

The Standard Construction Document CCDC 2 - 2008 for a Stipulated Price Contract, English version, consisting of the Agreement Between *Owner* and *Contractor*, Definitions and General Conditions of the Stipulated Price Contract, Parts 1 to 12 inclusive, governing same is hereby made part of the *Contract Documents*, with the following amendments, additions and modifications:

AGREEMENT BETWEEN OWNER AND CONTRACTOR

ARTICLE A-2 AGREEMENTS AND AMENDMENTS

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

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

ARTICLE A-3 – CONTRACT DOCUMENTS

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

- Amendments to CCDC 2 - 2008 including
 - o *Adjudication Rules*
 - o *Owner's* Corporate Policy and *Procedure No. 01-03-02*, "Conflict of Interest"
- Drawings* as listed in the table of contents of the *Specifications*
- Specifications*
- Performance Bond
- Labour and Material Payment Bond
- *Form of Offer* including the *Price Schedules* and any other of the *Owner's* standard forms)

ARTICLE A-5 – PAYMENT

5.1 In Article 5.1, change the first sentence to read as follows:

Subject to the *Contractor* performing its obligations under the *Contract Documents* and in accordance with the construction lien legislation and statutory regulations respecting holdback percentages and subject to the *Warranty Reserve* provided for in paragraph 5.2.11 herein, the *Owner* shall:

5.1.3 Amend paragraph 5.1.3, in the first line, by deleting the words "...the issuance of the..." and replacing them with "...receipt of the *Consultant's*..."

5.3.1 Delete paragraph 5.3.1 in its entirety.

5.3.2 Delete paragraph 5.3.2 in its entirety.

ARTICLE A-9 – CONFLICT OF INTEREST

Add new Article A-9 – Conflict of Interest:

- 9.1 The *Contractor*, all of the *Subcontractors* and *Suppliers*, and any of their respective advisors, partners, directors, officers, employees, agents, and volunteers shall not engage in any activity or provide any services where such activity or the provision of such services creates a conflict of interest (actually or potentially, in the sole opinion of the *Owner*) with the provision of the *Work* pursuant to the *Contract*. The *Contractor* acknowledges and agrees that a conflict of interest, as described in this Article A-9, includes, but is not limited to, the use of *Confidential Information* where the *Owner* has not specifically authorized such use.
- 9.2 The *Contractor* shall disclose to the *Owner*, in writing, without delay, any actual or potential situation that may be reasonably interpreted as either a conflict of interest or a potential conflict of interest, including the retention of any *Subcontractor* or *Supplier* that is directly or indirectly affiliated with or related to the *Contractor*.
- 9.3 The *Contractor* covenants and agrees that it will not hire or retain the services of any employee or previous employee of the *Owner* where to do so constitutes a breach by such employee or previous employee of the *Owner's* conflict of interest policy, as it may be amended from time to time, until after completion of the *Work* under the *Contract*.
- 9.4 It is of the essence of the *Contract* that the *Owner* shall not have direct or indirect liability to any *Subcontractor* or *Supplier*, and that the *Owner* relies on the maintenance of an arm's-length relationship between the *Contractor* and its *Subcontractors* and *Suppliers*. Consistent with this fundamental term of the *Contract*, the *Contractor* will not enter into any agreement or understanding with any *Subcontractor* or *Supplier*, whether as part of any contract or any written or oral collateral agreement, pursuant to which the parties thereto agree to cooperate in the presentation of a claim for payment against the *Owner*, directly or through the *Contractor*, where such claim is, in whole or in part, in respect of a disputed claim by the *Subcontractor* or *Supplier* against the *Contractor*, where the payment to the *Subcontractor* or *Supplier* by the *Contractor* is agreed to be conditional or contingent on the ability to recover those amounts or a portion thereof from the *Owner*, failing which the *Contractor* shall be saved harmless from all or a portion of those claims. The *Contractor* acknowledges that any such agreement would undermine the required arm's-length relationship and constitute a conflict of interest. The *Contractor* further acknowledges that it will be impossible to properly assess damages arising from such a breach and agrees that the appropriate remedy is to bar any claims for amounts to which the offending agreement pertains. For greater certainty, the *Contractor* shall only be entitled to advance claims against the *Owner* for amounts pertaining to *Subcontractor* or *Supplier* claims where the *Contractor* has actually paid or unconditionally acknowledged liability for those claims or where those claims are the subject of litigation or binding arbitration between the *Subcontractor* or *Supplier* and the *Contractor* has been found liable for those claims.

- 9.5 Notwithstanding paragraph 7.1.2 of GC 7.1 - OWNER'S RIGHT TO PERFORM THE WORK, TERMINATE THE CONTRACTOR'S RIGHT TO CONTINUE WITH THE WORK, SUSPEND THE WORK OR TERMINATE THE CONTRACT, a breach of this Article by the *Contractor*, any of the *Subcontractors*, or any of their respective advisors, partners, directors, officers, employees, agents, and volunteers shall entitle the *Owner* to terminate the *Contract*, in addition to any other rights and remedies that the *Owner* has in the *Contract*, in law, or in equity.

ARTICLE A-10 – CONFIDENTIALITY

Add new Article A-10 – Confidentiality:

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

DEFINITIONS

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

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

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

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

Add the following new definitions:

- 1a. **Act**

Act means the *Construction Lien Act* (Ontario).

