaling the aggregate dollar value of the Performance Bond and Labour & Material Bond;
- (c) include an automatic renewal provision where the Agreement is to be in place for more than one year;
- (d) indicate that the City will be given 30 days' notice by registered mail if the counterparty does not intend to renew;
- (e) conform with the City Standard Form of Irrevocable Letter of Credit. Any deviation from the standard format will be subject to review by the City and may be refused for non-compliance. The City Standard Form of Irrevocable Letter of Credit can be found on the City's website (<https://www.vaughan.ca/cityhall/departments/ps>) under 'Vendor Information';
- (f) be fully, properly and duly executed by the parties identified and enforceable at law;
- (g) be for the benefit of the City; and
- (h) unless otherwise directed by the City, letters of credit conforming to the intent of the standard format requirements outlined in the City Standard Form of Irrevocable Letter of Credit will only be accepted by the City from Schedule I and II banks.
 - Schedule I Banks: domestic banks authorized under Schedule I of the Bank Act to accept deposits.

- Schedule II Banks: foreign bank subsidiaries authorized under Schedule II of the Bank Act to accept deposits. Foreign bank subsidiaries are controlled by eligible foreign institutions.

39.7 *Additional Note Regarding Letters of Credit* - A letter of guarantee or confirmation may be requested from time to time as evidence of capacity to secure a letter of credit. However, at no time shall a letter of guarantee or confirmation serve as an acceptable alternative to a letter of credit. Letters of guarantee or confirmation must indicate that the financial institution is willing to provide a letter of credit in a format and within a time period deemed acceptable to the City.

40. NOTIFICATION OF AWARD, EXECUTION OF AGREEMENT AND PROVISION OF REQUIRED DOCUMENTATION

- 40.1 The award of the Contract is subject to the receipt of sufficient funding and appropriate staff and Council approvals.
- 40.2 An offer to enter into a Contract will be made in writing and only in writing - successful Bidder(s), if any, will be notified by Owner in writing via a "Notification of Award".
- 40.3 The successful Bidder(s), if any, shall execute the Agreement, within Seven (7) Working Days of the date on the Notification of Award, or longer period allowed by the Director.
- 40.4 There shall not be a binding Contract for the Work unless and until the City and the successful Bidder have executed the Agreement.
- 40.5 Further, the following documents shall be submitted by a successful Bidder prior to Agreement execution:
- (a) a completed and signed and otherwise valid City Standard Certificate of Insurance. The City Standard Certificate can be found on the City's website (<https://www.vaughan.ca/cityhall/departments/ps>) under 'Vendor Information';
 - (b) the Contract Security (and the name and contract information of the responsible representative at the Surety for purposes of communication);
 - (c) a current copy of its Workplace Safety and Insurance Certificate of Clearance; and
 - (d) proof of registration/enrolment with COR™; ISO 45001:2018; CSA Z45001:19; or OHSAS 1800:2007. The City will accept proof of full certification in lieu of registration/enrolment.
- 40.6 Further, Contractors who have independent Operator Status under the Worker's Safety Insurance Board Act shall submit a complete Independent Operator Status Questionnaire upon being awarded the Contract.
- 40.7 Should a successful Bidder either: attempt to withdraw their Bid, or fail to or refuse to execute the Agreement and/or provide required documentation within the stated deadlines:

- (a) the successful Bidders' Bid Bond may (at Owner's discretion) be forfeited and applied for use by the Owner;
- (b) Owner may award the Contract to the next lowest Responsive Bidder;
- (c) the defaulting successful Bidder shall be liable for the difference between its Bid Price and the Bid Price of the next Responsive Bidder, and any other damages and expenses and losses Owner may incur as a result of such breach by successful Bidder; and
- (d) the defaulting successful Bidder may (at Owner's discretion) be barred from bidding on future Requests for Tenders.

40.8 The Owner may grant additional time to fulfill the necessary requirements, if in the opinion of the Owner, the extension does not compromise the interests of the Owner.

41. DISQUALIFYING EVENTS

41.1 City shall:

- (a) disqualify a Bid which does not include a valid digital Bid Bond and/or Agreement to Bond (a scanned copy of a paper bond is not an acceptable digital Bond);
- (b) disqualify a Bidder who has engaged in bid rigging, price-fixing, collusion or other statutory offences in connection with this procurement process or any other City procurement process initiated within 5 years of the Closing Date;
- (c) disqualify a Bidder who submits conditions, options, variations or contingent statements to the terms set out in the RFT including the Bid Form and City Standard Agreement (where applicable) as part of its Bid;
- (d) disqualify a Bidder which does not meet any Mandatory Submission Requirements outlined in this RFT; and
- (e) disqualify a Bidder who does not attend a Mandatory Site Meeting, if applicable.

41.2 City may, in its sole discretion:

- (a) reject or disqualify any Bid pursuant to the 'Litigation' and/or 'Confidentiality' clauses above;
- (b) request that a Bidder submit a recent copy of its NEER or CAD-7 Statement regarding Safety Performance and disqualify the Bidder if it fails to provide before the deadline stated in the request;
- (c) disqualify a Bid if the Bidder does not (at time of Bid submission) have appropriate licenses, consents or approvals to perform the Work and is not likely to obtain such in a timely manner (as determined by the City in its sole discretion);
- (d) disqualify a Bidder who is the subject of legal proceedings by the City in respect of the City's Property Standards or Zoning By-laws;

- (e) disqualify a Bidder that has been convicted of being in violation of any City Vaughan's Property Standards By-law or Zoning By-law and the contravention remains;
 - (f) disqualify or not award a contract to a Bidder of who has contravened the provisions in the section entitled "Blackout Period";
 - (g) disqualify a Bidder who at any time has brought frivolous or vexatious litigation proceedings against the Owner ("litigation proceedings" shall mean all court proceedings and any other alternative dispute resolution processes, including arbitration, adjudication or any bid protest procedures under any applicable trade agreements.
 - (h) disqualify a Bidder as allowed by law;
 - (i) disqualify a bidder who was convicted, within the last five (5) years, of serious crimes or other serious offences, including bid-rigging, price-fixing or collusion, fraud or other statutory offenses;
 - (j) disqualify a Bidder who, in connection with this procurement process, has engaged in professional misconduct or acts or omissions that adversely reflect on the commercial integrity of the Bidder, such as:
 - inappropriate offers of gifts to City employees or Council,
 - inappropriate lobbying of or communications with City employees or Council, or
 - given false declarations including making misrepresentations in its Bid or failing to disclose conflicts of interest;
 - (k) not award a Contract to a Bidder which City, acting reasonably, feels will not able to meet Work specifications and performance standards and/or would be unduly hard to manage from a contract management/administration perspective;
 - (l) disqualify a Bidder who, at the time of Bid submission, is under Suspension pursuant to the City's Vendor Performance Evaluation Procedure;
 - (m) not award a Contract to a Bidder who received a Final Performance Evaluation Report Overall Rating of 'Marginal' or 'Unacceptable' on three or more previous contracts with City;
 - (n) disqualify, or not award an Agreement, to any Bidder who has a Conflict of Interest (as determined by the City in its sole discretion);
 - (o) disqualify a Bidder who submits conditions, options, variations or contingent statements to the terms set out in the RFT including the Bid Form and City Standard Agreement (where applicable) after receiving Notification of Award;
- and
- (p) disqualify a Bidder as allowed by law,

all notwithstanding any custom of the trade to the contrary or anything contained in the Bid Documents.

40.3 Further, Owner reserves the right to consider the following during the evaluation of Bids and when making determinations regarding Contract award:

- (a) Bid Price;
- (b) information provided in/with the Bid itself;
- (c) feedback from Bidder's references;
- (d) information received in response to enquiries made by the Owner of third parties in relation to the reputation, reliability, experience, financial stability, credit / credit rating, technical proficiency and capabilities of the Bidder;
- (e) the manner in which the Bidder and its key personnel provide(d) services to the City and others;
- (f) the experience and qualification of the Bidder's senior management, project management and/or other employees who would be engaged to perform the Work;
- (g) Bidder's safety records;
- (h) qualifications and experience and service record of any subcontractors proposed to be engaged by Bidder;
- (i) equipment proposed by Bidder to perform the Work;
- (j) advice and opinion of Owner's consultant's and/or agents;
- (k) Bidder past and current performance working with Owner's consultants and/or agents;
- (l) Bidder's (and/or its employees who would be involved in performing the Work) prior and current experience performing services for City;
- (m) lead times; and
- (n) completion history (including extended completion dates),

all notwithstanding any custom of the trade to the contrary or anything contained in the Bid Documents.

42. ADDITIONAL RESERVATION OF RIGHTS

42.1 To the extent permitted by law, and without limiting and notwithstanding any other provisions above, City reserves the right at any time in its sole discretion to:

- (a) cancel this RFT at any time;

- (b) invalidate this RFT and issue a replacement RFT for the same or similar Work or portion thereof;
- (c) cancel this RFT if any required approvals (e.g. from Council or regulatory authorities or government bodies) and/or funds are not obtained or maintained;
- (d) cancel this RFT if all Bid Prices exceed the City's allocated or estimated budget for the Work;
- (e) alter the RFT schedule, bid call process or procedures or objectives, or any other aspect of this RFT;
- (f) amend this RFT by posting Addendums at any time;
- (g) accept or reject all or part of any Bid;
- (h) request written clarification or the submission of supplementary written information in relation to the clarification request from any Bidder and incorporate a Bidder's response to that request for clarification into the Bid;
- (i) accept or not award a Contract to a Bidder who has submitted an unbalanced bid or whose bid contains price irregularities;
- (j) (not used);
- (k) waive any minor compliance irregularities or informalities, requirements, discrepancies, errors, omissions, or any other defects or deficiencies or any other forms of non-compliance with the Bid Documents in relation to any Bid if doing so would be in the best interest of the City;
- (l) contact and consider references;
- (m) not award the Contract to any Bidder who does not (if requested by City) furnish evidence, satisfactory to the City, that it has experience in performing the type of Work proposed and that it has sufficient capital and equipment to enable it to successfully complete the Work in a timely manner;
- (n) award a Contract to any Responsive Bidder;
- (o) not award any Contract to any Responsive Bidder, even if only one Responsive Bid was received;
- (p) not select the lowest Bidder for Contract award (1) even if it is the only Bid received or (2) if selecting another Bid would be in the best interests of the City, as determined by the City in its sole discretion;
- (q) award a Contract in its entirety or in part, to one or more Bidders;
- (r) in the event that the Bid price submitted by lowest Responsive Bidder exceeds the Owner's budget for all of the Work, the Owner reserves the right to (where in the opinion of the Owner it is possible to do so) award part of the Work to that Bidder; and

- (s) prohibit a Bidder from participating in this procurement process based on inappropriate conduct in a prior procurement process, and such inappropriate conduct shall include but not be limited to (1) submissions containing misrepresentations or any other inaccurate, misleading or incomplete information, or (2) the refusal of the respondent to honor its price or other commitments made in its submission or to comply with any conditions of award such as executing the City's form of Contract,

all notwithstanding any custom of the trade to the contrary or anything contained in the Bid Documents

43. APPLICABLE LAWS, ATTORNMENT

43.1 This RFT shall be governed and construed in accordance with the laws of the Province of Ontario and the federal laws of Canada applicable therein and applicable City By-Laws and Policies. To the extent the City is also subject to the Canadian Free Trade Agreement and the Comprehensive Economic and Trade Agreement, Chapter 19 Government Procurement, it is its intention that the procurement process conducted under this RFT be consistent with these requirements, where applicable.

43.2 The Bidder agrees that,

- (a) any action or proceeding relating to this RFT process shall be brought in any court of competent jurisdiction in the Province of Ontario and for that purpose the Bidder irrevocably and unconditionally attorns and submits to the jurisdiction of that Ontario court;
- (b) it irrevocably waives any right to and shall not oppose any Ontario action or proceeding relating to this RFT Process on any jurisdictional basis, including forum non conveniens; and
- (c) it shall not oppose the enforcement against it, in any other jurisdiction, of any judgement or order duly obtained from an Ontario court as contemplated by this section.

44. LIMITATION OF LIABILITY

44.1 Subject to Section 47(i) with respect to the Bidder, the Bidder acknowledges and agrees that the City shall have no liability to the Bidder or its sub-contractors in respect of the conduct of the procurement process relating to this RFT by the City, whether in contract or tort otherwise, and including without limitation, for costs that the Bidder or its sub-contractors incur with respect to the procurement process. The limitation of liability shall apply whether or not based on an allegation, whether in whole or in part, true or not, that the City conducted an unfair procurement process, or in the event the Bidder experiences any technical issues accessing the RFT or filling its Bid.

For further clarity, and without limitation, such limitation of liability also applies with respect to:

- owner exercising its rights and privileges as outlined in this RFT;
- owner's failure to accept or reject the bid submitted by the Bidder;

- the acceptance or rejection of any Bid;
- the manner in which this RFT process was conducted;
- City's award of or failure to award a Contract;
- acts and/or omissions of City or its Councillors or consultants related to this RFT process; and
- any matter arising out of or directly or indirectly related to the issuance of this RFT, evaluation of Bids or compliancy determinations or other City decisions

(collectively the "**RFT matters**").

44.2 Bidder absolutely waives and releases any right, or cause of action against the City and its agents, consultants, Mayor, Councillors and employees whether such right or cause of action arises in contract, negligence, or otherwise, including without limitation claims for loss of revenue, profit, or business opportunity.

44.3 Bidder acknowledges and agrees that, to the extent permitted by CFTA and CETA, it will not have or initiate any claims against the City or its agents, consultants, Mayor, Councillors and employees, including claims for incidental, exemplary, special, indirect, special or consequential damages, or any loss of revenue, profit, or business opportunity, even if it had advised the City of the possibility of such damages, and regardless of whether arising in tort (including negligence), contract, or other legal theory.

45. INTERPRETATION OF RFT, SEVERABILITY AND DEBRIEFINGS

45.1 Should any provision in this Document 1 or any other Bid Document be or become invalid, ineffective or unenforceable in whole or in part, the validity, effectiveness and enforceability of the remaining provisions shall not be affected thereby. Any such invalid, ineffective or unenforceable provision shall be deemed replaced by such valid, effective and enforceable provision which comes closest to the economic intent and the purpose of such invalid, ineffective or unenforceable provision as regards subject-matter, amount, time, place and extent.

45.2 The City will promptly inform participating Bidders of its contract award and procurement process decisions, and, on the request of a Bidder, will do so in writing. Subject to not disclosing Bidder information that might prejudice fair competition between Bidders and other reasonable restrictions, the City will, on request, provide an unsuccessful Bidder with an explanation of the reasons why its Bid was not selected and the relative advantages of the Successful Bidder's Bid. The City will provide unsuccessful Bidders, until 30 days following notification of the Agreement award date, a right to request a debriefing).

46. BID DISPUTES

46.1 Bid disputes shall be governed by and (to the extent permitted by CFTA and CETA) finally resolved in accordance with the City's Corporate Procurement Policy (PS-003). To the extent permitted by law, the RFT process may continue while the bid dispute notice is being reviewed pursuant to PS-003. As used in this RFT, "**CFTA**" means the

Canada Free Trade Agreement (2017) and “**CETA**” means the *Canada – European Union (EU) Comprehensive and Economic Trade Agreement*.

- 46.2 As used below, “**Challenge**” means (i) a claim by a Bidder that City has breached one or more provisions of CFTA or CETA, as applicable; or (ii) if the Bidder does not have a right to challenge directly a breach of CFTA or CETA under the laws of Ontario, a claim by Bidder that City has failed to comply with its obligations to implement CFTA or CETA.
- 46.3 Each Bidder shall be allowed a sufficient period of time to prepare and submit a Challenge, which shall be 15 days from the time when the basis of the Challenge became known or reasonably should have become known to the Bidder. Challenges shall be addressed to the City’s Director of Procurement Services and clearly and specifically outline Bidder’s concerns and claims and reference applicable provisions of the CFTA and/or CETA.
- 46.4 The Bidder and the City shall seek to resolve the Challenge through consultations and otherwise in accordance with City’s PS-003. The Bidder may appeal any City decisions regarding the Bidder’s Challenge pursuant to the following subsection (e). The RFT process may proceed, and a Contract may be awarded, during the appeal process.
- 46.5 Pending the establishment or designation of at least one impartial administrative or judicial authority by the Province of Ontario that is independent of its procuring entities to receive and review an applicable Challenge by a Bidder (and which the City elects to use for the purposes of this RFP), all disputes arising out of or in connection with this RFT, or in respect of any legal relationship associated with or derived from this RFT, may be finally resolved, at the City’s election, by arbitration under the Arbitration Rules of the ADR Institute of

Canada, Inc. The Seat of Arbitration will be Toronto, Ontario before a single arbitrator. The language of the arbitration will be English. For clarity, Bidder and the City can mutually agree to alternative rules and an alternative body to arbitrate the dispute.

- 46.6 The decision of a review body under (e) immediately above shall be subject to judicial review unless the review is conducted in accordance with the following:
- (a) The review body has procedures that provide that The City shall respond in writing to the challenge and disclose all relevant documents to the review body;
 - (b) the participants to the proceedings (“**participants**”) shall have the right to be heard prior to a decision of the review body being made on the challenge;
 - (c) the participants shall have the right to be represented and accompanied;
 - (d) the participants shall have access to all proceedings;
 - (e) the participants shall have the right to request that the proceedings take place in public and that witnesses may be presented; and
 - (f) the review body shall make its decisions or recommendations in a timely fashion, in writing, and shall include an explanation of the basis for each decision or recommendation.