1b. Adjudication Rules

Adjudication Rules means the rules for the adjudication of disputes as set out in Article A-3 – CONTRACT DOCUMENTS.

2a. Confidential Information

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

- 1) is or becomes generally available to the public without fault or breach on the part of the *Contractor*, including without limitation breach of any duty of confidentiality owed by the *Contractor* to the *Owner* or to any third party, but only after that information becomes generally available to the public;
- 2) the *Contractor* can demonstrate to have been rightfully obtained by the *Contractor* from a third party who had the right to transfer or disclose it to the *Contractor* free of any obligation of confidence;
- 3) the *Contractor* can demonstrate to have been rightfully known to or in the possession of the *Contractor* at the time of disclosure, free of any obligation of confidence; or
- 4) is independently developed by the *Contractor* without use of any *Confidential Information*.

3a. Construction Schedule

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

9a. Deficiency Reserve

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

10a. Force Majeure

Force Majeure means any circumstance, occurrence, event, or cause, beyond the reasonable control of the party seeking relief from its obligations under the *Contract*, other than bankruptcy or insolvency or economic hardship, which prevents the performance a party of any of its obligations under the *Contract* and the event of *Force Majeure* was not caused by a party's default or active commission or omission and could not be avoided or mitigated by the exercise of reasonable effort or foresight by a party. *Force Majeure* includes *Labour Disputes*, fire, unusual delay by common carriers or unavoidable casualties, civil disturbance, acts, orders, legislation, regulations or

directives of any government or other public authority, acts of a public enemy, terrorism, war, riot, sabotage, blockage, embargo, lightning, earthquake, or other acts of God, and epidemic or pandemic outbreaks, such as SARS, but shall not include adverse or inclement weather or climatic conditions or any kind whatsoever, whether abnormal or not.

10b. Form of Offer

Form of Offer means the *Owner's* tender form as set out in Article A-3 CONTRACT DOCUMENTS, and includes the Stipulated Price Schedule, the Unit Price Schedule and any other price schedule attached thereto.

10c. Include

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

10d. Install

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

10e. Labour Dispute

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

11a. OHSA

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

11b. Other Party

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

12a. Personal Information

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

13a. Price Schedules

Price Schedules means the “Stipulated Price Contract/Price Schedule”, the “Unit Price Schedule”, the “Separate Price Schedule” and the “Substitution Price Schedule”, or any one of them, or any combination of them, forming part of the *Form of Offer*.

15a. Proposed Change

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

16a. Request for Information/RFI

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

24a. Warranty Period

Warranty Period has the meaning set out in paragraph 12.3.1.

24b. Warranty Reserve

“*Warranty Reserve*” has the meaning set out in paragraph 5.2.11.

GENERAL CONDITIONS OF THE STIPULATED PRICE CONTRACT

Add new preamble as follows:

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

GC 1.1 CONTRACT DOCUMENTS

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

The *Specifications* are divided into divisions and sections for convenience but shall be read as a whole and neither such division nor anything else contained in the *Contract Documents* will be construed to place responsibility on the *Owner* or the *Consultant* to settle disputes among the *Subcontractors* and *Suppliers* with respect to such divisions. The *Drawings* are, in part, diagrammatic and are intended to convey the scope of the *Work* and indicate general and appropriate

locations, arrangements and sizes of fixtures, equipment and outlets. The *Contractor* shall obtain more accurate information about the locations, arrangements and sizes from study and coordination of the *Drawings*, including *Shop Drawings* and shall become familiar with conditions and spaces affecting those matters before proceeding with the *Work*. Where site conditions require reasonable minor changes in indicated locations and arrangements, the *Contractor* shall make such changes at no additional cost to the *Owner*. Similarly, where known conditions or existing conditions interfere with new installation and require relocation, the *Contractor* shall include such relocation in the *Work*. The *Contractor* shall arrange and install fixtures and equipment in such a way as to conserve as much headroom and space as possible. The schedules are those portions of the *Contract Documents*, wherever located and whenever issued, which compile information of similar content and may consist of drawings, tables and/or lists.

- 1.1.7 Amend paragraph 1.1.7.1 by adding “Amendments to CCDC 2 – 2008” before “the Agreement between the *Owner* and the *Contractor*”, deleting the reference to “Supplementary Conditions” and adding “*Form of Offer*” after “the Agreement Between *Owner* and *Contractor*”.

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

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

1.1.11 Add new paragraph 1.1.11 as follows:

The *Contract Documents* shall be signed in triplicate (3) by the *Owner* and the *Contractor*, and each of the *Contractor*, the *Owner* and the *Consultant* shall retain one set of signed and sealed *Contract Documents*.

GC 1.3 RIGHTS AND REMEDIES

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

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

GC 1.5 TIME IS OF THE ESSENCE OF THE CONTRACT

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

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

GC 2.2 ROLE OF THE CONSULTANT

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

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

2.2.19 Add new paragraph 2.2.19 as follows:

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

GC 2.3 REVIEW AND INSPECTION OF THE WORK

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

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

2.3.8 Add new paragraph 2.3.8 as follows:

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

GC 2.4 DEFECTIVE WORK

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

Add the following to the end of paragraph 2.4.1:

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

Add new paragraphs 2.4.1.1 and 2.4.1.2:

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

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

Add new paragraph 2.4.4 as follows:

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

GC 3.1 CONTROL OF THE WORK

3.1.3 Add a new paragraph 3.1.3 as follows:

Prior to commencing individual procurement, fabrication and construction activities, the *Contractor* shall verify at the *Place of the Work*, all relevant measurements and levels necessary for proper and complete fabrication, assembly and installation of the *Work* and shall further carefully compare such field

measurements and conditions with the requirements of the *Contract Documents*. Where dimensions are not included or exact locations are not apparent, the *Contractor* shall immediately notify the *Consultant* in writing and obtain written instructions from the *Consultant* before proceeding with any part of the affected *Work*.

3.1.4 Add a new paragraph 3.1.4 as follows:

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

GC 3.2 CONSTRUCTION BY OWNER OR OTHER CONTRACTORS

3.2.2.1 Delete paragraph 3.2.2.1 in its entirety.

3.2.2.2 Delete paragraph 3.2.2.2 in its entirety.

3.2.3.2 Delete paragraph 3.2.3.2 and replace it with the following:

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

3.2.3.4 Add new paragraph 3.2.3.4 as follows:

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

GC 3.3 TEMPORARY WORK

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

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

GC 3.4 DOCUMENT REVIEW

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

The *Contractor* shall review the *Contract Documents* and shall report promptly to the *Consultant* any error, inconsistency, or omission the *Contractor* may discover. Such review by the *Contractor* shall be undertaken with the standard of care

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

3.4.2 Add new paragraph 3.4.2. as follows:

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

3.4.3 Add new paragraphs 3.4.3 and 3.4.4 as follows:

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

3.4.4 Notwithstanding the foregoing, errors, inconsistencies, discrepancies and/or omissions shall not include lack of reference on the *Drawings* or in the *Specifications* to labour and/or *Products* that are required or normally recognized within respective trade practices as being necessary for the complete execution of the *Work*. The *Contractor* shall not use subsequent *RFIs*, issued during execution of the *Work* to establish a change and/or changes in the *Work* pursuant to Part 6 – CHANGES IN THE WORK.

GC 3.5 CONSTRUCTION SCHEDULE

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

The *Contractor* shall:

.1 within seven (7) days of receiving written confirmation of the award of the *Contract*, prepare and submit to the *Owner* and the *Consultant* for their review and acceptance, a *Construction Schedule* that indicates the timing of the activities of the *Work* and provides sufficient detail of the critical events and their inter-relationship to demonstrate the *Work* will be performed in conformity with the *Contract Time* and in accordance with the *Contract Documents*. The *Construction Schedule* and any updated *Construction Schedule* provided in accordance with paragraph 5.2.12 shall include a provision for contingency time to reflect normally adverse weather conditions appropriate to the season.

.2 employ construction scheduling software that permits the progress of the *Work* to be monitored in relation to the critical path established in the *Construction Schedule*. The *Contractor* shall provide the *Construction Schedule* and any successor or revised *Construction Schedules* in both electronic format and hard copy. Once accepted by the *Owner* and the *Consultant*, the *Construction Schedule* submitted by the *Contractor* shall become the baseline *Construction Schedule*;

.3 provide the expertise and resources, such resources including manpower and equipment, as are necessary to maintain progress under the accepted baseline *Construction Schedule* or any successor or revised *Construction Schedule* accepted by the *Owner* pursuant to GC 3.5 CONSTRUCTION SCHEDULE;

.4 monitor the progress of the *Work* on a weekly basis relative to the baseline *Construction Schedule*, or any successor or revised *Construction Schedule* accepted by the *Owner* pursuant to GC 3.5 CONSTRUCTION SCHEDULE, update the *Construction Schedule* on a monthly basis, at a minimum, or as required by the *Consultant* and provide the *Consultant* and the *Owner* with written notice of any variation from the baseline *Construction Schedule* or slippage in the *Construction Schedule*; and

.5 if, after applying the expertise and resources required under subparagraph 3.5.1.3, the *Contractor* forms the opinion that the variation or slippage in the *Construction Schedule* reported pursuant to subparagraph 3.5.1.4 cannot be recovered by the *Contractor*, it shall, in the same notice, indicate to the *Consultant* and the *Owner* if the *Contractor* intends to apply for an extension of *Contract Time* as provided in PART 6 - CHANGES IN THE WORK.

3.5.2 Add new paragraph 3.5.2 as follows:

If, at any time, it appears to the *Owner* or the *Consultant* that the actual progress of the *Work* is behind schedule or is likely to become behind schedule, or if the

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

GC 3.6 SUPERVISION

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

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

3.6.3 Add new paragraph 3.6.3:

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

GC 3.7 SUBCONTRACTORS AND SUPPLIERS

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

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

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

Add to the end of the paragraph the following:

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

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

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

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

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

GC 3.8 LABOUR AND PRODUCTS

3.8.1 Add the following at the end of paragraph 3.8.1:

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

3.8.2 Delete paragraph 3.8.2 and substitute with the following:

Products provided shall be new and shall conform to all current applicable specifications of the Canadian Standards Association, Canadian Standards Board or General Standards Board, ASTM, National Building Code, Ontario Building Code, National Fire Prevention Association, the Technical Standards and Safety Authority (also known as TSSA) and all governmental authorities having jurisdiction at the *Place of the Work*, unless otherwise specified. *Products* which are not specified shall be of a quality consistent with those specified and their use acceptable to the *Consultant*. *Products* brought on to the *Place of the Work* by the *Contractor* shall be deemed to be the property of the *Owner*, but the *Owner* shall be under no liability for loss thereof or damage thereto arising from any cause whatsoever. The said *Products* shall be at the sole risk of the *Contractor*.