- 46.7 Any rapid interim measures adopted or maintained by City to preserve the Bidder's opportunity to participate in the procurement may result in suspension of the procurement process.
- 46.8 Such measures may provide that overriding adverse consequences for the interests concerned, including the public interest, may be taken into account when deciding whether such measures should be applied. Just cause for not acting shall be provided in writing.
- 46.9 IN NO EVENT SHALL THE CITY'S LIABILITY TO THE BIDDER AND THE AGGREGATE AMOUNT OF COSTS AND DAMAGES RECOVERABLE AGAINST THE CITY RELATING TO OR ARISING FROM THIS RFT PROCESS OR ANY RFT MATTER EXCEED THE LESSER OF: (I) THE COSTS FOR THE PREPARATION OF THE BID; AND (II) THE COSTS RELATING TO THE CHALLENGE, IF A REVIEW BODY DETERMINES THAT THERE HAS BEEN A BREACH OR A FAILURE AS REFERRED TO IN PARAGRAPH 45(b). FOR CLARITY, TO THE EXTENT PERMITTED UNDER CETA AND CFTA, SUCH COSTS AND DAMAGES SHALL BE LIMITED TO ACTUAL, DIRECT COSTS REASONABLY INCURRED BY BIDDER IN THE CIRCUMSTANCES, AND SHALL NOT EXCEED COSTS WHICH A COMMERCIALY REASONABLE PARTY WOULD INCUR GIVEN THE ACTUAL REVENUES AND PROFITS THAT COULD REASONABLY BE EXPECTED IN THE CONTEXT OF THE SPECIFIC PROCUREMENT.
- 46.10A failure by the City to fulfill its obligations under this Section 47 shall not, to the extent permitted by CFTA and CETA, incur for the City a liability to Bidder that exceeds a costs and/or damages award in excess of the amount described in subsection 47 (i) above for the actual loss or damages suffered as a result of failure to perform its obligations under this Section 47, if any.
- 46.11 For greater clarity, further, a final determination that the City was permitted to take such actions as it did with respect to a Bidder's Bid, any RFT Matter or City's performance under this RFT, shall be consistent with a determination that no costs or damages award of any sort whatsoever should be made against the City.

47. BIDDER'S STATEMENT OF UNDERSTANDING

- 47.1 It is understood that the Bidders have carefully examined and understand all of provisions in the Bid Documents and have carefully considered the Work to be performed under the Contract if awarded.
- 47.2 The Bidder also confirms that, for the Bid Price, Bidders offers to furnish all labour, machinery, tools, apparatus and other means of implementation, and any other materials to complete the Work in strict accordance with the Contract (if awarded).
- 47.3 By Submitting a Bid, Bidder confirms that it has had, or has had the opportunity to obtain, independent legal advice in connection with Bidder's RFT review and Bid preparation, and has read tis RFT in its entirety, understands its contents and is submitting its Bid freely and voluntarily (without duress or undue influence from any party) with full capacity and authority to do so.

END OF DOCUMENT 1

Not applicable for this RFT.

END OF DOCUMENT 2

SUPPLEMENTARY ARTICLES

The Agreement of the Stipulated Price Contract, CCDC-2 2008 is hereby amended as follows:

SA1 ARTICLE A-1 THE WORK**SA1.1 Paragraph 1.3:**

Add the words “, and attain *Total Performance of the Work*, within 30 calendar days of attaining *Substantial Performance of the Work* save and except for landscaping work that may be deferred to a later date in the sole discretion of the Owner” after the words “in the year ___” in the third line of paragraph 1.3.

SA2 ARTICLE A-3 CONTRACT DOCUMENTS**SA2.1 Paragraph 3.1:**

Add the words “ - Supplementary Articles of the *Contract*
- Supplementary Definitions of the *Contract*
- Supplementary Conditions of the *Contract*”

to the list of *Contract Documents* in paragraph 3.1.

SA3 ARTICLE A-5 – PAYMENT**SA3.1 Paragraph 5.1.1**

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

SA3.2 Paragraph 5.3.1:

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

Should either party fail to make payments as they become due under the terms of the *Contract* or in an award by arbitration or Court, or under a determination in an adjudication conducted pursuant to Part II.1 of the *Act* and Part 14 – ADJUDICATION, interest on such amounts shall also become due and payable until payment is made at the prejudgment interest rate determined under subsection 127(2) of the *Courts of Justice Act*.

SA4 Article A-6 RECEIPT OF AND ADDRESSES FOR NOTICES IN WRITING**SA4.1 Paragraph 6.1:**

Delete the words “or other form of electronic communication” from the second and seventh lines of paragraph 6.1.

Delete the words “email address” from the signature lines for the *Owner*, *Contractor* and *Consultant* in paragraph 6.1.

SA5 ARTICLE A-9 – CONFLICT OF INTEREST

SA5.1 Add new Article A-9 – Conflict of Interest as follows:

ARTICLE A-9 CONFLICT OF INTEREST

- 9.1 The *Contractor*, all of the *Subcontractors*, and any of their respective advisors, partners, directors, officers, employees, agents, and volunteers shall not engage in any activity or provide any services where such activity or the provision of such services creates a conflict of interest (actually or potentially, in the sole opinion of the *Owner*) with the provision of the *Work* pursuant to the *Contract*.
- 9.2 The *Contractor* shall disclose to the *Owner*, in writing, without delay any actual or potential situation that may be reasonably interpreted as either a conflict of interest or a potential conflict of interest, including the retention of any *Subcontractor* or *Supplier* that is directly or indirectly affiliated with or related to the *Contractor*.
- 9.3 A breach of this Article by the *Contractor*, any of the *Subcontractors*, or any of their respective advisors, partners, directors, officers, employees, agents, and volunteers shall entitle the *Owner* to terminate the *Contract*, in addition to any other rights and remedies that the *Owner* has in the *Contract*, in law, or in equity.

SA6 Article A-10 SEVERABILITY

SA6.1 Add new Article A-10 SEVERABILITY as follows:

Article A-10 SEVERABILITY

- 10.1 - If any provision of this *Contract* is found to be invalid or unenforceable in any circumstances, the remainder of this *Contract*, and the application of such provision in any other circumstances, shall not be affected.

SA7 ARTICLE A-11 TIME OF ESSENCE

SA7.1 Add new Article A-11 TIME OF ESSENCE as follows:

ARTICLE A-11 TIME OF ESSENCE

- 11.1 Time shall be of the essence of the *Contract* and under all *Contract Documents*.

SUPPLEMENTARY DEFINITIONS

The Definitions of the Stipulated Price Contract CCDC2 – 2008 are hereby amended as follows:

SD1 Paragraph 3a – Construction Schedule

Add new paragraph 3a - Construction Schedule as follows:

3a. *Construction Schedule* means the baseline construction schedule for the performance of the *Work* provided by the *Contractor* pursuant to GC 3.5 CONSTRUCTION SCHEDULE, including any amendments to the baseline construction schedule made pursuant to the *Contract Documents*.

SD2 Paragraph 6 – Contract Documents

Add the words “in writing” after the word “upon” in the second line of paragraph 6.

SD3 Paragraph 27 – Act

Add new paragraph 27 – Act as follows:

27. *Act* means the *Construction Act*, R.S.O. 1990, c. C.30 as amended, and all regulations thereto.

SD4 Paragraph 28 – As-Built Drawings

Add new paragraph 28 – As-Built Drawings as follows:

28. *As-Built Drawings* means drawings prepared by the *Contractor* by marking on a copy of the *Drawings* the changes from the *Drawings* which occur during construction including, but are not limited to the exact location of major building components that were shown generally on the *Drawings*.

SD5 Paragraph 29 – Authority

Add new paragraph 29 – Authority as follows:

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

SD6 Paragraph 30 – Draft Proper Invoice

Add new paragraph 30 – Draft Proper Invoice as follows:

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

- .1 *Owner’s Invoice Cover Sheet*,
- .2 the invoice number,
- .3 the *Contractor’s* name and address,
- .4 the date on which the *Draft Proper Invoice* is submitted to the *Consultant*, and the period during which the services or materials for which payment is being applied for were supplied,
- .5 information identifying the authority, whether in contract or otherwise, under which the services or materials were supplied,
- .6 a description, including quantity where appropriate, of the services or materials that were supplied during the payment period,

- .7 the amount payable for the services or materials that were supplied during the payment period, and the payment terms,
- .8 the name, title, telephone number and mailing address of the person to whom payment is to be sent,
- .9 the *Contractor's* HST number,
- .10 evidence reasonably required by the *Consultant* to establish the value and delivery of *Products* for which payment is claimed in the *Draft Proper Invoice*, and which have been delivered to the *Place of Work*, but have not yet been incorporated into the *Work*,
- .11 backup documentation to support any cash allowances included in the *Proper Invoice* pursuant to GC 4.1 – CASH ALLOWANCES,
- .12 a statement based on the schedule of values, and
- .13 an updated *Construction Schedule* that shows revisions to the baseline *Construction Schedule*.

SD7 Paragraph 31 – Scale of Holdback

Add new paragraph 31 – Scale of Holdback as follows:

- 31. *Scale of Holdback* has the meaning ascribed to it in paragraph GC 5.7.1.

SD8 Paragraph 32 – Proper Invoice

Add new paragraph 32 – Proper Invoice as follows:

- 32. *A Proper Invoice* means an invoice submitted by the *Contractor* to the *Consultant* on or after the tenth calendar day following submission by the *Contractor* to the *Consultant* of a *Draft Proper Invoice*, and includes:
 - .1 Fully and properly completed *Owner's Invoice Cover Sheet*,
 - .2 the invoice number,
 - .3 the *Contractor's* name and address,
 - .4 the date on which the *Proper Invoice* is submitted to the *Consultant* and the period during which the services or materials for which payment is being applied for were supplied,
 - .5 information identifying the authority, whether in the contract or otherwise, under which the services or materials were supplied,
 - .6 a description, including quantity where appropriate, of the services or materials that were supplied during the payment period,
 - .7 the amount payable for the services or materials that were supplied during the payment period, and the payment terms,
 - .8 the name, title, telephone number and mailing address of the person to whom payment is to be sent,
 - .9 the *Contractor's* HST number,
 - .10 evidence reasonably required by the *Consultant* to establish the value and delivery of *Products* for which payment is claimed in the *Proper Invoice*, and which have been delivered to the *Place of Work*, but have not yet been incorporated into the *Work*,
 - .11 backup documentation to support any cash allowances included in the *Proper Invoice* pursuant to GC 4.1 – CASH ALLOWANCES,
 - .12 a statement based on the schedule of values,

- .13 an updated *Construction Schedule* that shows revisions to the baseline *Construction Schedule*,
- .14 a Statutory Declaration on an original CCDC Document 9A-2001, attesting to the truth of the statements made therein, and, if requested by the *Owner*, a Statutory Declaration from any *Subcontractor*, as may be identified by the *Owner*, and,
- .15 a copy of the *Draft Proper Invoice* submitted for the relevant payment period.

SD9 Paragraph 33 – Submittals

Add new paragraph 33 – Submittals as follows:

33. *Submittals* are documents or items required by the *Contract Documents* to be provided by the *Contractor*, 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
 - Record drawings and manuals that provide instructions for the operation and maintenance of the *Work*.

SD10 Paragraph 34 – Total Performance of the Work

Add new Paragraph 34 – Total Performance of the Work as follows:

34. *Total Performance of the Work* means when the entire *Work*, except for those items arising from GC 12.3 – WARRANTY, has been performed in accordance with the requirements of the *Contract Documents* and is so certified by the *Consultant*.

SUPPLEMENTARY CONDITIONS

The General Conditions of the Stipulated Price Contract CCDC 2 – 2008 are hereby amended as follows:

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

SC 1 CONTRACT DOCUMENTS**Paragraph 1.1.6:**

SC1.1 Add new sentence to the end of paragraph 1.1.6:

The *Specifications* are divided into divisions and sections for convenience but shall be read as a whole and neither such division nor anything else contained in the *Contract Documents* will be construed to place responsibility on the *Consultant* to settle disputes among the *Subcontractors* and *Suppliers* or as between them and the *Contractor* with respect to such divisions.

SC1.2 Paragraph 1.1.7.1:

Add the words “- Supplementary Articles” at the beginning of the order of priority of documents in subparagraph 1.1.7.1.

Add the words “- Supplementary Definitions” above the words “the Definitions” in the order of priority of documents in subparagraph 1.1.7.1.

SC1.3 Paragraph 1.1.7.5:

Add new subparagraph 1.1.7.5 as follows:

1.1.7.5 - In case of discrepancies, noted materials and annotations shall take precedence over graphic indications in the *Contract Documents*

SC1.4 Paragraph 1.1.8:

Delete paragraph 1.1.8 in its entirety and substitute new paragraph 1.1.8 as follows:

1.1.8 - The *Owner* shall provide the *Contractor*, without charge, 6 copies of the *Contract Documents*. At the request of the *Contractor*, the *Owner* will provide additional copies at the *Contractor's* expense.

SC2 GC 1.3 RIGHTS AND REMEDIES**SC2.1 Paragraph 1.3.2:**

Delete the word "No" from the beginning of paragraph 1.3.2 and substitute the following words:

"Except with respect to the notice requirements set out in paragraphs 6.4.1, 6.5.4, and 6.6.1, no".

SC2.2 Paragraph 1.3.3

Add new paragraph 1.3.3 as follows:

1.3.3 – Notwithstanding paragraph 1.3.1, the *Owner* shall not be liable, whether in contract, tort, or any other theory of law or statute, for any claim arising from any prior negotiation, representation, or agreement, whether written or oral, which is superseded by the *Contract* under Article A-2 of the Agreement- AGREEMENTS AND AMENDMENTS.

SC3 GC 1.4 ASSIGNMENT**SC3.1 Paragraph 1.4.1:**

Add the following sentence to the end of paragraph 1.4.1:

In the event of an assignment of the *Contract* by the *Contractor*, such assignment shall not relieve the *Contractor* from its obligations and liabilities hereunder.

SC4 GC 2.2 ROLE OF THE CONSULTANT**SC4.1 Paragraph 2.2.4:**

Delete paragraph 2.2.4 in its entirety, and replace with the following:

The *Consultant* will inform the *Owner* that the *Consultant* has received a *Draft Proper Invoice* from the *Contractor* on the same day that the *Draft Proper Invoice* is received by the *Consultant* as provided in paragraph 5.2.2 of GC 5.2 – APPLICATIONS FOR PROGRESS PAYMENT and shall provide a copy of such *Draft Proper Invoice* to the *Owner* on the same day that it is received by the *Consultant*.

The *Consultant* will inform the *Owner* that the *Consultant* has received a *Proper Invoice* from the *Contractor* on the same day that the *Proper Invoice* is received by the *Consultant* as provided in paragraph 5.2.6 of GC 5.2 – APPLICATIONS FOR PROGRESS PAYMENT and shall provide a copy of such *Proper Invoice* to the *Owner* on the same day that it is received by the *Consultant*.

SC4.2 Paragraph 2.2.7:

Delete the words "Except with respect to GC 5.1 – FINANCING INFORMATION REQUIRED OF THE OWNER, the" and substitute the word "The" at the beginning of paragraph 2.2.7.

SC4.3 Paragraph 2.2.13:

Add the following to the end of paragraph 2.2.13:

If, in the opinion of the *Contractor*, performance of the *Supplemental Instruction* will result in an increase in the *Contract Price* or to the *Contract Time*, the *Contractor* shall, within 10 *Working Days* of receipt of the *Supplemental Instruction*, provide the *Consultant* with *Notice in Writing* of the cause and duration of the delay and of any increase in *Contract Price*. Failure to provide the *Notice in Writing* shall be a deemed acceptance of the *Supplemental Instruction* by the *Contractor* without adjustment in the *Contract Price* or *Contract Time*.

SC4.4 Paragraph 2.2.14:

Delete the word “submittals,” and substitute the words “*Submittals* which are provided” after the word “*Contractor’s*” in the first line of paragraph 2.2.14.

SC4.5 Paragraph 2.2.19:

Add new paragraph 2.2.19 as follows:

2.2.19 – The *Consultant* will conduct reviews of the *Work* to determine the date of *Total Performance of the Work* as provided in paragraph 5.7.1.

SC5 GC 2.3 REVIEW AND INSPECTION OF THE WORK**SC5.1 Paragraphs 2.3.8, 2.3.9 and 2.3.10:**

Add new paragraphs 2.3.8, 2.3.9 and 2.3.10 as follows:

2.3.8 The *Contractor* shall immediately inform the *Owner* and the *Consultant* of any notices, warnings or asserted violations issued by any regulatory or government agencies having jurisdiction relating to the *Work*.

2.3.9 No review of the *Work* by the *Owner* or the *Consultant* shall relieve the *Contractor* from its responsibility to perform the *Work* in accordance with the *Contract Documents*.

2.3.10 Where standards of performance are specified in the *Contract Documents* and the *Work* does not comply with the performance specified, such deficiency shall be corrected as directed by the *Consultant*. Any testing of work identified as defective in accordance with GC 2.4, including retesting required by the *Owner* to verify performance, shall be done at the *Contractor’s* expense.

SC6 GC 2.4 DEFECTIVE WORK**SC6.1 Paragraph 2.4.1.1:**

Add new subparagraph 2.4.1.1 as follows:

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

SC6.2 Paragraph 2.4.3:

Delete the words “the difference in value between the work as performed and that called for by” and substitute the words “the value of such work as is necessary to correct any non-compliance with” in the second and third lines of paragraph 2.4.3.

SC6.3 Paragraph 2.4.4:

Add new paragraph 2.4.4 as follows:

2.4.4 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*.

SC7 GC 3.1 CONTROL OF THE WORK

SC7.1 Paragraph 3.1.2:

Add the word “schedules” after the word “techniques” in the first line of paragraph 3.1.2.

SC7.2 Paragraph 3.1.3:

Add new paragraph 3.1.3 as follows:

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

SC8 GC 3.2 CONSTRUCTION BY OWNER OR OTHER CONTRACTORS

SC8.1 Paragraph 3.2.2.1:

Delete subparagraph 3.2.2.1 in its entirety.

SC8.2 Paragraph 3.2.2.2:

Delete subparagraph 3.2.2.2 in its entirety and substitute the words “require other contractors and the *Owner’s* own forces to comply with the requirements and instructions of the *Contractor* with respect to construction safety at the *Place of the Work*.”

SC8.3 Paragraph 3.2.3.4:

Add new subparagraph 3.2.3.4 as follows:

3.2.3.4 Subject to General Condition 9.4 - CONSTRUCTION SAFETY, assume overall responsibility for compliance with all aspects of the applicable health and safety legislation in the *Place of the Work* for the *Owner's* own forces and for other contractors, including all of the responsibilities of the contractor, constructor, prime contractor or principal contractor as may apply in accordance with the applicable health and safety legislation of the *Place of the Work* as defined in the *Occupational Health and Safety Act*.

SC8.4 Paragraph 3.2.3.5:

Add new subparagraph 3.2.3.5 as follows:

3.2.3.5 Take all reasonable, practical and prudent steps to provide for the coordination of the activities and work of other contractors and *Owner's* own forces with the *Work* of the *Contract*.

SC9 GC 3.4 DOCUMENT REVIEW**SC9.1 Paragraph 3.4.1:**

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

3.4.1 The *Contractor* shall review the *Contract Documents* and shall report promptly to the *Consultant* any error, inconsistency, or omission the *Contractor* may discover. Such review by the *Contractor* shall be undertaken with the standard of care described in paragraph 3.14.1 of the *Contract*. Except for its obligation to make such review and report the result, the *Contractor* does not assume any responsibility to the *Owner* or to the *Consultant* for the accuracy of the *Contract Documents*. The *Contractor* shall not be liable for damage or costs resulting from such errors, inconsistencies, or omissions in the *Contract Documents*, which the *Contractor* could not reasonably have discovered through the exercise of the required standard of care. If the *Contractor* does discover any error, inconsistency, or omission in the *Contract Documents*, the *Contractor* shall not proceed with the work affected until the *Contractor* has received corrected or missing information from the *Consultant*.

SC9.2 Paragraph 3.4.2:

Add new paragraph 3.4.2 as follows:

3.4.2 The lack of reference on a drawing or in a specification to labour or products that are required or normally recognized within the applicable trade practice as being necessary for the complete execution of the *Work* shall not constitute an error, inconsistency or omission.

SC9.3 Paragraph 3.4.3:

Add new paragraph 3.4.3 as follows:

3.4.3 The issuance of Requests for Information by the *Contractor* shall not entitle the *Contractor* to any increases to the *Contract Price* or *Contract Time*.

SC9.4 Paragraph 3.4.4:

Add new paragraph 3.4.4 as follows:

3.4.4 If, at any time, the *Contractor* finds errors, inconsistencies, or omissions in the *Contract Documents* or has any doubt as to the meaning or intent of any part thereof, the *Contractor* shall immediately notify the *Consultant*, and request a *Supplemental Instruction, Change Order, or Change Directive*, as the case may require. Neither the *Owner* nor the *Consultant* will be responsible for the consequences of any action of the *Contractor* based on oral instructions.

SC10 GC 3.5 CONSTRUCTION SCHEDULE

SC10.1 Paragraph 3.5.1:

Delete paragraph 3.5.1 in its entirety and substitute new paragraph 3.5.1 as follows:

3.5.1 - The *Contractor* shall,

- .1 within 10 *Working Days* following the notice of award of the *Contract*, prepare and submit to the *Owner* and the *Consultant* for their review and acceptance, a construction schedule that indicates the timing of the activities of the *Work* and provides sufficient detail of the critical events and their inter-relationship to demonstrate that the *Work* will be performed in conformity with the *Contract Time* and in accordance with the *Contract Documents*. Unless otherwise agreed to in writing, in advance by the *Owner* and the *Contractor*, when required by the *Specifications* to employ construction scheduling software, the *Contractor* shall employ the software Microsoft Project in generating the construction schedule, which permits the progress of the *Work* to be monitored in relation to the critical path established in the schedule. The *Contractor* shall provide the construction schedule and any successor or revised schedules to the *Owner* in electronic format and paper copy. When required by the *Specifications* to employ construction scheduling software, the *Contractor* shall provide the construction schedule to the *Owner* in editable format, together with a record version in PDF format. Once accepted by the *Owner* and the *Consultant*, the construction schedule submitted by the *Contractor* shall become the baseline construction schedule. If the construction schedule submitted by the *Contractor* is not accepted by the *Owner* and the *Consultant*, the *Contractor* shall make revisions to the construction schedule until it is accepted by the *Owner* and the *Consultant*.
- .2 provide the expertise and resources, such resources including manpower and equipment, as are necessary to maintain progress under the accepted baseline construction schedule or any successor or revised schedule accepted by the *Owner* pursuant to General Condition 3.5 – CONSTRUCTION SCHEDULE;

- .3 monitor the progress of the *Work* on a weekly basis relative to the baseline construction schedule, or any successor or revised schedule accepted by the *Owner* pursuant to General Condition 3.5 – CONSTRUCTION SCHEDULE, update the schedule on a bi-weekly basis and advise the *Consultant* and the *Owner* in writing of any variation from the baseline or slippage in the schedule; and
- .4 if, after applying the expertise and resources required under subparagraph 3.5.1.2, the *Contractor* forms the opinion that the variation or slippage in schedule reported pursuant to subparagraph 3.5.1.3 cannot be recovered by the *Contractor*, it shall, in the same notice, indicate to the *Consultant* and the *Owner* if the *Contractor* intends to apply for an extension of *Contract Time* or to claim compensation for delay as provided in PART 6 of the General Conditions - CHANGES IN THE WORK.

SC10.2 Paragraph 3.5.2:

Add new paragraph 3.5.2 as follows:

3.5.2 If, at any time, the *Owner* or the *Consultant* advise the *Contractor* that it appears that the actual progress of the *Work* is behind schedule or is likely to become behind schedule, or if the *Contractor* has given notice of such to the *Owner* or the *Consultant* pursuant to subparagraph 3.5.1.3, the *Contractor* shall take appropriate steps to cause the actual progress of the *Work* to conform to the schedule or minimize the resulting delay and shall produce and present to the *Owner* and the *Consultant* a recovery plan demonstrating how the *Contractor* will achieve the recovery of the schedule. If the *Contractor* intends to apply for a change in the *Contract Price* or claim compensation for delay in relation to a schedule recovery plan, then the *Contractor* shall proceed in accordance with General Condition 6.5 – DELAYS.

SC11 GC 3.6 SUPERVISION

SC11.1 Paragraph 3.6.1:

Add the words “and upon the *Contractor* obtaining the *Owner’s* written consent, which consent will not be unreasonably withheld” after the word “reason” at the end of paragraph 3.6.1.

SC11.2 Paragraph 3.6.3:

Add new paragraph 3.6.3 as follows:

3.6.3 The *Owner* may, at any time, for reasonable cause, object to the representative referred to in paragraph 3.6.1 and require the *Contractor* to dismiss and replace the said representative.

SC11.3 Paragraphs 3.6.4, 3.6.5, 3.6.6, 3.6.7, 3.6.8:

Add new paragraphs 3.6.4, 3.6.5, 3.6.7 and 3.6.8 as follows:

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

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

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

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

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

SC12 GC 3.8 LABOUR AND PRODUCTS

SC12.1 Paragraph 3.8.2:

Delete paragraph 3.8.2 and replace with new paragraph 3.8.2 as follows:

3.8.2 Unless otherwise specified in the *Contract Documents*, *Products* provided shall be new and as specified. The *Contractor* shall not provide substitutions for specified *Products* without the express written consent of the *Consultant* and the *Owner*.

SC12.2 Paragraph 3.8.4:

Add new paragraphs 3.8.4 and 3.8.5 as follows:

3.8.4 The *Contractor* is responsible for the safe on-site storage of *Products* and their protection (including *Products* supplied by the *Owner* and other contractors to be installed under the *Contract*) in such ways as to avoid dangerous conditions or contamination to the *Products* or other persons or property and in locations at the *Place of the Work* to the satisfaction of the *Owner* and the *Consultant*. The *Owner* shall provide all relevant information on the *Products* to be supplied by the *Owner*.

3.8.5 The *Contractor* represents and warrants that the *Products* provided for in accordance with the *Contract* are not subject to any conditional sales contract and are not subject to any security rights obtained by any third party which may subject any of the *Products* to seizure and/or removal from the *Place of the Work*.

SC13 GC 3.10 SHOP DRAWINGS

SC13.1 Add the words "AND OTHER SUBMITTALS" to the Title after "SHOP DRAWINGS".

SC13.2 **Paragraph 3.10.1, 3.10.2, 3.10.4, 3.10.7, 3.10.8, 3.10.8.2, 3.10.9, 3.10.10 and 3.10.11:**

Add the words "and *Submittals*" after the words "*Shop Drawings*" in clauses 3.10.1, 3.10.2, 3.10.4, 3.10.7, 3.10.8, 3.10.8.2, 3.10.9, 3.10.10 and 3.10.11.

SC13.3 **Paragraph 3.10.3:**

Delete paragraph 3.10.3 in its entirety and substitute new paragraph 3.10.3 as follows:

3.10.3 Prior to the first application for payment, the *Contractor* and the *Consultant* shall jointly prepare a schedule of the dates for submission and return of *Shop Drawings* and any *Submittals*.

SC13.4 **Paragraph 3.10.12:**

Delete paragraph 3.10.12 in its entirety and substitute new paragraph 3.10.12 as follows:

3.10.12 The *Consultant* will review and return *Shop Drawings* and *Submittals* in accordance with the schedule agreed upon in 3.10.3, or, in the absence of such schedule, with reasonable promptness. If, for any reason, the *Consultant* cannot process them within the agreed-upon schedule or with reasonable promptness, the *Consultant* shall notify the *Contractor* and they shall meet to review and arrive at an acceptable revised schedule for processing. The *Contractor* shall update the *Shop Drawings* and *Submittals* Schedule to correspond to changes in the construction schedule. Changes in the *Contract Price* or *Contract Time* may be made only as otherwise provided in the *Contract*.

SC14 GC3.14 PERFORMANCE BY CONTRACTOR

SC14.1 Add a new GC3.14 PERFORMANCE BY CONTRACTOR as follows:

GC 3.14 PERFORMANCE BY CONTRACTOR

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

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

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

SC 15 GC 3.15 INTERFERENCE

SC15.1 Add new GC 3.15 INTERFERENCE as follows:

GC 3.15 INTERFERENCE

3.15.1 If the *Work*, in whole or in part, involves the renovation of, or addition to, existing and occupied premises:

- .1 the *Contractor* shall maintain normal business operations and traffic flow, with a minimum of inconvenience to the tenants and occupants of the *Place of the Work*;
- .2 subject to the provisions of the *Contract Documents*, the *Contractor* shall ensure that no essential services such as electric power, water supply or other public utilities are interrupted;
- .3 in every case where an interruption to existing services or utilities is to occur during execution of the *Work*, the *Contractor* shall give the *Owner* five *Working Days* prior written notice. The *Contractor* shall reschedule any such interruption, at no additional cost to the *Owner*, if requested to do so in writing by the *Owner*; and
- .4 subject to work restrictions set out elsewhere in the *Contract Documents*, any work that generates excessive noise shall be carried out by the *Contractor* between the hours of 5:00 p.m. and 8:00 a.m. or on weekends and holidays as may be agreed upon between the *Contractor* and the *Owner*, subject to applicable by-laws.

SC16 GC 3.16 RIGHT OF ENTRY

SC16.1 Add new GC 3.16 RIGHT OF ENTRY as follows:

GC 3.16 RIGHT OF ENTRY

3.16.1 The *Owner* shall have the right to enter or occupy the *Place of the Work* in whole or in part for the purpose of placing materials, fittings and equipment or for other uses at any time before *Substantial Performance of the Work*, if, in the reasonable opinion of the *Consultant*, such entry or occupation does not prevent or substantially interfere with the *Contractor's* completion of the *Contract* or achieving *Substantial Performance of the Work* within the *Contract Time*. Such entry or occupation or use of equipment or systems shall not be considered as acceptance of the *Work* in whole or in part, or in any way relieve the *Contractor* from its responsibility as constructor under the *Occupational Health and Safety Act* or to complete the *Contract*.

SC17 GC 4.1 CASH ALLOWANCES

SC17.1 Paragraph 4.1.4:

Delete paragraph 4.1.4 in its entirety and substitute new paragraph 4.1.4 as follows:

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

SC17.2 Paragraph 4.1.5:

Delete paragraph 4.1.5 in its entirety and substitute new paragraph 4.1.5 as follows:

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

SC17.3 Paragraph 4.1.8:

Add new paragraph 4.1.8 as follows:

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

SC18 GC 5.1 FINANCING INFORMATION REQUIRED OF THE OWNER

SC18.1 Revise the heading, “GC 5.1 FINANCING INFORMATION REQUIRED OF THE OWNER” to read, “GC 5.1 FINANCING INFORMATION REQUIRED”.

SC18.2 Paragraph 5.1.1:

Delete paragraph 5.1.1 in its entirety and substitute new paragraph 5.1.1 as follows:

5.1.1 The *Owner* and *Contractor* shall provide each other with timely *Notice in Writing* of any material change in their financial ability to fulfil their respective obligations under the *Contract*.

SC18.3 Delete paragraph 5.1.2 in its entirety.

SC19 GC 5.2 APPLICATIONS FOR PROGRESS PAYMENT**SC19.1 Paragraph 5.2.1**

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

SC19.2 Paragraph 5.2.2

Delete paragraph 5.2.2 and replace with the following new paragraph 5.2.2:

Subject to paragraph 5.2.3, after the last day of each payment period, the *Contractor* shall submit to the *Consultant* a *Draft Proper Invoice* for an amount proportionate to the amount of the *Contract*, of *Work* performed and *Products* delivered to the *Place of the Work* as of the last day of the payment period.

SC19.3 Paragraph 5.2.3

Delete paragraph 5.2.3 in its entirety and replace with the following new paragraph 5.2.3:

Notwithstanding paragraph 5.2.2, the *Contractor* shall not submit a *Draft Proper Invoice* between December 24 and January 2.

SC19.4 Paragraph 5.2.3

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

The *Consultant* will evaluate the *Draft Proper Invoice* and, based upon its observations, may, in its sole discretion, provide comments to the *Contractor* in relation to the *Draft Proper Invoice*.

SC19.5 Paragraph 5.2.6

Delete paragraph 5.2.6 in its entirety and replace with the following new paragraph 5.2.6:

Subject to paragraph 5.2.7, applications for progress payment shall consist of a *Proper Invoice*, and shall be submitted by the *Contractor* to the *Consultant* on or after the tenth calendar day following the submission of a *Draft Proper Invoice* to the *Consultant*.

SC 19.6 Paragraph 5.2.7

Delete paragraph 5.2.7 in its entirety and replace with the following new paragraph 5.2.7:

Notwithstanding paragraph 5.2.6, the *Contractor* shall not submit a *Proper Invoice* to the *Client* between November 22 and January 2.

SC19.7 Paragraphs 5.2.8, 5.2.9, 5.2.10, 5.2.11 and 5.2.12

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

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

5.2.9 A *Proper Invoice* is deemed to be received by the *Owner* on the date that it is received by the *Consultant*.

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

5.2.11 Any *Products* delivered to the *Place of the Work* but not yet incorporated into the *Work* shall remain at the risk of the *Contractor* notwithstanding that title has passed to the *Owner* pursuant to General Condition 13.1 - OWNERSHIP OF MATERIALS.

SC20 GC 5.3 PROGRESS PAYMENT

SC20.1 Paragraph 5.3.1

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

SC20.2 Subparagraph 5.3.1.1

Delete subparagraph 5.3.1.1 in its entirety and substitute the following:

The *Consultant* will inform the *Owner* that the *Consultant* has received a *Proper Invoice* from the *Contractor* on the same day that the *Proper Invoice* is received by the *Consultant*. The *Consultant* will provide a copy of such *Proper Invoice* to the *Owner* on the day that it is received by the *Consultant* from the *Contractor*.

SC20.3 Subparagraph 5.3.1.2

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

Delete the second sentence of paragraph 5.3.1.2

SC20.4 Subparagraph 5.3.1.3

Delete subparagraph 5.3.1.3 in its entirety and substitute the following:

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

SC20.5 Subparagraph 5.3.1.4

Add new subparagraph 5.3.1.4 as follows:

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

SC21 GC 5.4 SUBSTANTIAL PERFORMANCE OF THE WORK**SC21.1 Paragraph 5.4.3:**

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

5.4.3 The *Contractor*, shall attain *Total Performance of the Work*, including the rectification of all deficiencies, within 30 days of attaining *Substantial Performance of the Work*, save and except for landscaping work that may be deferred to a later date in the sole discretion of the *Owner*.