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

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

3.8.4 Unless otherwise specified, all materials existing at the *Place of the Work* at the time of execution of the *Contract* shall remain the property of the *Owner*. All

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

- 3.8.5 Upon receipt of a written notice from the *Consultant*, the *Contractor* shall dismiss, from the *Place of the Work*, tradesmen and labourers whose *Work* is unsatisfactory to the *Consultant* or who are considered by the *Consultant* to be unskilled or otherwise objectionable.
- 3.8.6 The *Contractor* shall not employ any persons for the *Work* whose labour affiliation or lack thereof is incompatible with other labour employed in connection with the *Work*. Any costs arising from *Labour Disputes*, as a result of the employ of any such person by the *Contractor*, its *Subcontractors* or *Suppliers*, shall be the sole expense of the *Contractor*.
- 3.8.7 The *Contractor* shall cooperate with the *Owner* and its representatives and shall take all reasonable and necessary actions to maintain stable and harmonious labour relations with respect to the *Work* at the *Place of the Work*, including cooperation to attempt to avoid *Work* stoppages, trade union jurisdictional disputes and other *Labour Disputes*. In the event that there is a *Labour Dispute* that stops the *Work*, the *Contractor* shall ensure that the *Place of the Work* and the *Work* are left in a safe, secure condition, as required by authorities having jurisdiction at the *Place of the Work*, and in accordance with the *Contract Documents*.

GC 3.9 DOCUMENTS AT THE SITE

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

The *Contractor* shall keep at the *Place of the Work* one copy of the current *Contract Documents*, *Supplemental Instructions*, *Proposed Changes*, *Change Directives*, cash allowance disbursement authorizations, reviewed *Shop Drawings*, current as-built drawings as required by paragraph 5.2.10, submittals, reports and records of meetings, in good order and available to the *Owner* and *Consultant*.

Add new paragraphs 3.9.2, 3.9.3 and 3.9.4 as follows:

- 3.9.2 The *Contractor* shall cause its supervisor or such competent person as it may delegate, to prepare and keep at the *Place of the Work* a daily log or diary reporting on weather conditions, work force of the *Contractor*, *Subcontractors*, *Suppliers* and any other forces on site and also record the general nature of *Work* activities (the "Logs"). The Logs shall also include any extraordinary or emergency events which may occur and the identities of any persons who visit the site who are not part of the day-to-day work force. The *Contractor* shall bring the Logs to the site meetings for review by the *Consultant*. The *Consultant* may issue comments and instructions to the *Contractor* to rectify the Logs which shall be completed by the *Contractor* by the next site meeting.

- 3.9.3 During the course of the *Work*, the *Contractor* shall maintain records, either at its head office or at the *Place of the Work*, recording manpower and material resourcing on the *Project*, including records which document the activities of the *Contractor* in connection with GC 3.5 CONSTRUCTION SCHEDULE, and comparing that resourcing to the resourcing anticipated when the most recent version of the *Construction Schedule* was prepared pursuant to GC 3.5 CONSTRUCTION SCHEDULE (the "Records"). The *Contractor* shall make the Records available to the *Consultant* or the *Owner*, upon request, during normal business hours, prior to *Substantial Performance of the Work*
- 3.9.4 The *Contractor* shall maintain and keep accurate *Project* records (which means all tangible records, documents, computer printouts, electronic information, books, plans, *Drawings*, *Specifications*, accounts or other information relating to the *Work*) in its office in Ontario in accordance with requirements of law but in any event for not less than six (6) years from *Substantial Performance of the Work* or until all claims have been settled. During this time, the *Contractor* shall allow the *Owner* access to the *Project* records during normal business hours upon the giving of reasonable notice. The *Contractor* shall ensure that equivalent provisions to those provided herein are made in each subcontract (and shall require the *Subcontractors* and *Suppliers* to incorporate them into every level of contract thereunder for any part of the *Work*).

GC 3.10 SHOP DRAWINGS

- 3.10.3 Delete paragraph 3.10.3 in its entirety and replace with the following:
- The *Contractor* shall prepare a *Shop Drawings* schedule acceptable to the *Owner* and the *Consultant* prior to the first application for payment. A draft of the proposed *Shop Drawings* schedule shall be submitted by the *Contractor* to the *Consultant* and the *Owner* for approval. The draft *Shop Drawings* schedule shall clearly indicate the phasing of *Shop Drawings* submissions.
- 3.10.8.1 In the second line, delete the words "or will do so".
- 3.10.9 Add the following at the end of paragraph 3.10.9:
- Where manufacturers' literature is submitted in lieu of scaled drawings, it shall be clearly marked in ink, to indicate the specific items for which review is requested.
- 3.10.12 Delete paragraph 3.10.12 in its entirety.
- Add new paragraphs 3.10.13, 3.10.14, 3.10.15, 3.10.16 and 3.10.17 as follows:
- 3.10.13 Reviewed *Shop Drawings* shall not authorize a change in the *Contract Price* and/or the *Contract Time*.