SC21.2 Paragraphs 5.4.4, 5.4.5, 5.4.6 and 5.4.7:

Add new paragraphs 5.4.4, 5.4.5, 5.4.6 and 5.4.7 as follows:

5.4.4 Within seven (7) calendar days of receiving a copy of the certificate of *Substantial Performance* of the *Work* signed by the *Consultant*, the *Contractor* shall publish a copy of the certificate in a construction trade newspaper (as that term is defined in the *Act*) and shall provide to the *Consultant* and the *Owner* the date of publication and the name of the construction trade newspaper in which the publication occurred. If the *Contractor* fails to comply with this provision, the *Owner* may publish a copy of the certificate and charge the *Contractor* with the costs so incurred.

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

- .1 guarantees;
- .2 warranties;
- .3 certificates;
- .4 testing and balancing reports;
- .5 distribution system diagrams;
- .6 spare parts;
- .7 maintenance manuals;
- .8 samples;
- .9 existing reports and correspondence from authorities having jurisdiction in the *Place of the Work*;
- .10 a copy of all shop drawings that were processed under GC 3.10 showing all notations and amendments made by the *Contractor* and the *Consultant*;

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

5.4.6 Where the *Contractor* is unable to deliver the documents and materials described in paragraph 5.4.5, then, provided that none of the missing documents and materials interferes with the use and occupancy of the *Project* in a material way, the failure to deliver shall not be grounds for the *Consultant* to refuse to certify *Substantial Performance of the Work*. Any documents or materials not delivered in accordance with paragraph 5.4.5 shall be delivered as provided in GC 5.7, paragraph 5.7.1.

5.4.7 Together with the submission of its written application for *Substantial Performance of the Work*, the *Contractor* shall submit to the *Consultant* and to the *Owner* a statutory declaration setting forth in reasonable detail any then outstanding and unresolved disputes or claims between the *Contractor* and any *Subcontractor* or *Supplier*, including any claims allegedly arising from delay, which are, directly or indirectly, related to any then outstanding or anticipated disputes or claims between the *Contractor* and the *Owner*, and this disclosure shall, at a minimum:

- .1 identify the parties involved;
- .2 identify the amount in dispute;
- .3 provide a brief statement summarizing the position of each party;
- .4 include copies of any correspondence or documents in support of either party's position;
- .5 include copies of any documents of any court or arbitration process related to the matter;

- .6 identify the dispute or claim between the *Contractor* and the *Owner* to which the matter relates, if any; and
- .7 include a copy of any written agreement or a summary of any oral agreement between the parties related to resolution of the matter.

The *Contractor* expressly acknowledges that the submission of the aforesaid complete statutory declaration is a condition precedent to the *Contractor* receiving payment from the *Owner* of any amount pertaining to any claim or dispute referred to in this paragraph, and that the *Contractor* shall not be entitled to recover from the *Owner* any amount pertaining to any claim or dispute referred to in this paragraph, if the provisions of this paragraph have not been fully complied with. For greater certainty, the *Contractor* is not obliged to make the aforementioned disclosure with respect to any dispute or claim that is not related to or does not touch upon any unresolved dispute or claim between the *Contractor* and the *Owner*.

SC22 GC 5.5 PAYMENT OF HOLDBACK UPON SUBSTANTIAL PERFORMANCE OF THE WORK

SC22.1 Paragraph 5.5.1

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

SC22.2 Subparagraph 5.5.1.2

Add the words “and, if requested by the *Owner*, a Statutory Declaration from any *Subcontractor*, as may be identified by the *Owner*, on an original form of CCDC Document 9B – 2001 Statutory Declaration of Progress Payment Distribution by Subcontractor.” to the end of subparagraph 5.5.1.2.

SC22.3 Subparagraphs 5.5.1.3 and 5.5.1.4

Add new subparagraphs 5.5.1.3 and 5.5.1.4 as follows:

- 5.5.1.3 submit a statement that the *Contractor* has not received any written notices of a lien,
- 5.5.1.4 submit a Workplace Safety & Insurance Board clearance certificate.

SC22.4 Paragraph 5.5.2

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

Delete from line 1 of paragraph 5.5.2, the words, “the statement” and substitute the words “the documents”.

SC22.6 Paragraph 5.5.3

Delete paragraph 5.5.3 in its entirety.

SC22.6 Paragraph 5.5.4

Delete the words “In the common law jurisdictions” at the beginning of paragraph 5.5.4 and substitute with the words “Subject to publication by the *Owner* of a notice of non-payment under paragraph 5.5.6”

Delete the second and third sentences of paragraph 5.5.4.

SC22.7 Paragraph 5.5.6

Add new paragraph 5.5.6 as follows:

In the event that the *Owner* intends to pay the *Contractor* an amount that is less than that set out in the *Contractor’s* application for payment of the holdback, the *Owner* shall, no later than 20 calendar days before the expiration of the holdback period stipulated in the *Act*, publish a notice in the form prescribed in the *Act*, specifying the amount of the holdback that the *Owner* refuses to pay and notify the *Contractor* of the publication of the notice.

SC23 GC 5.6 PROGRESSIVE RELEASE OF HOLDBACK**SC23.1 Paragraph 5.6.1, 5.6.2 and 5.6.3:**

Delete GC 5.6 PROGRESSIVE RELEASE OF HOLDBACK and paragraphs 5.6.1, 5.6.2 and 5.6.3 in their entirety and replace with “GC 5.6 – INTENTIONALLY LEFT BLANK”.

SC24 GC 5.7 FINAL PAYMENT**SC24.1 Paragraph 5.7.1:**

Delete paragraph 5.7.1 in its entirety and substitute new paragraph 5.7.1 as follows:

5.7.1 When the *Contractor* considers that the *Work* has been totally performed, the *Contractor* shall submit an application for final payment, together with a written application for review by the *Consultant* to establish *Total Performance of the Work*. The *Contractor’s* application for final payment shall be accompanied by any documents or materials not yet delivered pursuant to paragraph 5.4.5 together with complete *As-Built Drawings*. Should the *Contractor* fail to deliver any of the foregoing documents, the *Owner* shall be at liberty to withhold from amounts otherwise payable to the *Contractor* the amount specified in the following *Scale of Holdback* as security for the obligation of the *Contractor* to deliver the undelivered documents. The *Contractor* shall have no right to receive payment of the amount so withheld until such time as all required documents and materials referenced in paragraph 5.4.5 have been delivered.

Scale of Holdback:

- where the *Contract Price* is less than \$100,000 the amount to be retained is \$5,000
- where the *Contract Price* is greater than \$100,000 but less than \$500,000, the amount to be retained is 5% of the *Contract Price*
- where the *Contract Price* is greater than \$500,000 but less than \$5,000,000, the amount to be retained is 3% of the *Contract Price*
- where the *Contract Price* is greater than \$5,000,000, the amount to be retained is 2% of the *Contract Price*.

SC24.2 Paragraph 5.7.2:

Delete the words “and advise the *Contractor* in writing that the application is valid or give reasons why it is not valid” and substitute the words “and:

- .1 advise the *Contractor* in writing that the *Work* is not totally performed and give reasons why, or
- .2 state the date of *Total Performance of the Work* in a certificate and issue a copy of that certificate to each of the *Owner* and the *Contractor*.”

at the end of paragraph 5.7.2.

SC24.3 Paragraph 5.7.3:

Delete the words “finds the *Contractor’s* application for final payment valid” and substitute the words “issues the certificate of *Total Performance of the Work*” in the first line of paragraph 5.7.3.

SC24.4 Paragraph 5.7.4:

Delete from the second line of paragraph 5.7.4 the words, “calendar days” and substitute the words “*Working Days*”.

Amend paragraph 5.7.4 in line 2 by removing “5” and replacing it with “20”.

SC24.5 Add a new paragraph 5.7.5 as follows:

5.7.5 Prior to the release of the finishing holdback provided for under the *Act*, the *Contractor* shall submit:

- .1 *Contractor’s* written request for release of the finishing holdback, including a statement that no written notices of lien have been received by it;
- .2 a Statutory Declaration on an original form to the *Owner* stating that payments in connection with the *Work*, as noted in the Statutory Declaration, have been made in full up to the end of the period immediately preceding that covered by the application for release of the finishing holdback, and, if requested by the

Owner, a Statutory Declaration from any *Subcontractor*, as may be identified by the *Owner*, on an original form of CCDC Document 9B – 2001 Statutory Declaration of Progress Payment Distribution by Subcontractor;

.3 a final Workplace Safety & Insurance Board Clearance Certificate.

SC24.6 Add a new paragraph 5.7.6 as follows:

5.7.6 The *Owner* shall be entitled to deduct and withhold from each progress payment an amount, as specified in the chart below, of the *Contract Price*, to secure the *Contractor's* performance under the *Contract Documents*, including, without limitation, correction of deficiencies and warranty performance (the "*Warranty Security*"). The *Warranty Security* will be held and administered by the *Owner* and is in addition to the statutory holdbacks required to be retained by the *Owner* under the *Construction Act* and the holdback described at GC 5.7.1.

The *Contract Price* shall form the basis for the following *Warranty Security*:

| <i>Contract Price</i> | <i>Warranty Security</i> (withheld from each Progress Payment) | <i>Warranty Security</i> Aggregate Maximum Amount |
|----------------------------------|--|---|
| \$0 - \$4,999,999.99 | 2.5% | 2.5% |
| \$5,000,000.00 to \$9,999,999.99 | 2.0% | 2.0% |
| Greater than \$10,000,000.00 | 1.5% | 1.5% |

In addition to other remedies available to the *Owner* under the *Contract Documents* or otherwise at law, the *Owner* may set off against the *Warranty Security* as compensation: (a) for any costs incurred as a consequence of the *Contractor's* failure to meet the agreed upon schedule, (b) any costs incurred in addressing any lien claims and (c) any other costs arising out of the *Contractor's* non-performance of its contractual obligations, including, without limitation, the *Contractor's* obligations under GC 12.3 WARRANTY.

The *Warranty Security*, net of claims by the *Owner*, shall be paid to the *Contractor* at the expiry of the one (1) year warranty period set out in GC 12.3 WARRANTY.

SC25 GC 6.1 OWNER'S RIGHT TO MAKE CHANGES

SC25.1 Paragraphs 6.1.3, 6.1.4 and 6.1.5:

Add a new paragraph 6.1.3, 6.1.4 and 6.1.5 as follows:

6.1.3 The *Contractor* shall not be entitled to receive any additional compensation arising out of changes to the *Work* other than the amounts determined and agreed to under GC 6.2 - CHANGE ORDER, or as provided in GC 6.3 - CHANGE DIRECTIVE.

6.1.4 For the purpose of valuing expenditures under cash allowances pursuant to paragraph 4.1.4, expenditures under the contingency allowance pursuant to paragraph 4.2.2, changes which result in an increase in the *Contract Price*, and any other items under the *Contract Documents* which provide for payment to the *Contractor* of overhead and profit, allowances for overhead and profit shall be included in the percentages set out in subparagraph 6.2.3.3(3).

6.1.5 The *Contractor's* percentage fee mark-up on changes is intended to cover all general expenses and overhead costs incurred by the *Contractor* in relation to the change. For greater certainty, the following items of cost to the *Contractor* in relation to any changes are covered by and included in the *Contractor's* overhead and profit percentage fee mark-up on changes:

- .1 project management costs;
- .2 estimating, site supervision, safety, preparation of As-built Drawings, coordination and administration costs;
- .3 warranty costs;
- .4 bonding and insurance costs;
- .5 general clean-up and disposal costs.

SC26 GC 6.2 CHANGE ORDER

SC26.1 Paragraph 6.2.3:

Add new paragraph 6.2.3 as follows:

6.2.3 The method of adjustment of the *Contract Price* presented by the *Contractor* may be:

- .1 by quotation and acceptance of a lump sum. All quotations must contain an itemized and complete breakdown of costs, including hours and hourly rates of labour, payroll burden, itemized costs of materials, quantity of materials, *Products*, and all other costs to perform the change in the *Work*, including the *Contractor's* mark-up fee set out in the table below, such that the quotations are capable of being evaluated by the *Consultant*. The *Contractor* shall require *Subcontractors* and *Suppliers* to supply similar information to the *Consultant*.
- .2 by unit prices set out in the Schedule of Prices listed in Article A-3 – CONTRACT DOCUMENTS or subsequently agreed upon in writing by the parties. Unit prices shall include materials, labour, equipment, delivery, freight, handling, disposal, statutory charges, supervisions, testing, all applicable duties, brokerage charges, import charges, taxes, bonding, overhead, profit and all relative charges and expenses including, but not limited to, office

administration charges such as disbursements, travel costs, printing and incidentals to the *Contractor*, and shall be the total cost to the *Owner*. Adjustment to the *Contract Price* shall be based on a net quantity difference from the original quantity.

- .3 by the amount, net of all credits, of time, materials, *Construction Equipment* and *Products* expended:
- (1) by a *Subcontractor* applying its labour charge out rates, together with the actual costs, without mark-up, of materials, *Construction Equipment* and *Products* utilized in the change, plus the *Subcontractor's* mark-up fee set out in the table below, which shall be applied to material and *Product* costs only;
 - (2) by the *Contractor* applying its labour charge out rates, together with the actual costs, without *Contractor's* mark-up, of materials, *Construction Equipment* and *Products* plus the mark-up fee set out in the table below which shall be applied to material, *Construction Equipment* and *Product* costs only;
 - (3) the *Contractor* shall be entitled to the *Contractor* mark-up fee in the table below on the value of *Subcontractor* work even where the *Subcontractor* is not entitled to a mark-up fee on its labour charge out rates pursuant to paragraph 6.2.3.3(1).

| Change in the <i>Contract Price</i> | <i>Subcontractor</i> and <i>Contractor's</i> Own Forces Mark-Up Fee (%) (includes overhead and profit) | <i>Contractor</i> Mark-up Fee (%) on <i>Subcontractor's</i> work (includes overhead and profit) |
|-------------------------------------|--|---|
| \$0 - \$49,999.99 | 10 | 5 |
| Over \$50,000.00 | 7.5 | 5 |

- .4 the aforesaid *Subcontractor* and *Contractor's* percentage fee mark-ups include all necessary supervision, general account items, general clean-up, small tools, as-built drawings and job safety necessary to perform the change.

SC27 GC 6.3 CHANGE DIRECTIVE

SC27.1 Paragraph 6.3.6.3:

Delete the words "the *Contract Documents* or as otherwise agreed by the parties" and substitute the words "paragraph 6.2.3" in paragraph 6.3.6.3.

SC27.2 Paragraph 6.3.7.1 (1):

Delete subparagraph 6.3.7.1(1) and substitute the following:

“(1) carrying out the work, including necessary supervisory services;”

SC27.3 Paragraph 6.3.7.1(2):

Delete subparagraph 6.3.7.1(2) in its entirety.

SC27.4 Paragraph 6.3.7.1(3):

Delete subparagraph 6.3.7.1(3) in its entirety and substitute the following:

“(3) engaged in the preparation of *Shop Drawings*, fabrication drawings, coordination drawings and *As-Built Drawings*: or...”

SC28 GC 6.4 CONCEALED OR UNKNOWN CONDITIONS

SC28.1 Paragraphs 6.4.5, 6.4.6 and 6.4.7:

Add new paragraphs 6.4.5, 6.4.6 and 6.4.7 as follows:

6.4.5 If the *Contractor* was given access to the *Place of the Work* prior to the submission of the bid on which the *Contract* was awarded, then the *Contractor* confirms that it carefully investigated the character of the *Work*, the *Place of the Work* and all local conditions which might affect its obligations and that it has satisfied itself as to the nature and extent of the *Work*, the *Contract Documents* and the *Contract* and as to the facilities and difficulties in attending and completing the execution of the *Work*. The *Contractor* confirms that it has applied to its investigation the degree of care and skill required by paragraph 3.14.1. In those circumstances, notwithstanding the provisions of paragraph 6.4.2, the *Contractor* is not entitled to an adjustment to the *Contract Price* or to an extension of the *Contract Time* for conditions which could reasonably have been ascertained by the *Contractor* by such careful investigation, or which could have been reasonably inferred from the material provided with the *Contract Documents*. In those circumstances, should a claim arise, the *Contractor* will have the burden of establishing that it could not have discovered the materially different conditions from a careful investigation, because of restrictions placed on its access or inferred the existence of the conditions from the material provided with the *Contract Documents*.

6.4.6 To the extent the *Contractor* has not investigated as referenced in paragraph 6.4.5, the *Contractor* willingly assumes responsibility for all losses, damages, costs, expenses (including all legal costs on a full indemnity basis), liabilities, claims, actions, and demands, whether arising under statute, contract or at common law, which such investigations might have avoided or reduced and shall indemnify and save harmless the *Owner* from all risk which might make it more onerous and more expensive to fulfill or perform the *Work* than was contemplated or known when the *Contract* was signed, and for any and all liability, responsibility and obligations which the *Owner* may have to any third parties resulting from any failure to investigate.

6.4.7 If the finding made pursuant to paragraph 6.4.2 is that the subsurface or otherwise concealed physical conditions differ materially and this would cause an increase or decrease in the *Contractor's* cost or time to perform the *Work*, and if the

said conditions were otherwise discoverable by the *Contractor* in the proper performance of its duties and obligations under the *Contract*, all costs and expenses resulting from any delay (excluding, for clarity, the direct cost of remediating the said conditions) in the completion of the *Work* that is caused, or contributed to, as a result of the said conditions, will be borne by the *Contractor*.

SC29 GC 6.5 DELAYS

SC29.1 Paragraph 6.5.1:

Delete the period at the end of paragraph 6.5.1, and substitute the following words:

“, but excluding any consequential, incidental, indirect or special damages including, without limitation, loss of profits, loss of opportunity or loss of productivity resulting from such delay.”

SC29.2 Paragraph 6.5.2:

Delete the period at the end of paragraph 6.5.2, and substitute the following words:

“, but excluding any consequential, incidental indirect or special damages including, without limitation, loss of profit, loss of opportunity or loss of productivity resulting from such delay.”

SC29.3 Paragraph 6.5.4:

Add the words “compensation for delay shall be paid to the *Contractor*, and no” after the word “No” at the beginning of paragraph 6.5.4.

SC29.4 Paragraphs 6.5.6, 6.5.7, 6.5.8, 6.5.9 and 6.5.10:

Add new paragraphs 6.5.6, 6.5.7, 6.5.8, 6.5.9 and 6.5.10 as follows:

6.5.6 If the *Contractor* is delayed in the performance of the *Work* by an act or omission of the *Contractor*, any *Subcontractor* or *Supplier*, or anyone employed or engaged by them, directly or indirectly, or by any cause within the *Contractor's* control, the *Contractor* shall devote such additional resources and take all steps necessary, all at the *Contractor's* own cost and expense, to ensure that the dates for attaining *Substantial Performance of the Work* and *Total Performance of the Work* under the *Contract* as may have been amended in accordance with the provisions of Part 6 of the General Conditions – CHANGES IN THE WORK, are met. If the *Contractor* fails to attain *Substantial Performance of the Work* or *Total Performance of the Work* as aforesaid, the *Owner* shall be reimbursed by the *Contractor* for all reasonable costs, damages and expenses incurred by the *Owner* as the result of any such failure, including, but not limited to, the cost of all additional services required by the *Owner* from the *Consultant* or any subconsultants, project managers, or others employed or engaged by the *Owner*.

6.5.7 The *Contractor* recognizes and agrees that the *Owner* will suffer financial loss if the *Work* is not completed within the time specified in the *Contract*. The *Contractor* also recognizes the delays, expenses and difficulties involved in proving the

actual loss suffered by the *Owner* if the *Work* is not completed on time. Accordingly, instead of requiring any such proof, the *Contractor* agrees that as liquidated damages for delay (but not as a penalty) the *Contractor* shall pay to the *Owner*, as liquidated damages, an amount per day, as designated in the *Contract Documents* for each and every day's delay from the specified time for the completion of the *Work* until actual completion of the *Work*, and it is further expressly acknowledged and agreed by the *Contractor* that:

(a) this amount is a reasonable estimate of the actual damage that will be incurred by the *Owner* due to any failure to complete the *Work* within the time required by this *Contract*;

(b) the *Owner* may deduct the amount due under this section from any monies that may be due or payable to the *Contractor*, whether under this *Contract* or any other agreement;

(c) the *Owner* may invoice the *Contractor* for liquidated damages owing, and the *Contractor* shall pay such invoices within 30 days of receipt; and,

(d) the liquidated damages provided for in this section shall be without prejudice to any other remedy to which the *Owner* may be entitled at law or in equity.

SC30 GC 7.1 OWNER'S RIGHT TO PERFORM THE WORK, TERMINATE THE CONTRACTOR'S RIGHT TO CONTINUE WITH THE WORK OR TERMINATE THE CONTRACT

SC30.1 Add the words "**SUSPEND OR**" after the word "**WORK**," in the first line of the heading for GC 7.1.

SC30.2 Paragraph 7.1.2:

Delete the words "to a substantial degree" in paragraph 7.1.2 and substitute the words "in a material way".

SC30.3 Paragraphs 7.1.7, 7.1.8, 7.1.9, 7.1.10, 7.1.11, 7.1.12, 7.1.13 and 7.1.14:

Add new paragraphs 7.1.7, 7.1.8, 7.1.9, 7.1.10, 7.1.11, 7.1.12, 7.1.13 and 7.1.14 as follows:

7.1.7 The *Owner* may, if conditions arise which make it necessary for reasons other than as provided in paragraphs 7.1.1 and 7.1.4, suspend performance of the *Work*, terminate the *Contractor's* right to continue with the *Work* or terminate the *Contract*, in whole or in part, by giving *Notice in Writing* to that effect to the *Contractor*. Such suspension or termination shall be effective in the manner specified in said notice and shall be without prejudice to any claims which either party may have against the other. The *Owner's* entitlement to so terminate or suspend shall be absolute and unconditional and exercisable by the *Owner* in its sole discretion.

7.1.8 The *Contractor* upon receiving notice of suspension or termination from the *Owner* shall suspend all operations as soon as reasonably possible except for work which, in the *Contractor's* opinion, is necessary for the safety of personnel and for the

care and preservation of the *Work* and *Products*. Subject to any directions in the notice of suspension or termination, the *Contractor* shall discontinue ordering materials, facilities, and supplies and make every reasonable effort to delay delivery of existing orders and, in the event of termination, to cancel existing orders on the best terms available.

7.1.9 During any period of suspension, the *Contractor* shall not remove from the site any part of the *Work*, or any *Products* or materials without the consent of the *Owner*.

7.1.10 If the *Work* should be suspended for a period of 60 consecutive calendar days or less, the *Contractor*, upon the expiration of the period of suspension, shall resume the performance of the *Work* in accordance with the *Contract Documents*. If the suspension was not due to an act or omission of the *Contractor*, the *Contract Price* and *Contract Time* shall be adjusted as provided in paragraph 6.5.1 of GC 6.5 DELAYS.

7.1.11 If after 60 consecutive calendar days from the date of notice of suspension of the *Work*, the *Owner* and the *Contractor* agree to continue with and complete the *Work*, the *Contractor* shall resume operations and complete the *Work* in accordance with any terms and conditions agreed upon by the *Owner* and the *Contractor*. Failing such an agreement, the provisions of paragraph 7.2.2 shall become applicable.

7.1.12 If the *Owner* terminates the *Contract* pursuant to paragraph 7.1.7, the *Contractor* shall only be entitled to receive payment for all work performed up to the date of termination as certified by the *Consultant* and the direct costs associated with the termination incurred by the *Contractor*, including the costs of the demobilization, losses sustained on *Products* and *Construction Equipment* and *Subcontractor* and sub-subcontractor cancellation costs (which costs shall not include loss of profit claims) reasonably incurred by the *Contractor*. The *Contractor* shall not be entitled to any additional reimbursement on account of the termination including, without limitation, indirect, incidental, special, consequential or other damages, including loss of profits, notwithstanding any other provision of the *Contract Documents*.

7.1.13 In the case of either a termination of the *Contract* or a suspension of the *Work* under General Condition 7.1 - OWNER'S RIGHT TO PERFORM THE WORK, TERMINATE THE CONTRACTOR'S RIGHT TO CONTINUE WITH THE WORK, SUSPEND THE WORK OR TERMINATE THE CONTRACT or General Condition 7.2 - CONTRACTOR'S RIGHT TO SUSPEND THE WORK OR TERMINATE THE CONTRACT, the *Contractor* shall use its best commercial efforts to mitigate the financial consequences to the *Owner* arising out of the termination or suspension, as the case may be.

7.1.14 Upon the resumption of the *Work* following a suspension under General Condition 7.1 - OWNER'S RIGHT TO PERFORM THE WORK, TERMINATE THE CONTRACTOR'S RIGHT TO CONTINUE WITH THE WORK, SUSPEND THE WORK OR TERMINATE THE CONTRACT or General Condition 7.2 - CONTRACTOR'S RIGHT TO SUSPEND THE WORK OR TERMINATE THE CONTRACT, the *Contractor* will endeavour to minimize the delay and financial consequences arising out of the suspension.

SC31 GC7.2 CONTRACTOR'S RIGHT TO SUSPEND THE WORK OR TERMINATE THE CONTRACT**SC31.1 Paragraph 7.2.2:**

Delete the words "20 Working Days" and substitute the words "60 consecutive calendar days" in the first line of paragraph 7.2.2.

SC31.2 Paragraph 7.2.3.1:

Delete subparagraph 7.2.3.1 in its entirety.

SC31.3 Paragraph 7.2.3.2

Delete subparagraph 7.2.3.2 in its entirety.

SC31.4 Paragraph 7.2.3.3:

Delete subparagraph 7.2.3.3 in its entirety and substitute new subparagraph 7.2.3.3 as follows:

7.2.3.3 the *Owner* fails to pay the *Contractor* when due the amount required in accordance with a determination made by an adjudicator pursuant to Part II.1 of the *Act* and GC 14 – ADJUDICATION or awarded by arbitration or a court, except where the *Owner* has a bona fide claim for set off, or

SC31.5 Paragraph 7.2.3.4:

Delete from subparagraph 7.2.3.4, the words:

", except for General Condition 5.1 - FINANCING INFORMATION REQUIRED OF THE OWNER,"

SC31.6 Paragraph 7.2.5:

Delete paragraph 7.2.5 in its entirety and substitute the following:

7.2.5 If the *Contractor* terminates the *Contract* under the conditions set out above, the *Contractor* shall be entitled to be paid for all work performed to the date of termination. The *Contractor* shall also be entitled to recover the direct costs associated with termination, including the costs of demobilization, and losses sustained on *Products* and *Construction Equipment*. The *Contractor* shall not be entitled to any additional reimbursement on account of any such termination including, without limitation, indirect, incidental, special, consequential or other damages, including los of profits, notwithstanding any other provision of the *Contract Documents*.

SC31.7 Paragraph 7.2.6:

Add new paragraph 7.2.6 as follows:

7.2.6 In the event that a lien is preserved against the *Project* premises or the *Owner* receives written notice of a lien in relation to the *Project*, the *Owner's* withholding of a progress payment, holdback payment or final payment pursuant to the terms of the *Contract*, shall not constitute a default under paragraph 7.2.3 which would permit the *Contractor* to stop the *Work* or terminate the *Contract*. In such circumstances, the *Contractor* shall continue with the *Work*.

SC31.8 Paragraph 7.2.7:

Add new paragraph 7.2.7 as follows:

7.2.7 If the *Contractor* stops the *Work* or terminates the *Contract* in accordance with this GC 7.2 – CONTRACTOR'S RIGHT TO SUSPEND THE WORK OR TERMINATE THE CONTRACT, the *Contractor* shall leave the *Place of the Work* and the *Work* in a secure condition.

SC32 GC 7.3 ASSIGNMENT OF SUBCONTRACTS ON TERMINATION

SC32.1 Add new **GC 7.3 ASSIGNMENT OF SUBCONTRACTS ON TERMINATION** as follows:

GC 7.3 ASSIGNMENT OF SUBCONTRACTS ON TERMINATION

7.3 The *Owner* shall not be deemed by virtue of the *Contract* or for any other reason to have any contractual relationship with or obligation to any *Subcontractor* or *Supplier* but the *Contractor* hereby agrees that in the event that this *Contract* is terminated or the right of the *Contractor* to continue the *Work* is terminated, as provided in GC 7.1.1, 7.1.4 or 7.1.7, at the option of the *Owner*, any or all subcontracts as may be selected by the *Owner* shall, upon notice to the *Contractor* and the affected *Subcontractors* and *Suppliers* from the *Owner*, be assigned to the *Owner*, without any action being necessary from the *Contractor* and in order to ensure the rights of the *Owner*, the *Contractor* shall:

.1 contractually obligate each of its *Subcontractors* and *Suppliers* to agree that each such subcontract shall be assignable, at the option of the *Owner*, to the *Owner*, upon delivery of the notice described above, in the event that:

- a) this *Contract* is terminated; or
 - b) the right of the *Contractor* to continue the *Work* is terminated;
- as provided in GC 7.1.1, 7.1.4 or 7.1.7; and

.2 add the following wording to all subcontracts:

"The *Subcontractor* or *Supplier* acknowledges, and consents to the fact, that the *Contractor* has agreed that this subcontract shall be assigned to the *Owner* or its permitted successors or assigns under the *Contract* in the event that the *Contract* between the *Owner* and the *Contractor* is terminated or the right of the *Contractor*

to continue the *Work* under the *Contract* is terminated and the *Owner* gives notice to the *Contractor* and the *Subcontractor* or *Supplier* that it wishes to take an assignment of this subcontract by providing a *Notice of Assignment*. The *Subcontractor* or *Supplier* agrees with the *Contractor* and the *Owner* that:

- a) until *Notice of Assignment* is received, the *Contractor* is the person entitled to receive the property, services and work to be delivered and performed under the subcontract and to exercise and enforce all of the rights, entitlements and benefits which may arise under the subcontract;
- b) following receipt of a *Notice of Assignment*, the *Owner*, or its permitted successors or assigns under the *Contract*, shall be the person entitled to receive, enjoy and deal with the property, services and work to be delivered and provided under the subcontract and to enjoy, exercise and enforce all of the rights, entitlements, benefits, advantages, authorities, discretions, powers and remedies arising under the subcontract; and
- b) the *Owner*, or its permitted successors or assigns under the *Contract*, shall only be responsible for obligations which accrue under the subcontract after the date of receipt of notice of assignment.”

SC33 GC 8.1 AUTHORITY OF THE CONSULTANT

SC33.1 Paragraph 8.1.3:

Delete the last sentence of 8.1.3 and substitute the following sentence:

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

SC34 GC 8.2 NEGOTIATION, MEDIATION AND ARBITRATION

SC34.1 Paragraph 8.2.1:

Delete the words “shall appoint a Project Mediator” from the second line and replace with “may appoint a Project Mediator, except that such appointment shall only be made if both the *Owner* and the *Contractor* agree.”

SC34.2 Paragraph 8.2.4:

Delete the words “the parties shall request the Project Mediator” from the second line and replace with “and subject to paragraph 8.2.1 the parties may request the Project Mediator”

SC34.3 Paragraphs 8.2.6

Delete paragraphs 8.2.6 in its entirety and replace with new paragraph 8.2.6 as follows:

8.2.6 The dispute may be finally resolved by arbitration under the Rules for Arbitration of Construction Disputes as provided in CCDC 40 in effect at the time of bid closing, provided that both the *Contractor* and the *Owner* agree. If the *Contractor* and the *Owner* agree to resolve the dispute by arbitration, the arbitration shall be conducted in the jurisdiction of the *Place of the Work*.

SC34.4 Paragraph 8.2.7

Delete paragraph 8.2.7 in its entirety and replace with new paragraph 8.2.7 as follows:

8.2.7 Notwithstanding any other provision of this *Contract*, the provisions set out in paragraphs 8.2.1 and 8.2.3 to 8.2.6 shall only apply if the parties agree in writing to submit a dispute to all or any part of those alternative dispute resolution processes. If the parties do not agree as aforesaid, the courts shall have exclusive jurisdiction to determine any dispute relating to the *Work* or to the *Contract*.

SC34.5 Paragraph 8.2.8

Delete paragraph 8.2.8 in its entirety.

SC35 GC 8.3 RETENTION OF RIGHTS

SC35.1 Paragraph 8.3.3:

Add a new paragraph 8.3.3 as follows:

8.3.3 If the *Owner* and the *Contractor* agree to have a dispute resolved by arbitration, the *Contractor* agrees that this paragraph 8.3.3 shall be construed as a formal consent to the stay of any lien proceedings until an award is rendered in the arbitration or such dispute is otherwise resolved between the parties. In no event shall the *Contractor* be deprived of its right to enforce its lien against the *Project* should the *Owner* fail to satisfy any arbitral award against it in full on the dispute in respect of which the lien proceedings were commenced. Nothing in this subparagraph 8.3.3 shall prevent the *Contractor* from taking the steps required by the *Act* to preserve, perfect or otherwise prevent the expiry of a lien to which it may be entitled.

SC36 GC 9.1 PROTECTION OF WORK AND PROPERTY

SC36.1 Paragraph 9.1.1.1:

Delete subparagraph 9.1.1.1 in its entirety and replace with new subparagraph 9.1.1.1 as follows:

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

SC36.2 Paragraph 9.1.2:

Delete paragraph 9.1.2 in its entirety and replace with new paragraph 9.1.2 as follows:

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

SC36.3 Paragraph 9.1.5:

Add new paragraph 9.1.5 as follows:

9.1.5 With respect to any damage to which paragraph 9.1.4 applies, the *Contractor* shall neither undertake to repair or replace any damage whatsoever to the work of other contractors, or to adjoining property, nor acknowledge that the same was caused or occasioned by the *Contractor*, without first consulting the *Owner* and receiving written instructions as to the course of action to be followed from either the *Owner* or the *Consultant*.

SC36.4 Paragraph 9.1.6:

Add new paragraph 9.1.6 as follows:

9.1.6 The *Contractor* shall be responsible for securing the *Place of the Work* at all times and shall take all reasonable precautions necessary to protect the *Place of the Work*, its contents, materials (including *Owner*-supplied materials) and the public from loss or damage during and after working hours.

SC37 GC 9.2 TOXIC AND HAZARDOUS SUBSTANCES

SC37.1 Paragraph 9.2.5.5:

Add new subparagraph 9.2.5.5 as follows:

9.2.5.5 take all reasonable steps to mitigate the impact on *Contract Time* and *Contract Price* and any further steps it deems necessary to mitigate or stabilize any conditions resulting from encountering toxic or hazardous substances or materials.