- 3.10.14 Except where the parties have agreed to a different *Shop Drawings* schedule pursuant to paragraph 3.10.3, the *Contractor* shall comply with the requirements for *Shop Drawings* submissions stated in the *Specifications*.
- 3.10.15 The *Contractor* shall not use the term “by others” on *Shop Drawings* or other submittals. The related trade, *Subcontractor* or *Supplier* shall be stated.
- 3.10.16 Certain *Specifications* sections require the *Shop Drawings* to bear the seal and signature of a professional engineer. Such professional engineer must be registered in the jurisdiction of the *Place of the Work* and shall have expertise in the area of practice reflected in the *Shop Drawings*.
- 3.10.17 The *Consultant* will review and return *Shop Drawings* and submittals in accordance with the schedule agreed upon in paragraph 3.10.3, or, in the absence of such a schedule, with reasonable promptness.

GC 3.11 USE OF THE WORK

- 3.11.3 Add new paragraph 3.11.3 as follows:

The *Owner* shall have the right to enter or occupy the *Work* in whole or in part for the purpose of placing fittings and equipment, or for other use before *Substantial Performance of the Work*, if, in the opinion of the *Consultant*, such entry and occupation do not prevent or substantially interfere with the *Contractor* in the performance of the *Contract* within the *Contract Time*. Such entry or occupation shall neither be considered as acceptance of the *Work*, nor in any way relieves the *Contractor* from its responsibility to complete the *Contract*.

GC 3.13 CLEAN UP

- 3.13.2 In paragraph 3.13.2, in the fourth line add the word “materials” between the word “tools” and the words “*Construction Equipment*”.
- 3.13.3 In paragraph 3.13.3, in the first and second lines add the word “materials” between the word “tools” and the words “*Construction Equipment*”.
- 3.13.4 Add new paragraph 3.13.4 as follows:

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

GC 3.14 CONTRACTOR STANDARD OF CARE

Add a new General Condition 3.14 as follows:

- 3.14.1 In performing its services and obligations under the *Contract*, the *Contractor* shall exercise the standard of care, skill, and diligence that would normally be provided by an experienced and prudent contractor supplying similar services for similar projects. The *Contractor* acknowledges and agrees that throughout the *Contract*, the performance of the *Contractor's* obligations, duties, and responsibilities shall be judged against this standard. The *Contractor* shall exercise the same standard of care, skill, and diligence in respect of any *Products*, personnel, or procedures which it may recommend to the *Owner*.
- 3.14.2 The *Contractor* further represents covenants and warrants to and in favour of the *Owner*, acknowledging that the *Owner* is relying thereon, that:
- .1 the personnel it assigns to the *Project* are appropriately experienced;
 - .2 it has a sufficient staff of qualified and competent personnel to replace any of its appointed representatives, subject to the *Owner's* approval, in the event of death, incapacity, removal or resignation;
 - .3 it has a qualified team of *Subcontractors* and *Suppliers* with a proven record of performing large projects on time;
 - .4 there are no pending, threatened or anticipated claims that would have a material effect on the financial ability of the *Contractor* to perform its work under the *Contract*.

GC 4.1 CASH ALLOWANCES

- 4.1.1 Delete paragraph 4.1.1 in its entirety and replace with the following:
- 4.1.1 The *Consultant* may direct the *Contractor* to bid work for which payment is made from a cash allowance.
- 4.1.2 Add to the end of paragraph 4.1.2 the following:
- Cash allowances cover the net cost to the *Contractor* of services, *Products*, *Construction Equipment*, freight, unloading, handling, storage, installation, and other authorized expenses incurred in performing the work stipulated under the cash allowances. The net cost to the *Contractor* of such items shall be charged to the *Owner* on a flow-through basis and the *Contractor* shall provide the *Owner* with invoices evidencing such net cost. The *Contractor* shall not be entitled to any overhead and profit on such net cost or on any *Value Added Taxes* payable by the *Owner* to the *Contractor*.

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

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

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

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

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.

Add new GC 4.2 CONTINGENCY ALLOWANCE as follows:

GC 4.2 CONTINGENCY ALLOWANCE

4.2.1 The *Contract Price* includes the contingency allowance, if any, as determined by the *Owner*.

4.2.2 The amount of any contingency allowance shall not include the *Contractor's* overhead and profit in connection with such contingency allowance.

4.2.3 Expenditures under the contingency allowance shall be authorized and valued as provided in GC 6.1 – OWNER'S RIGHT TO MAKE CHANGES, GC 6.2 – CHANGE ORDER and GC 6.3 – CHANGE DIRECTIVE.

4.2.4 The *Contract Price* shall be adjusted by *Change Order* to provide for any difference between the expenditures authorized under paragraph 4.2.3 and the contingency allowance.

4.2.5 The amount of any unused contingency allowance shall be deducted from the *Contract Price* or reallocated to a cash allowance by *Change Order*, in the discretion of the *Owner*.