C37.2 Paragraph 9.2.8.3:

Add the words "and as a result of the delay" before the semicolon at the end of subparagraph 9.2.8.3:

SC38 GC 9.4 CONSTRUCTION SAFETY

SC38.1 Paragraph 9.4.1:

Delete the words "Subject to paragraph 3.2.2.2 of GC 3.2 – CONSTRUCTION BY OWNER OR OTHER CONTRACTORS, the" and substitute the word "The" at the beginning of paragraph 9.4.1.

SC38.2 Paragraphs 9.4.2, 9.4.3, 9.4.4, 9.4.5, 9.4.6, 9.4.7 and 9.4.8:

Add new paragraphs 9.4.2, 9.4.3, 9.4.4, 9.4.5, 9.4.6, 9.4.7 and 9.4.8 as follows:

9.4.2 The *Contractor* shall assume the role of contractor, constructor, prime contractor, or principal contractor as may apply in accordance with applicable Occupational Health and Safety Legislation at the *Place of the Work* and provide to the *Owner* copies of the related Health and Safety notices and documents.

9.4.3 The *Contractor* represents and warrants that it is familiar with the obligations imposed on an “employer” as defined in the *Occupational Health and Safety Act (Ontario)*, and that it has in place a health and safety program to ensure the health and safety of all workers for which it has responsibility under the said *Act*.

9.4.4 The *Contractor* shall comply in all respects with the requirements of the *Occupational Health and Safety Act (Ontario)* and its own health and safety program to take all steps reasonable in the circumstances to ensure the health and safety of all workers for which it has responsibility under the said *Act*. The *Contractor* shall maintain and strictly enforce its health and safety program. The *Contractor* shall also provide such information within such timeframes as may be required in order to allow the *Owner* to fulfill its obligations pursuant to the *Occupational Health and Safety Act (Ontario)*, including, without limitation, the obligation to notify the Director under such *Act* in the event of an accident causing personal injury.

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

- .1 copies of the *Contractor's* insurance policies having application to the *Project* or certificates of insurance, at the option of the *Owner*;
- .2 documentation setting out the *Contractor's* in-house safety programs;
- .3 a copy of the Notice of Project filed with the Ministry of Labour naming itself as “constructor” under the *Occupational Health and Safety Act*.

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

9.4.7 In the event of an emergency threatening health, life or property, the *Contractor* shall take such action as may be necessary to save lives and protect persons from injury, and done to protect and preserve the property. The *Contractor* shall notify the *Owner* and the *Consultant* of such emergency as promptly as is practical under the circumstances.

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

SC39 GC 9.5 MOULD

SC39.1 Paragraph 9.5.2.3:

Add the words "and as a result of the delay" before the comma at the end of subparagraph 9.5.2.3.

SC40 GC 10.1 TAXES AND DUTIES

SC40.1 Paragraph 10.1.3:

Add new paragraph 10.1.3 as follows:

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

SC40.2 Paragraph 10.1.4:

Add new paragraph 10.1.4 as follows:

10.1.4 The *Contractor* shall maintain accurate records tabulating equipment, material and component costs reflecting the taxes, customs duties, excise taxes and *Value Added Taxes* paid.

SC40.3 Paragraph 10.1.5:

Add new paragraph 10.1.5 as follows:

10.1.5 Any refund of taxes, including without limitation, any government sales tax, customs duty, excise tax or *Value Added Tax*, whether or not paid, which is found to be inapplicable or for which exemption may be obtained, is the sole and exclusive property of the *Owner*.

SC40.4 Paragraph 10.1.6:

Add new paragraph 10.1.6 as follows:

10.1.6 The *Contractor* agrees to cooperate with the *Owner* and to obtain from all *Subcontractors* and *Suppliers* cooperation with the *Owner* in the application for any rebates, incentives or refund or exemption of any taxes, which cooperation shall include, but not be limited to, making or concurring in the making of an application for any such rebates, incentives, refund or exemption and providing to the *Owner* copies, or where required, originals of records, invoices, purchase orders and other documentation necessary to support such applications. All such rebates, incentives or refunds shall either be paid to the *Owner*, or shall be a credit to the *Owner* against the *Contract Price*, in the *Owner's* discretion.

SC40.5 Paragraph 10.1.7:

Add new paragraph 10.1.7 as follows:

10.1.7 Customs duties, penalties, or any other penalty, fine or assessment levied against the *Contractor* shall not be treated as a tax or customs duty for purposes of this GC10.1.

SC41 GC 10.2 LAWS, NOTICES, PERMITS, AND FEES

SC41.1 Paragraph 10.2.4:

Delete the words “or codes” and substitute the words “codes, and industry best practices and guidelines” after the word “regulations,” in the first line of paragraph 10.2.4.

Add the words “to the environment,” after the words “relate to the *Work*,” in the second line of paragraph 10.2.4.

Add the words “The *Contractor* shall provide the *Owner* with copies of all such required notices and related health and safety documents.” at the end of paragraph 10.2.4.

Add the following to the end of paragraph 10.2.4:

The *Contractor* shall notify the Chief Building Official or the registered code agency, where applicable, of the readiness, substantial completion, and completion of the stages of construction set out in the Ontario Building Code. The *Contractor* shall be present at each site inspection by an inspector or registered code agency. If any laws, ordinances, rules, regulations, or codes conflict, the more stringent shall govern.

SC41.2 Paragraph 10.2.5:

Delete the word “The” from the first line of paragraph 10.2.5, and substitute the words “Subject to paragraph 3.4.1, the”.

Add the following before the period at the end of the second sentence of paragraph 10.2.5:

and no further work on the affected components of the *Contract* shall proceed until these changes to the *Contract Documents* have been obtained by the *Contractor* from the *Consultant*.

SC42 GC 10.4 WORKERS' COMPENSATION

SC42.1 Add the words "again with each application for progress payment, and" after the word "Work", in the first line of subparagraph 10.4.1.

SC42.2 Paragraph 10.4.2:

Add the following to the beginning of paragraph 10.4.2:

The *Contractor* shall ensure that each *Subcontractor* complies with the workers' compensation legislation at the *Place of the Work*.

SC42.3 Paragraph 10.4.3:

Add new paragraph 10.4.3 as follows:

10.4.3 Where a *Subcontractor* is not required to participate in the insurance plan provided for under the workers' compensation legislation, the *Contractor* shall require the *Subcontractor* to provide a sworn declaration of its exemption as a condition of the *Subcontractor's* admission to the *Place of the Work*. When requested by the *Owner*, the *Contractor* shall require the *Subcontractor* to provide a letter of exemption under the workers' compensation legislation.

SC43 GC 11.1 INSURANCE

Delete GC 11.1 and replace with the following new GC 11.1:

GC 11.1 INSURANCE AND THIRD PARTY CLAIMS HANDLING

Part One – Insurance Policies / Coverage Requirements

1. The *Contractor* shall, at all times prior to commencing construction until total completion (as contemplated in the *Act*) of the *Work*, unless otherwise specified in this Section, effect, maintain and keep in force, at its sole cost and expense the following coverages:

- a. Single Project Wrap-Up Liability insurance acceptable to the *Owner* and subject to limits of not less than Ten Million Dollars (\$10,000,000.00) per occurrence and annual aggregate. Such insurance shall name the *Owner*, general contractor, trade contractors, subcontractors, employees, agents, architects, landscape architects, engineers, consultants, planners and project managers as additional insureds. The Wrap-Up Liability insurance shall include, but is not limited to, bodily injury and property damage including loss of use; personal injury; contractual liability; premises and operations; property damage; products; contingent employers liability; cross liability and severability of interest clause; and shoring, blasting, excavation,

underpinning, demolition, pile driving, caisson work and work below ground surface including tunnelling and grading. This Wrap-Up Liability insurance policy shall be the primary insurance coverage in all cases for all risks of liability associated with the construction operations of this project.

- b. Broad Form (All Risk) Builder's Risk insurance shall have limits of not less than the full contract price of the work or equal to one hundred (100%) percent of the full (new) replacement cost of this project (i.e. buildings/contents). This coverage shall include Business Interruption insurance including Delay/Start-Up and additional soft costs.
 - c. All Risk Property insurance coverage for construction machinery, tools, equipment and temporary facilities used by the *Contractor's* contractors for the performance of the work.
 - d. Professional Liability Insurance coverage from anyone providing a professional service in connection with the contract such as architects, planners and engineers of at least Two Million Dollars (\$2,000,000.00). Such insurance shall be kept in force during the construction of each of the improvements and the *Owner* reserves the right to require such insurance to be kept in force for five (5) additional one (1) year terms following the date of total completion of each of the improvements.
 - e. If boiler, machinery and/or heating, ventilation and air conditioning (HVAC) systems being installed or removed as part of the scope of work: *Contractor* must obtain Boiler and Machinery Insurance including testing and commissioning of objects. Coverage shall have limits of not less than the replacement value of the permanent or temporary boilers and pressure vessels, and other insurable object.
 - f. Contractor's Pollution Liability insurance in an amount not less than Five Million (\$5,000,000) per claim. If a single project policy, it should include an extended reporting period of 24 months. If an annual policy, it should be kept in force for 24 months from the date of substantial completion of the latest improvement. The *Owner* shall be named as an additional insured on this policy.
 - g. Automobile Liability insurance for all licensed vehicles owned, rented and/or leased by or on behalf of the *Contractor* or its contractor(s) while on any business connected with the *Work* to a limit of not less than Five Million Dollars (\$5,000,000) per occurrence in respect of bodily injury, death and damage to property including loss of use thereof. The *Contractor's* contractor(s) shall obtain proof of insurance from its subcontractors for the vehicles they own, rent and/or lease.
2. The Single Project Wrap-Up Liability shall be in the name of the *Contractor* and shall name the *Owner* as additional insured with respect to claims arising out of the operations of the insured. Broad Form Builder's Risk, Boiler and Machinery and Broad Form Property insurance policies shall be in the name of the *Contractor*.

Part Two – General Insurance Requirements

- a. Without restricting the generality of any contractual indemnity provisions, the *Contractor* shall obtain, maintain, pay the premium(s) and any deductibles and provide evidence of required insurance coverage. The *Contractor* shall be entirely responsible for the cost of any deductible or Self Insured Retention Policy (SIR) amounts that form part of its insurance policy.
- b. The forms of these insurance policies shall in all respects be satisfactory to the *Owner's* Insurance and Risk Manager and shall be maintained continuously from the commencement of the *Work* until the *Work* has been completed to the satisfaction of the *Owner*.
- c. The insurance shall be taken out with insurance companies licensed to transact business in the Province of Ontario and who are not otherwise excluded by the *Owner's* Insurance and Risk Manager.
- d. The policies shown above shall be endorsed to provide the *Owner* with not less than thirty (30) days written notice of expiry, cancellation, change or amendment restricting coverage such that the requirements in the *Contract* are no longer met.
- e. However, if for any reason the insurer, on behalf of the *Contractor*, cannot endorse their policies to provide the *Owner* with not less than thirty (30) days written notice of change or amendment restricting coverage, the responsibility thereof shall automatically transfer to the *Contractor* and becomes the *Contractor's* strict obligation to deliver to the *Owner* by registered mail with not less than thirty (30) days written notice of change or amendment restricting coverage.
- f. The *Contractor* shall provide the *Owner* with proof of insurance, by submitting an original Certificate of Insurance on the *Owner's* standard "Certificate of Insurance" form, or documentation approved by the Insurance and Risk Manager, upon execution and delivery of the *Contract*, prior to commencement of the *Work* and thereafter upon request by the *Owner*. In lieu of an original Certificate of Insurance, the *Owner* may accept an electronic copy provided it is e-mailed or faxed by the *Contractor's* insurance broker directly to the *Owner*. These certificates should be submitted to the attention of the project manager with the project/bid number indicated.
- g. The *Contractor* shall submit certificates of insurance and continuity of coverage to the City on an annual basis, or such other greater frequency as may be requested by the City, for all applicable insurance coverages required. These certificates should be submitted to the attention of the project manager with the Project/BID number indicated.
- h. The *Contractor* shall not commence work under the *Contract* until such time as evidence of insurance, on the *Owner's* Certificate of Insurance form, has been completed and filed with and approved by the *Owner*.

- i. If required by the *Owner*, the *Contractor* shall provide certified true copy(s) of the policy(s) certified by an authorized representative of the insurer together with copies of any amending endorsements applicable to the *Work*.
- j. If the *Contractor* fails to maintain insurance as required by the *Contract* the *Owner* shall have the right to provide and maintain such insurance and give evidence to the *Contractor* and (if applicable) the *City's* consultant and The *Regional Municipality of York*. The *Contractor* shall pay the cost thereof to *Owner* on demand or the *Owner* may deduct the cost from the amount which is due to or may become due to the *Contractor*.
- k. The *Owner* reserves the right to request such higher limits of insurance or other types of policies appropriate to work as the *Owner* may reasonably require.
- l. All policies shall apply as primary and not as excess of any insurance available to the *Owner*.
- m. If requested the *Contractor* shall provide the *Owner* with a letter from their insurance provider confirming the *Contractor's* ability to meet the insurance requirements as set out in the *Contract*.
- n. All policies of insurance shall contain provisions for settling joint loss disputes amongst property.
- o. It is the *Contractor's* responsibility to ensure that any *Subcontractors* employed must have proof of active insurance policies providing the following coverages the *Contractor* as Additional Insured where applicable:
 - Commercial General Liability
 - Automobile Insurance
- p. The *Contractor* shall obtain current Certificates of Clearance indicating a *Subcontractor's* good standing and/or letter for the following:
 - WSIB or Equivalent Employer's Liability Insurance
- q. If the completion of the *Work* will or is expected to take more than 24 months to complete (including if time is added via Change Orders or other means), the *Owner* and the *Contractor* agree, on the request of the other, to meet and review, from time to time, at reasonable intervals, and not less often than annually during the term of the *Contract*, the insurance specifications and the other requirements of this section. No amendment of any insurance coverage existing from time to time shall be effected other than in accordance with this section GC 11.1. Any amendment of any insurance coverage required to be made in accordance with this section GC 11.1 shall be effected forthwith upon such amendment being agreed upon by the *Owner* and the *Contractor* in writing.
- r. No insurance taken out by the *Owner* shall relieve the *Contractor* of its obligation to insure as required by this section GC 11.1.

- s. Except as contemplated above re Single Project Wrap-Up Liability, all proceeds payable pursuant to any and all of the policies of property insurance comprising the *Contractor's* insurance shall be paid to the *Contractor*.
- t. Further, all policies of property insurance required to be obtained by the *Contractor* under this section GC 11.1 shall contain:
- (1) a waiver by the insurer of any rights of subrogation, or indemnity, or any other claim over to which the insurer thereunder might be entitled against the *Owner*, its agents, employees, servants or any other person for whom the foregoing are in law responsible;
 - (2) provisions to the effect the *Contractor's* insurance policies shall not call into contribution other insurance available to the *Owner*;
 - (3) a waiver in respect of the interests of the *Owner* of any provision of the policy with respect to any breach by the *Contractor* or any other insured of any warranties, representations, declarations or conditions contained in the policy; and
 - (4) where applicable, a severability of interests clause and a cross-liability clause.

Part Three – Claims Handling

- a. The *Contractor* shall respond to, and deal with, all indemnifiable third-party claims in a prompt, courteous and efficient manner.
- b. The *Contractor* shall contact all third-party claimants and acknowledge receipt of all third-party claims in writing within 7 *Working Days* upon being notified in writing of the third-party claim.
- c. The *Contractor* shall immediately, upon receipt of any third-party claim, provide the *Owner's* Office of the City Clerk, Insurance Risk Management Section with notice of the third-party claim.
- d. The *Contractor* shall also provide the *Owner's* Office of the City Clerk, Insurance Risk Management Section with copies of all correspondence between the *Contractor* or its agents and the third-party claimant.
- e. The *Contractor* shall not advise the third-party claimant that the *Owner* is responsible for their claim.
- f. If, in the sole discretion of the *Owner's* Office of the City Clerk, Insurance Risk Management Section, acting reasonably, a claim is not being dealt with in a manner consistent with the provisions of this *Contract*, which includes, without limiting the generality of the foregoing:
 - failure of the *Contractor* to acknowledge receipt of the third-party claim in the manner set out above; and

- failure to resolve the third-party claim to the satisfaction of the *Owner* within 90 Days of the receipt of the third-party claim,

the *Owner* reserves the right to appoint an insurance adjuster or other person to settle any third-party claims arising from this *Contract*.

- g. Any money paid by the *Owner* in satisfaction of any third-party claim determined to be the *Contractor's* responsibility, plus all adjuster costs and other associated costs and administrative costs incurred by the *Owner*, shall be deducted from monies owing to the *Contractor* by the *Owner*.

SC44 GC 11.2 CONTRACT SECURITY

SC44.1 Paragraph 11.2.1:

Delete paragraph 11.2.1 in its entirety and substitute new paragraph 11.2.1 as follows:

11.2.1 - The *Contractor* shall, prior to commencement of the *Work*, provide to the *Owner* a performance bond and a labour and material payment bond in the form required under the *Act*. Each bond shall:

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

SC44.2 Paragraph 11.2.2:

Delete paragraph 11.2.2 in its entirety and substitute new paragraph 11.2.2:

11.2.2 - The bonds referred to in paragraph 11.2.1 shall be maintained in good standing until the *Contractor* has fulfilled all of its obligations under the *Contract*.

SC44.3 Paragraph 11.2.3:

Add new paragraph 11.2.3:

11.2.3 - If approved changes pursuant to the *Contract* result in approved increase or cumulative increases to the *Contract Price* the *Contractor* shall, if requested in writing to do so by the *Owner*, promptly acquire additional bonding at the *Owner's* expense. Where additional bonding premiums are paid by the *Owner*, the *Contractor* shall promptly submit written confirmation that the premiums were paid to the surety and promptly provide the *Owner* with the original revised performance bond(s).