GC 5.1 FINANCING INFORMATION REQUIRED OF THE OWNER

5.1.1 Delete paragraph 5.1.1 in its entirety.

5.1.2 Delete paragraph 5.1.2 in its entirety.

GC 5.2 APPLICATIONS FOR PROGRESS PAYMENT

5.2.3 Amend paragraph 5.2.3 by adding the following to the end of that paragraph:

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

5.2.7 Add to the end of paragraph 5.2.7 the following new sentence:

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

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

5.2.8 As a condition of receiving each progress payment after the first, the *Contractor* shall submit a Statutory Declaration on an original form CCDC Document 9A-2001, attesting to the truth of the statements made therein.

5.2.9 The *Contractor* shall submit a Workplace Safety & Insurance Board Clearance Certificate and a current certificate of insurance with each application for progress payment.

5.2.10 The *Contractor* shall prepare and maintain at the *Place of the Work* current as-built drawings which shall consist of the *Drawings* and *Specifications* revised by the *Contractor* during the *Work*, showing changes to the *Drawings* and *Specifications*, which current as-built drawings shall be made available by the *Contractor* to the *Consultant* for review at the weekly site meeting prior to each application for progress payment. The *Consultant* shall retain a reasonable amount for the value of the as-built drawings not presented for review.

5.2.11 The *Contract Price* shall provide the basis for the following *Warranty Reserve*:

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

The *Warranty Reserve*, net of any claims by the *Owner* and others, as provided in the *Contract Documents*, shall be paid to the *Contractor* at the time of final

completion of the *Work*, but not before the expiration of the one (1) year *Warranty Period* set out in GC 12.3 WARRANTY, whichever comes later. The *Warranty Reserve* shall be in addition to the required holdbacks under the *Act*.

- 5.2.12 As a condition of receiving each progress payment, the *Contractor* shall submit an updated *Construction Schedule* that shows revisions to the baseline *Construction Schedule* referred to in paragraph 3.5.1.1, together with site photographs showing progress of the *Work*.

GC 5.3 PROGRESS PAYMENT

- 5.3.1.3 Delete subparagraph 5.3.1.3 in its entirety and substitute as follows:

the *Owner* shall make payment to the *Contractor* on account as provided in Article A-5 of the Agreement – PAYMENT no later than thirty (30) days after the date of a certificate of payment issued by the *Consultant*.

Add new paragraph 5.3.2 as follows:

- 5.3.2 If the *Contractor* fails to provide a statutory declaration as required by paragraph 5.2.8, or the clearance certificate required by paragraph 5.2.9, or the updated *Construction Schedule* or site photographs required by paragraph 5.2.12, the *Owner* shall be entitled to withhold payment from the *Contractor* until such time as the *Contractor* has provided such statutory declaration, clearance certificate or updated *Construction Schedule* and site photographs, as applicable, satisfactory to the *Consultant*.

GC 5.4 SUBSTANTIAL PERFORMANCE OF THE WORK

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

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

Add new paragraphs 5.4.4, 5.4.5 and 5.4.6 as follows:

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

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

- .1 guarantees;
- .2 warranties, completed as per paragraph 12.3.8;
- .3 certificates;
- .4 testing and balancing reports;
- .5 distribution system diagrams;
- .6 spare parts;
- .7 maintenance/operation manuals;
- .8 samples;
- .9 reports and correspondence from authorities having jurisdiction in the *Place of the Work*;
- .10 shop drawings;
- .11 completed as-built drawings;
- .12 inspection certificates;
- .13 an original of the performance bond rider pursuant to paragraph 11.2.2;
- .14 copies of the Logs, as defined in and pursuant to paragraph 3.9.2;
- .15 copies of the Records, as defined in and pursuant to paragraph 3.9.3.

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

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

GC 5.5 PAYMENT OF HOLDBACK UPON SUBSTANTIAL PERFORMANCE OF THE WORK

Add new paragraphs 5.5.1.3 and 5.5.1.4 as follows:

- 5.5.1.3 submit a statement that no written notices of lien have been received by it.
- 5.5.1.4 submit a Workplace Safety & Insurance Board clearance certificate.

5.5.3 Delete paragraph 5.5.3 in its entirety.

GC 5.6 PROGRESSIVE RELEASE OF HOLDBACK

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

Add new paragraph 5.6.4 as follows:

5.6.4 For release of holdback on subcontracted work that is 100% complete prior to final payment, the *Contractor* shall make application by written request for a review to determine the date of completion of the subcontract and shall submit such supporting material as the *Consultant* may, in his discretion require, and may include statutory declarations from such persons and dealing with such matters as the *Consultant* requires. Such material shall, in any event, include:

- .1 description of the scope of work included in the subcontract;
- .2 Declaration of Last Supply by the *Subcontractor* as prescribed in s. 31(5) of the *Act* (Form 5);
- .3 Certificate of Completion of Subcontract as prescribed in s. 33(1) of the *Act* (Form 7);
- .4 Workplace Safety & Insurance Board clearance certificate for the *Contractor*, the *Subcontractor* in question and any other *Subcontractors* and *Suppliers* who have provided any services or materials to the *Subcontractor*;
- .5 statutory declaration by an officer of the *Subcontractor* in the form CCDC Document 9B – 2001;
- .6 *Contractor's* written acknowledgement to the *Owner* that the requirements of the *Contract Documents* will not be altered by early release of the holdback of the completed subcontracts, including, but not limited to any and all warranty periods commencing to run from the date of *Substantial Performance of the Work*;
- .7 confirmation from the *Contractor's* bonding company that it has been notified of the intent to claim early release of holdback and does not object.

GC 5.7 FINAL PAYMENT

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

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

determined by the *Consultant* in accordance with the provisions of GC 5.8 WITHHOLDING OF PAYMENT.

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

5.7.4 Delete from the second line of paragraph 5.7.4 the words, “5 calendar days after the issuance” and substitute the words “30 days after receipt of”.

GC 5.10 CONSTRUCTION LIENS

Add a new General Condition 5.10 as follows:

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

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

5.10.2 In the event that the *Contractor* fails to conform with the requirements of paragraph 5.10.1, the *Owner* may fulfil those requirements without *Notice in Writing* to the *Contractor* and set off and deduct from any amount owing to the *Contractor*, all costs and associated expenses, including the costs of posting security and all legal fees and disbursements associated with discharging or vacating the claim for lien or certificate of action and defending the action. If there is no amount owing by the *Owner* to the *Contractor*, then the *Contractor* shall reimburse the *Owner* for all of the said costs and associated expenses.

GC 6.1 OWNER'S RIGHT TO MAKE CHANGES

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

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

Add new paragraph 6.1.3 as follows:

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

GC 6.2 CHANGE ORDER

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

Add new paragraph 6.2.3 as follows:

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

- .1 by quotation and acceptance of a lump sum, and all quotations must contain an itemized and complete breakdown of costs, including hours and hourly rates of labour, payroll burden, itemized costs of materials, quantity of materials, *Products*, and all other costs to perform the change in the *Work* including any mark-up, such that the quotations are capable of being evaluated by the *Consultant*. The *Contractor* shall require *Subcontractors* and *Suppliers* to supply similar information to the *Consultant*.
- .2 by unit prices set out in the *Form of Offer* or subsequently agreed upon by the parties. Unit prices shall include materials, labour, equipment, delivery, freight, handling, disposal, statutory charges, supervisions, testing, all applicable duties, brokerage charges, import charges, PST, bonding, overhead, profit and all relative charges and expenses including, but not limited to, office administration charges such as disbursements, travel costs, printing and incidentals to the *Contractor*, and shall be the total cost to the *Owner*. Adjustment to the *Contract Price* shall be based on a net quantity difference from the original quantity.
- .3 by the amount, net of all credits, of time, materials, *Construction Equipment* and *Products* expended:
 - (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 disclosed in the table below which applies to material and *Product* costs only;
 - (2) by the *Contractor* applying its labour charge out rates, together with the actual costs, without mark-up, of materials, *Construction*

Equipment and Products plus the mark-up disclosed in the table below which applies to material, *Construction Equipment and Product* costs only;

(3) the *Contractor* shall be entitled to the *Contractor* mark-up in the table below on the value of *Subcontractor* work even where the *Subcontractor* is not entitled to a mark-up on its labour charge out rates pursuant to paragraph 6.2.3.3(1).

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

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

GC 6.3 CHANGE DIRECTIVE

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

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

6.3.7 Delete paragraph 6.3.7 in its entirety.

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

GC 6.4 CONCEALED OR UNKNOWN CONDITIONS

6.4.1 Delete paragraph 6.4.1 and replace with the following:

6.4.1 If the *Contractor* was given access to the *Place of the Work* prior to the submission of the bid on which the *Contract* was awarded, then the *Contractor*

confirms that it carefully investigated the *Place of the Work* and carried out such tests as it deemed appropriate and, in doing so, applied to that investigation the degree of care and skill required by paragraph 3.14.1.

6.4.2 Amend paragraph 6.4.2 by addition of a new first sentence as follows:

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

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

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

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

GC 6.5 DELAYS

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

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

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

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

Add new paragraphs 6.5.6, 6.5.7 and 6.5.8 as follows:

6.5.6 If the *Contractor* is delayed in the performance of the *Work* by an act or omission of the *Contractor* or anyone directly or indirectly employed or engaged by the

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

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

6.5.8 If the *Owner* is delayed in making any payment as it becomes due under the terms of the *Contract* or in an award by arbitration or court and such delay is caused by:

- .1 technical or other failure at the *Owner's* financial institution resulting in the *Owner* not having access to the *Owner's* own funds; or
- .2 an epidemic, pandemic or natural disaster resulting in the *Owner* not having access to the *Owner's* own funds or not having staff available to process the payment under the *Contract* or other similar inability to make the payment; or
- .3 other similar extraordinary circumstance beyond the *Owner's* control that prevents the *Owner* from making the payment;

then, in such a circumstance, the time for payment shall be extended for such reasonable time as the *Consultant* shall recommend in consultation with the *Owner*. The extension of time shall not be less than the time lost as a result of the circumstance causing the delay, unless the *Owner* agrees to a shorter extension. The *Owner* shall make reasonable efforts to make the delayed payment as soon as practicable.

In such a circumstance the *Contractor* shall not be entitled to payment for costs incurred due to the delayed payment including, but not limited to, interest on the delayed payment. Furthermore, no such delay in payment shall be considered a

default or grounds for termination under GC 7.2 CONTRACTOR'S RIGHT TO STOP THE WORK OR TERMINATE THE CONTRACT.