SC45 GC 12.1 INDEMNIFICATION

SC45.1 Paragraph 12.1.2.4:

Add a new subparagraph 12.1.2.4 as follows:

12.1.2.4 - The *Contractor* agrees that the *Owner* shall not be liable for any injury, death or damage to any employees, officers or agents of the *Contractor* unless the injury, death or damage is caused by the negligence or wilful misconduct of an officer or employee of the *Owner* while acting within the scope of their employment.

SC45.2 Paragraphs 12.1.7, 12.1.8 and 12.1.9:

Add new paragraphs 12.1.7, 12.1.8 and 12.1.9 as follows:

12.1.7 - Notwithstanding any other term or condition of this *Contract*, the *Contractor* shall indemnify and hold harmless the *Owner* from and against all claims, demands, actions, suits or proceedings by any of the employees of the *Contractor*, or *Subcontractors* or sub-subcontractors arising from the *Contractor's* failure to maintain worker's compensation insurance required by the *Contract Documents*. This indemnity shall survive the completion of the *Work* or the termination for any reason of the *Contract*.

12.1.8 - Notwithstanding anything contained in the *Contract Documents* to the contrary, the *Owner* shall have the right to set-off the amount of any claims for which *Notice in Writing* has been given by the *Owner* to the *Contractor* in accordance with GC 6.6 CLAIMS FOR A CHANGE TO CONTRACT PRICE or GC 12.1 INDEMNIFICATION against any amounts which may be otherwise owing or payable to the *Contractor* pursuant to the terms of the *Contract*.

12.1.9 - Notwithstanding anything contained in the *Contract Documents* to the contrary, except to the extent such loss is paid by insurance, neither party shall be liable for any consequential, indirect, special or incidental damages of any kind or nature no matter how arising, including in contract, tort (including negligence), warranty, strict liability or any other theory of liability at law or in equity.

SC46 GC 12.2 WAIVER OF CLAIMS

SC46.1 Paragraph 12.2.2:

Delete the reference to "395 calendar days" in the last line of paragraph 12.2.2 and substitute "120 calendar days".

SC46.2 Paragraph 12.2.3.4:

Delete the last sentence of subparagraph 12.2.3.4 and substitute the following:

"Substantial defects or deficiencies" mean those defects or deficiencies in the *Work* where the reasonable cost of repair of such defects or deficiencies exceeds:

- .1 if the *Contract Price* is \$2 million or less, the sum of \$50,000, before *Value Added Taxes*;
- .2 if the *Contract Price* exceeds \$2 million, the sum of \$100,000, before *Value Added Taxes*;

but, in any event, a defect or deficiency in the *Work* which affects the *Work* to such an extent or in such a manner that a significant part or the whole of the *Work* is unfit for the purpose intended by the *Contract Documents* shall be deemed to be a “substantial defect or deficiency” regardless of the cost of repair.

SC46.3 Paragraph 12.2.5:

Add the words ",12.2.3.4" immediately after the reference to paragraph 12.2.3.3 in paragraph 12.2.5.

SC47 GC 12.3 WARRANTY

SC47.1 Paragraph 12.3.1:

Add the following to the end of paragraph 12.3.1:

Where the *Contractor* has been permitted to make use of permanent equipment or systems, as provided in GC 13.4, prior to the issuance of the Certificate of Substantial Performance of the *Work*, such permanent equipment or system shall be subject to the same warranty as described in this GC12.3 and shall be judged, for purposes of assessing compliance with the warranty, as though the equipment or system was new, clean and unused by the *Contractor*, except for normal commissioning and start up activities, prior to the date of *Substantial Performance of the Work*.

SC47.2 Paragraph 12.3.2:

Delete the word “The” from the first line of paragraph 12.3.2 and substitute the words: “Subject to paragraph 3.4.1, the...”.

SC47.3 Paragraph 12.3.5:

Add the following to the end of paragraph 12.3.5:

The carrying out of the replacement work and making good of defects shall be executed at such times as are convenient with the *Owner* which may entail overtime work on the part of the *Contractor*. Additional charges for overtime work in this regard shall be borne by the *Contractor*.

SC47.4 Paragraph 12.3.7:

Add a new paragraph 12.3.7 as follows:

12.3.7 The *Contractor* shall assign to the *Owner* all warranties, guarantees or other obligations for work, services or *Products* performed or supplied by any *Subcontractor*, *Supplier* or other person in connection with the *Work* and such assignment shall be with the consent of the assigning party where required by law or by the terms of that party’s contract. Such assignment shall be in addition to, and shall in no way limit, the warranty rights of the *Owner* under the *Contract Documents*. Until the expiry of the relevant warranty periods enforceable against the *Contractor*, the *Owner* shall have in its custody all warranties, guarantees and other obligations to third parties respecting the *Work*.”

SC48 PART 13 OTHER PROVISIONS

SC48.1 Add new PART 13 OTHER PROVISIONS as follows:

PART 13 OTHER PROVISIONS**GC 13.1 OWNERSHIP OF MATERIALS**

13.1.1 All *Work* and *Products* delivered to the *Place of the Work* by the *Contractor* shall be the property of the *Owner*. The *Contractor* shall remove all surplus or rejected materials when notified in writing to do so by the *Consultant*.

GC 13.2 CONSTRUCTION LIENS

13.2.1 The *Contractor* shall cause any and all construction liens relating to the *Work* preserved by any *Subcontractor*, sub-subcontractor, *Supplier*, *Contractor's* employees, or any other party to whom the *Contractor* is or may be responsible at law, to be discharged or vacated by the *Contractor* with seven *Working Days* of the date of preservation, all at the *Contractor's* sole expense.

13.2.2 The *Contractor* shall cause any and all written notices of lien relating to the *Work* given to any person, including, but not limited to, the *Owner* by any *Subcontractor*, sub-subcontractor, *Supplier*, *Contractor's* employees, or any party to whom the *Contractor* is or may be responsible at law, to be withdrawn, and the *Contractor* shall do so within seven *Working Days* of the written notice of lien having been given, all at the *Contractor's* sole expense.

13.2.3 If the *Contractor* fails to discharge or vacate any such lien, or to have any such written notice of lien withdrawn, then the *Owner* may, at its sole option, do so and set off and deduct from any amount owing to the *Contractor*, all costs and expenses of so doing, and of defending any related action, including without limitation, the costs of borrowing the appropriate cash, letter of credit or bond as security, and legal fees and disbursements on a full indemnity basis. If there is no amount owing by the *Owner* to the *Contractor*, then the *Contractor* shall reimburse the *Owner* for all of the said costs and expenses of so doing.

GC 13.3 PROJECT RECORDS

13.3.1 The *Contractor* shall maintain and keep accurate *Project* records (which means all tangible records, daily reports, daily logs, documents, computer printouts, electronic information, books, plans, *Drawings*, *Specifications*, accounts or other information relating to the *Work*) in its office in Ontario in accordance with requirements of law, but in any event for not less than 6 years from *Substantial Performance of the Work* or until all claims have been settled. The records shall include detailed records of all actions taken by the *Contractor* related to security and health and safety legislation in the *Place of the Work*. During this time, the *Contractor* shall allow the *Owner* access to the *Project* records during normal business hours upon the giving of reasonable notice. The *Contractor* shall ensure that equivalent provisions to those provided herein are made in each subcontract and shall require

the *Subcontractors* and *Suppliers* to incorporate them into every level of contract thereunder for any part of the *Work*.

GC 13.4 CONTRACTOR USE OF PERMANENT EQUIPMENT OR SYSTEMS

13.4.1 With the prior written approval of the *Owner*, the *Contractor* may make use of elements of the mechanical and electrical systems or equipment comprising a permanent part of the *Work* for the purpose of providing heat or power to the *Project* during the final stages of construction. In such event, before making its written application for *Substantial Performance of the Work*, and again, immediately prior to final takeover by the *Owner* of such systems and equipment, the *Contractor* shall clean and make good, to the satisfaction of the *Consultant*, such systems and equipment as it had been permitted to use. The *Contractor* shall pay any and all costs associated with such use, cleaning and making good.

GC. 13.5 RIGHT TO AUDIT AND RETENTION OF RECORDS

13.5.1 At any time during business hours, and as often as the *Owner* may deem necessary, there shall be made available to the *Owner* for examination the *Contractor's* records with respect to the *Work* and its applicable bid therefore.

13.5.2 The *Contractor* shall permit the *Owner* to audit, examine, and make copies, excerpts or transcripts from such records, and to make audits of data relating to the *Work* and its applicable bid therefore.

13.5.3 The *Contractor* shall maintain and retain all records and other documents related to the *Work* and its applicable bid therefore for a period of six years from the date of *Substantial Performance of the Work* (or longer as required by law), except in cases where unresolved audit questions require a longer period of time for resolution, as determined by the *Owner*.

GC 13.6 EVALUATION OF PERFORMANCE

13.6.1 During and/or upon completion of the *Work*, the *Owner* may complete evaluation(s) of the *Contractor's* performance.

13.6.2 A copy of any evaluation completed in accordance with paragraph 13.6.1 may be given to the *Contractor*.

13.6.3 Any evaluation completed in accordance with paragraph 13.6.1 shall be placed on file with the *Owner* and may be considered by the *Owner* when making future decisions regarding *Contract* extensions and renewals, contract awards and procurement-related decisions.

13.6.4 Information related to evaluations completed in accordance with paragraph 13.6.1 may be made available to persons requesting the *Owner* references for the *Contract* and also may be reviewed and may form part of the *Owner's* criteria when awarding future contracts.

13.6.5 By agreeing to undertake the *Work*, the *Contractor* hereby authorizes the maintenance and release of information related to evaluations completed in accordance with paragraph 13.6.1.

SC49 PART 14 ADJUDICATION

SC49.1 Add new PART 14 ADJUDICATION as follows:

PART 14 ADJUDICATION**GC 14.1 COMMENCEMENT OF ADJUDICATION**

14.1.1 Subject to the notice requirements in paragraph 14.3.1, if either party wishes to refer a dispute to adjudication in accordance with Part II.1 of the *Act*, such party shall give to the other party *Notice in Writing* of an adjudication, setting out:

- .1 the names and addresses of the parties,
- .2 the nature, and a brief description, of the dispute including details respecting how and when it arose,
- .3 the nature of the redress sought,
- .4 the names of 3 adjudicators that the referring party nominates to adjudicate the dispute, each of whom must be listed in the registry established by the *Authority*, and
- .5 the date that any required notice was given in accordance with paragraph 14.3.1 and a copy of the notice.

14.1.2 *Notice in Writing* of an adjudication given by the *Contractor* to the *Owner* shall be delivered to the Office of the City Clerk.

14.1.3 The party giving *Notice in Writing* of an adjudication in accordance with paragraph 14.1.1, shall, on the same day, provide a copy of the notice to the *Authority* in electronic format.

GC 14.2 APPOINTMENT OF ADJUDICATOR

14.2.1 By no later than the third calendar day following receipt of *Notice in Writing* of an adjudication, the responding party shall give *Notice in Writing* to the referring party stating either that (i) the responding party accepts one of the referring party's nominees or (ii) none of the referring party's nominees are acceptable. If the responding party accepts one of the referring party's nominees, the referring party shall notify the nominee of such appointment on the day that *Notice in Writing* of the acceptance is received from the responding party, and shall request the nominee's prompt consent to conduct the adjudication. If none of the referring party's nominees are acceptable to the responding party, the parties may discuss the appointment of another mutually agreeable adjudicator. In the event that the parties have not selected a mutually agreeable adjudicator by the close of business on the third calendar day following the giving of *Notice in Writing* of an adjudication, the referring party shall, by the next calendar day, request that the *Authority* appoint an adjudicator.

14.2.2 If, by the close of business on the fourth day following the giving of the *Notice in Writing* of an adjudication, the parties' agreed upon adjudicator, if any, has not consented to conduct the adjudication, the referring party shall immediately request that the *Authority* appoint an adjudicator.

GC 14.3 ADJUDICATION PROCEDURE

14.3.1 With the exception of disputes that arise as a result of a notice of non-payment given by the *Owner* under paragraph 5.3.1.4 or 5.5.6, it is a pre-condition to either party giving *Notice in Writing* of an adjudication that at least 30 calendar days prior to giving *Notice in Writing* of an adjudication, the party giving *Notice in Writing* of an adjudication shall have given *Notice in Writing* of a dispute, which notice shall set out the nature, and a brief description, of the dispute. Any *Notice in Writing* of a dispute given in accordance with paragraph 8.2.2 shall constitute *Notice in Writing* of a dispute in accordance with this paragraph.

14.3.2 No later than five (5) calendar days after an adjudicator agrees, or is appointed, to conduct the adjudication, the party who gave *Notice in Writing* of an adjudication shall provide to the adjudicator a copy of the *Notice in Writing* of an adjudication, and shall provide to the responding party and the adjudicator a copy of the *Contract* and any documents that the party intends to rely upon during the adjudication.

14.3.3 Subject to the provisions of the *Act*, a party who received *Notice in Writing* of an adjudication shall provide to the adjudicator and to the referring party any documents that it intends to rely upon at the adjudication within 20 calendar days of receiving the documents referred to in paragraph 14.3.2.

14.3.4 The adjudicator shall make a determination of the matter that is the subject of the adjudication no later than 30 calendar days after receiving the documents referred to in paragraph 14.3.2.

13.3.5 Subject to the consent of the adjudicator, each party shall, if requested by the other party, agree to extend the timeline referred to in paragraph 14.3.3 to 30 calendar days and the timeline referred to in paragraph 14.3.4 to 40 calendar days or such other reasonable extensions as either party may request.

14.3.6 Neither party may deliver *Notice in Writing* of an adjudication in accordance with PART 13 - ADJUDICATION or part II.1 of the *Act* after completion of the *Work*.

END OF DOCUMENT 3

1. INTENT

The intent of this Tender is to procure services of a Remediation Contractor for General Contracting and Remediation Services for the remediation and roof repair of the MNR South and North Buildings located at 10401 Dufferin Street, Vaughan, Ontario.



2. THE PRIME CONSULTANT / PROJECT MANAGER

- a) The Owner's Engineer and Contract Administrator: TELSTORM Corp.
- b) The Owner's Project Manager: City of Vaughan (Facility Management Department)

3. PROJECT SCHEDULE

- a) The Contractor shall mobilize no later than **December 01, 2020**, unless otherwise specified by the Owner.
- b) The Owner requires the project to reach Substantial Performance no later than **March 31, 2021**. Substantial Performance of the Work is as defined by CCDC 2-2008.

4. REFERENCES

Bidders are required to provide a minimum of three (3) Owner references for similar projects completed within the last five (5) years with substantially the same project team as proposed for this Project. The Owner reserves the right to contact the references for evaluation of the Bidder's performance.

All references stated shall be for similar scope of Work as the one described in the Bid Documents.

The City reserves the right to contact references to obtain information about the Bidder's (and any other named entity's) quality of service, reliability, responsiveness, quality assurance/quality control capabilities, ability to schedule, overall project management skills, and so forth.

Failure to provide references as required may result in inability to submit a Bid online and/or Bid disqualification after submission.

5. NON-MANDATORY SITE VISIT

Bidders may view the exterior of the MNR north and south buildings at grade level at any time during the tender period but cannot enter the buildings. The site is located at 10401 Dufferin Street, Vaughan ON. Entrance to the parking area is located on the east side of Dufferin Street, north of Major Mackenzie Drive (north of Eagles Nest Golf Course).

6. CONSTRUCTION WORK DURING COVID-19

The following measures shall be adhered to:

- 1. Contractor shall implement a sign-in procedure for all workers and visitors to *Place of the Work*. This shall be maintained by the Contractor and be readily available for City review. For emergency and COVID-19 reasons, it is important to know which contractors and visitors were in the facility, where in the facility and at what time they were in the facility.
- 2. Prior to any entry into a city facility, contractors shall complete Public Health Ontario's COVID-19 Pre-screen requirements (<https://covid-19.ontario.ca/self-assessment/>) to determine if they are required to self-isolate as per COVID-19. If a contractor has been advised to self-isolate as per the provincial self-assessment, they shall not enter the City facility and notify their employer of this restriction.

3. Contractors performing work shall adhere to physical distancing practices (e.g. 2 meters/6 ft. distance rule from other persons). If this cannot be achieved, alternative measures need to be considered (e.g. re-planning of work, implementation of PPE requirements, etc.)
4. Contractor shall implement the provincial COVID-19 controls at *Place of the Work*:
<https://www.ontario.ca/page/construction-site-health-and-safety-during-covid-19>

7. DESCRIPTION OF APPENDICES

The following appendices are included and a brief description is provided:

- a) Designated Substances and Hazardous Materials Survey by WSP Canada Inc., dated July 7, 2015. Report of the MNR North and South Buildings.
- b) Contractor Safety Compliance – General Requirements, Pre-construction Meeting Checklist. Contractors shall perform their duties in accordance with current Health and Safety standards, including the Occupational Health and Safety Act, as well as applicable City of Vaughan Corporate policies and procedures.
- c) Issued for Tender Drawings and Specifications by TELSTORM Corp. Drawings and Specifications applicable to the Contractor's scope of work.
- d) Site Videos, dated August 12, 2020. Video footage of the MNR North and South Buildings' interior and exterior for Contractor information.
- e) Site Photos, dated August and September, 2020. Still images within the MNR North and South Buildings' interior and exterior for Contractor information.

SEE ADDITIONAL SPECIFICATIONS ATTACHED

END OF DOCUMENT 4

END OF DOCUMENT 5

The Contractor will be required to execute the attached agreement satisfactory to the City (CCDC 2 – Stipulated Price Contract) within seven (7) working days of notice of the award.

END OF DOCUMENT 6

Change Order Form

City's Invoice Cover Sheet

City's H.S. 1.5 Contractor Safety Compliance

Designated Substances Survey

TELSTORM Corp. Issued For Tender Drawings

TELSTORM Corp. Issued For Tender Specifications

Site Video

Site Photos

END OF DOCUMENT 7

Please find below a preview only of certain schedules (collectively, "Schedules") that will need to be completed online only through the Bidding System by Bidders as part of their Bid submission.

The Bidder acknowledges that the preview below is provided as a courtesy only (to assist the Bidder in determining the size and scope of the project, etc.) and shall not be relied upon in any way.

Please note that the Schedules shown below are subject to change/addition/deletion by addendum(s) issued by the Owner. Following the issuance of each addendum, such changes may be reflected in the electronic Schedules to be completed but will not be reflected in this document. It is the Bidder's responsibility to review all addendums and ensure that their Bid is submitted based on the current requirements.

For greater certainty, the Bidder shall submit their Bid by completing all Schedules and fields in the online Bidding System. Any Bid submitted on the basis of the preview Schedules below may in the Owner's sole discretion, be disqualified and rejected on the basis of being incomplete.

T20-246 - Construction Services for MNR Buildings Remediation

Opening Date: October 16, 2020 12:00 PM

Closing Date: November 2, 2020 3:00 PM

Schedule of Prices

When inputting your unit price(s), the total field(s) will automatically calculate

Red asterisk (*) within the table denotes a "MANDATORY" line item. This would need to be completed in order to successfully submit your bid.

The first table is a Summary Table which provides your Sub-Total for each pricing table and also indicates whether or not the table is mandatory or not. Asterisk's within the table denotes a "MANDATORY" line item.

If the line item and /or table is "NON-MANDATORY" and you are not bidding on it, leave the table and /or line item blank. Do not enter a \$0.00 dollar value unless you are prepared to provide the line item at zero dollars to the Owner.

If a table is "NON-MANDATORY" and you are bidding on it, you must bid on all line items with an asterisk.

If there are multiple tables, you must click the "EDIT PRICING" button inside the Summary Table to display the applicable Pricing Table that you wish to bid on.

When all of the required fields have been completed, click "Save My Bid" button.

As each pricing table is filled in, a subtotal will be automatically generated and a green check mark will appear when the table has been completed.

All prices submitted shall be in Canadian funds.

Prices shall exclude Harmonized Sales Tax ("HST"), but shall include all other taxes and duties, as well as any reduction in the Contractor's operating costs due to rebating of any sales taxes.

All work performed under the Contract will be subject to HST only.

The Bidder hereby bids and offers to enter into the Contract referred to and to supply and do all or any part of the Work, at the unit prices, and/or lump sums, hereinafter stated.

The Bidder also understand and accepts that the quantities shown in the Bid Documents are approximate estimates only and are subject to increase, decrease or deletion entirely if found not to be required.

Fee

| Line Item | Description | Unit of Measure | Quantity | Unit Price * | Total Bid Price |
|-----------|--|-----------------|----------|--------------|-----------------|
| 1 | All Work for total construction and related services required by the Contract Documents. | Lump Sum | 1 | | |

Provisional Prices

| Line Item | Description | Unit of Measure | Quantity | Unit Price * |
|-----------|---|-----------------|----------|--------------|
| 1 | Labourer (per hour regular time) | Hour | 1 | |
| 2 | Foreman (per hour regular time) | Hour | 1 | |
| 3 | Site Superintendent (per hour regular time) | Hour | 1 | |
| 4 | Roof repair work in accordance with Drawing A.203 | Lump Sum | 1 | |
| 5 | Disposal of furniture in North Building, for furniture identified in Scope of Work #8 of Drawing A.204. | Lump Sum | 1 | |
| 6 | Mould Remediation | Square foot | 1 | |
| 7 | Flooring Abatement | Square foot | 1 | |
| 8 | Ceiling Abatement | Square foot | 1 | |
| 9 | Asbestos Abatement | Square foot | 1 | |
| 10 | Asbestos Abatement | Linear foot | 1 | |
| 11 | Lead Abatement | Square foot | 1 | |
| 12 | Disposal | Metric tonne | 1 | |
| 13 | General Cleaning | Square foot | 1 | |
| 14 | Credit for removal of exterior caulking being non-hazardous instead of ACM type 1. | Linear foot | 1 | |

Bid Questions

Please provide your registered HST Number.

Please provide your remittance address.

Disclosure

If Bidder agrees with all listed items in the "Disclosure" section below, click on the box "We will not be submitting for Disclosure". A confirm message will appear. Click on the "yes" button to confirm that Bidder does not have any item to disclose.

Otherwise, if Bidder disagrees with one or more of the listed items in the "Disclosure" section, Bidder shall complete and provide specific details of disclosure indicate in below section:

We will not be submitting for Disclosure

| Description | Response * | Specify details of Disclosure * |
|---|---|---------------------------------|
| <p>The Bidder acknowledges that, except for any matters specifically disclosed by the Bidder in the Bidder's Bid with respect to the following matters (hereafter called the "Disclosure"):</p> <p>(a) The Bidder is not currently the subject of legal proceedings by the City of Vaughan in respect of Vaughan's Property Standards By-law or Zoning By-laws.</p> <p>(b) The Bidder has not been convicted by a court of such a matter set out in (a) above where the contravention remains.</p> <p>(c) The Bidder is not a named party in litigation, judicial or arbitral proceedings against or by the City with respect to any other procurement, contract or business transaction.</p> <p>The Bidder agrees that its Disclosure, if any, shall provide specific details of the Disclosure. The Bidder further agrees that the Owner shall be entitled at its sole discretion to reject this Bid as a result of any Disclosure.</p> | <input type="text" value="Select A Value"/> | |

Privacy & Information

All Bids are subject to the provisions of the Municipal Freedom of Information and Protection of Privacy Act, RSO 1990, c M.56 ("MFIPPA"). In accordance with MFIPPA, the personal information provided by Bidders in response to this Request for Tender is being collected under the authority of the Municipal Act, 2001, SO 2001, c 25 and will be used exclusively in the selection process.

All Bids submitted shall become the property of the City.

In accordance with the requirements of MFIPPA, Bidders shall identify in their Bid any specific scientific, technical, commercial, proprietary, or similar confidential information, the disclosure of which could cause them injury. Complete Bids shall not be identified as confidential. Should you have any questions in this regard, please contact the City's Access and Privacy Officer in the Office of the City Clerk at 905-832-8585 extension 8987.

If Bidder does not have any specific scientific, technical, commercial, proprietary, or similar confidential information, the disclosure of which could cause them injury to declare, click on the box "We will not be submitting for Privacy & Information" button. A confirm message will appear. Click on the "yes" button to confirm that Bidder does not have confidential information to disclose.

Otherwise, Bidder shall complete and provide specific details of confidential information in the section below:

We will not be submitting for Privacy & Information

| Question | Response * | If Yes, Please specify * |
|---|---|--------------------------|
| <p>Does your Bid include any specific scientific, technical, commercial, proprietary, or similar confidential information, the disclosure of which could cause you injury?</p> <p>If Yes, Please identify the specific scientific, technical, commercial, proprietary, or similar confidential information, the disclosure of which could cause you injury to the right hand field.</p> | <input type="text" value="Select A Value"/> | |

REFERENCES

All references stated shall be for the same or similar scope of Work as the one described in the Bid Documents.

For newly formed business entity including, corporations, partnerships and sole proprietors or a Contractor teaming arrangement you shall state below in the "Owner Name" Row that you were not the "Contractor" for the named project and should state whose past experience on the named project is relevant to that reference.

The City reserves the right to contact references to obtain information about Bidder's (and any other named entity's) quality of service, reliability, responsive, correction of defects etc.

Failure to provide references as required may result in inability to submit a Bid online and/or Bid disqualification after submission.

List of References

Bidders are required to provide a minimum of three (3) owner references for similar projects completed within last five (5) years with substantially the same project team as proposed for this Project. The Owner reserves the right to contact the references for evaluation of Bidder's performance.

| Information | Project A * | Project B * | Project C * |
|----------------------------------|-------------|-------------|-------------|
| Project Name | | | |
| Project Description | | | |
| Project Location | | | |
| Initial Project Bid Amount (\$) | | | |
| Value of Work at Completion (\$) | | | |
| Completion Date | | | |
| Owner's Company Name | | | |
| Owner's Name | | | |
| Title | | | |
| Address | | | |
| Phone | | | |
| Email | | | |

List subcontractors

By clicking here I confirm that there are no Subcontractor(s) / Subconsultant(s) and the Bidder / Proponent shall perform the project with their "OWN FORCES".

| Type of Work | Sub-Contractor | Contact Name | Contact Number | Contact e-mail |
|--------------|----------------|--------------|----------------|----------------|
| | | | | |

Documents

It is your responsibility to make sure the uploaded file(s) is/are not defective or corrupted and are able to be opened and viewed by the Owner. If the attached file(s) cannot be opened or viewed, your Bid may be rejected.

BONDING UPLOAD SECTION

Gentle Reminder:

The Bid Bond and / or Agreement to Bond must contain digital signature(s) digital seal(s). A scanned copy of a paper bond is not an acceptable digital bond.

A Bid submission that is not accompanied by a valid digital Bid Bond and / or Agreement to Bond shall be disqualified and / or rejected.

Bid submissions must include a digital Bid Bond, in the amount outlined in the Bid Document, as security for the execution and delivery of the Contract and the provision of the required bonds, insurance and other documents required to be provided by a successful Bidder.

Bid submissions must also include a digital Agreement to Bond or digital Undertaking to Bond or digital Consent of Surety ("Agreement to Bond") issued by a surety licensed in the Province of Ontario which states the Bidder has the required bonding in accordance with the Bid Document.

- Bid Bond * (mandatory)
- Undertaking (Agreement) to Bond * (mandatory)

Declarations & Addenda

BIDDER DECLARATIONS

1. The Bidder, by submitting this Bid offers to enter into a contract with The Corporation of the City of Vaughan (the "City") to perform the Work described in the Bid Documents, do and fulfill everything indicated in the Contract, and complete the Work strictly in accordance with the Contract Documents within the timelines specified therein at the unit and lump sum prices submitted in the Schedule of Prices.
2. The Bidder acknowledges that if this Bid is accepted, the Schedule of Prices will be form part of the Contract.
3. The Bidder acknowledges that the quantities included in the Schedule of Prices are an estimate of the City's requirements and there is no guarantee that the full quantities of products or work will be required or purchased. The Bidder agrees that in the event that Contract requirements exceed the estimates, payment for those item(s) exceeding the estimates will be made at the tendered price(s) for the item(s).
4. The Bidder confirms that all prices submitted are in Canadian funds.
5. The Bidder confirms that it's prices exclude Harmonized Sales Tax ("HST"), but include all other taxes and duties, as well as any reduction in the Contractor's operating costs due to rebating of any sales taxes. The Bidder agrees that all work performed under the Contract will be subject to HST only.
6. The Bidder agrees that this Bid shall remain open for acceptance, and that the prices will remain firm and unchanged, for the irrevocability period specified in the Bid Documents and the City may at, any time within this period, accept this Bid regardless of whether any other Bid has been previously accepted or not.
7. The Bidder acknowledges that if its Bid is accepted and the Bidder fails to properly execute the Agreement in accordance with the Notification of Award, or if the Bidder purports to improperly withdraws its Bid, the City may, at its option, consider that the Bidder has abandoned its Bid and the acceptance by the City shall be null and void and the City may exercise its rights as outline in the Bid Documents and for certainty:
 - (a) the City may retain the proceeds of the bid bond as liquidated damages, if applicable; and
 - (b) the Bidder shall immediately pay to the City the difference between the amount of the Bidder's Bid and any other Bid that the City accepts if the other Bid is for a greater amount and any costs that the City incurs by reason of recalling the Bids; and
 - (c) in addition, the Bidder shall indemnify and hold harmless the City, its Council members, employees, successors and assigns, from and against all actions, claims, demands, losses, costs, damages, suits or proceedings whatsoever which may be brought against or made upon the City and against all losses, liabilities, judgments, claims, suits, demands or expenses which the City may sustain, suffer or be put to resulting from, or arising out of, the undersigned's unauthorized withdrawal of its Bid or failure to execute the Agreement.
8. The Bidder agrees that if this Bid is accepted, and the Bidder is non-resident in Ontario or Canada, it shall obtain a GST/HST Registration Number prior to commencement of the Work.
9. The Bidder confirms that it has the necessary experience, skill and expertise required to fulfill the obligations, duties, liabilities and responsibilities of the Contractor under the Contract.
10. The Bidder declares that no person, firm or organization, other than the Bidder, has any interest in this Bid or in the proposed contract for which this Bid is submitted.
11. The Bidder declares that this Bid is made without any connection to, comparison of figures against, arrangement with, or knowledge of, any other corporation, firm or person submitting a Bid and is in all respects fair and without collusion or fraud.
12. The Bidder agrees that no member of City Council, or officer or employee of the City is, will be, or has become, interested directly or indirectly, as a contracting party, partner, stockholder, surety or otherwise, in the performance of the Contract, or in any portion of the profit thereof, or any supplies to be used therein, or in any of the monies to be derived therefrom.
13. The Bidder confirms that it has examined the location where the Work will be performed, and the Bid Documents, and is fully informed as to the nature of the Work and conditions relating to its performance.
14. The Bidder acknowledges that any reports made available by the City were compiled for the use of the City and no responsibility will be assumed by the City for the correctness or completeness of the reports.
15. The Bidder agrees to comply with the Occupational Health and Safety Act, RSO 1990, c O.1 and Regulations and all other applicable laws when performing the Work if awarded a Contract.
16. The Bidder declares and confirms that it is not engaged in Unresolved Litigation with the City as of the date of submission of this Bid, or has declared such in its Bid.
17. The Bidder acknowledges that if selected for Award of this project, the Bidder will provide the City with proof of registration (or complete certification) with with COR™; ISO 45001:2018; CSA Z45001:19; or OHSAS 1800:2007, if applicable.
18. If the Bidder is an incorporated company, the Bidder represents to the City that:
 - (a) the Bidder is a corporation validly subsisting under the laws of the jurisdiction in which it was incorporated and has full corporate power and capacity to submit this Bid and enter into an Agreement arising from this Bid; and

(b) all necessary corporate action has been taken by the Bidder to authorize the execution and delivery of this Bid.

Disclosures (Legal and Conflicts of Interest)

18. The Bidder represents that, except for any "Matters" specifically disclosed:

(a) The Bidder is not currently the subject of legal proceedings by the City of Vaughan in respect of Vaughan's Property Standards By-law or Zoning By-laws.

(b) The Bidder has not been convicted by a court of such a matter set out in (a) above where the contravention remains.

(c) The Bidder is not a named party in litigation, judicial or arbitral proceedings against or by the City with respect to any other procurement, contract or business transaction.

(d) There is no Conflict of Interest with respect to Bidder participating in this procurement process or providing goods or services if awarded a contract hereunder.

The Bidder agrees that the Owner shall be entitled at its sole discretion to reject this Bid as a result of any **Matter** disclosed above / below or otherwise in existence at time of Bid, and for Bidder's failure to make full, honest, accurate disclosures (if any) at time of Bid submission.

19. Privacy and Information

(a) All Bids are subject to the provisions of the Municipal Freedom of Information and Protection of Privacy Act, RSO 1990, cM.56 ("MFIPPA").

(b) In accordance with MFIPPA, the personal information provided by Bidders in response to this Request for Tender is being collected under the authority of the Municipal Act, 2001, SO 2001, c 25 and will be used exclusively in the selection process.

(c) All Bids submitted shall become the property of the City.

(d) In accordance with the requirements of MFIPPA, Bidders shall identify in their Bid any specific scientific, technical, commercial, proprietary, or similar confidential information, the disclosure of which could cause them injury. Complete Bids shall not be identified as confidential.

(e) Should you have any questions in this regard, please contact the City's Access and Privacy Officer in the Office of the City Clerk at 905-832-8585 extension 8987.

20. Acknowledgement of Receipt of Addenda

(a) The Bidder shall acknowledge receipt of addenda by checking the boxes in the "I have reviewed the below addendum and attachments (if applicable)" column below.

(b) Bids that do not contain evidence of receipt of all addenda will be deemed to be "INCOMPLETE" and will not be accepted in the Bidding system website.

(c) The Bidder acknowledges and agrees that the addenda listed below form part of the Bid Documents.

BID IRREVOCABLE PERIOD

(a) Unless properly withdrawn, Bids are irrevocable for a sixty (60) Working Day period, starting on the RFT closing date.

(b) If for any reason a Contract with a successful Bidder is not executed within sixty (60) Working Days from the Bid closing time, City may (without notice or liability) award that Contract to another Bidder.

The Bidder agrees to be bound by all terms and conditions contained in the Bid Documents, and the person named below has the authority to submit this Bid on behalf of the Bidder and has the authority to bind the Bidder.

The Bidder / Proponent shall declare any potential conflict of interest that could arise from bidding on this bid. Do you have a potential conflict of interest?

Yes No

The Bidder / Proponent acknowledges and agrees that the addendum/addenda below form part of the Bid / Proposal Document.

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

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