GC 6.6 CLAIMS FOR A CHANGE IN CONTRACT PRICE

6.6.1 Delete paragraph 6.6.1 and change to read as follows:

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

6.6.2 Delete paragraph 6.6.2 and change to read as follows:

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

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

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

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

7.1.2 Delete paragraph 7.1.2 entirely and replace with the following:

If the *Contractor*:

- a) neglects to prosecute the *Work* properly, in the opinion of the *Consultant*; or
- b) fails or neglects to maintain the latest *Construction Schedule* provided pursuant to GC 3.5 CONSTRUCTION SCHEDULE; or
- c) has made incorrect or untrue statements contained in the *Form of Offer*; or
- d) fails to comply with all municipal laws and regulations as they pertain to the *Owner* in respect of the operation of the *Contractor's* business and/or if the *Contractor* fails to ensure that its *Subcontractors* and *Suppliers* also remain in compliance with such municipal laws and regulations in respect of the performance of the *Contract*; or

- e) fails to comply with all federal and provincial laws in respect of the performance of the *Contract*; or
- f) or any *Subcontractor* or *Supplier* is a party in a claim, judicial or arbitral proceedings against, by or otherwise involving the *Owner*, other than in respect of the *Contract*; or,
- g) or any *Subcontractor* or *Supplier* is related to or controlled by another person or entity to whom or to which, as applicable, statements c), d), e), or f) immediately above applies; or,
- h) fails to comply with the requirements of the *Contract* to a substantial degree;

the *Owner* may, without prejudice to any other right or remedy the *Owner* may have, give the *Contractor Notice in Writing* that the *Contractor* is in default of the *Contractor's* contractual obligations and instruct the *Contractor* to correct the default in the 5 *Working Days* immediately following the receipt of such *Notice in Writing*.

Add a new subparagraph 7.1.3.4 as follows:

7.1.3.4 An "acceptable schedule" as referred to in subparagraph 7.1.3.2. means a schedule approved by the *Consultant* and the *Owner* wherein the default can be corrected within the balance of the *Contract Time* and shall not cause delay to any other aspect of the *Work* or the work of other contractors, and in no event shall it be deemed to give a right to extend the *Contract Time*.

7.1.5.3 In subparagraph 7.1.5.3, after the words "*Contract Price*" in the fourth line, add the words "excluding the *Warranty Reserve* set out in paragraph 5.2.11 and any reserve fund set out in paragraph 5.5.2." and delete the words ";however, if such cost of finishing the *Work* is less than the unpaid balance of the *Contract Price*, the *Owner* shall pay the *Contractor* the difference."

Add new subparagraph 7.1.5.5 as follows:

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

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

7.1.6 In addition to its right to terminate the *Contract* set out herein and in ARTICLE A-9 CONFLICT OF INTEREST, paragraph 9.5, the *Owner* may terminate the *Contract* at any time for any other reason and without cause upon giving the *Contractor Notice in Writing* to that effect. In such event, the *Contractor* shall be entitled to be paid for all or a portion of the *Work* performed including reasonable profit, for loss sustained upon *Products* and *Construction Equipment*, and such

other damages as the *Contractor* may have sustained as a result of the termination of the *Contract*, but in no event shall the *Contractor* be entitled to be compensated for any loss of profit on unperformed portions of the *Work*, or indirect, special, or consequential damages incurred.

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

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

7.2.2 Delete paragraph 7.2.2 in its entirety.

7.2.3.1 Delete subparagraph 7.2.3.1 in its entirety.

7.2.3.2 Delete subparagraph 7.2.3.2 in its entirety and replace with the following:

.2 after providing the *Owner* with 10 *Working Days*' written notice that the *Consultant* has not issued a certificate, the *Consultant* fails to issue a certificate as provided in GC 5.3 – PROGRESS PAYMENT, or

Delete subparagraph 7.2.3.3 in its entirety and substitute with the following:

7.2.3.3 the *Owner* fails to pay the *Contractor* when due the amount certified by the *Consultant* or awarded by arbitration or a court, except where the *Owner* has a bona fide claim for set off, or

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

Add new subparagraph 7.2.3.5 as follows:

7.2.3.5 The foregoing defaults in contractual obligations shall not apply to the withholding of certificates or payments, or both, because of the *Contractor's* failure to pay all legitimate claims promptly, or because of the registration of claims for liens against the title to the *Owner's* property, until such claims and liens are discharged.

Add the following to the end of paragraph 7.2.4:

7.2.4 If the default cannot be corrected within the 5 *Working Days* specified in the preceding sentence, the *Owner* shall be deemed to have cured the default if it:

- .1 commences correction of the default within the specified time;
- .2 provides the *Contractor* with an acceptable schedule for such correction;
and
- .3 completes the correction in accordance with such schedule.

Delete paragraph 7.2.5 in its entirety and substitute the following:

7.2.5 If the *Contractor* terminates the *Contract* under the conditions described in GC 7.2, the *Contractor* shall be entitled to be paid for that portion of the *Work* performed to the date of termination, as determined by the *Consultant*. The *Contractor* shall also be entitled to recover the direct costs associated with

termination, including the costs of demobilization, losses sustained on *Products* and *Construction Equipment*. The *Contractor* shall not be entitled to any recovery for any special, indirect or consequential losses, including loss of profit.

Add new paragraph 7.2.6 as follows:

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

GC 8.1 AUTHORITY OF THE CONSULTANT

- 8.1.2 In paragraph 8.1.2, change “GC 8.2 – NEGOTIATION, MEDIATION AND ARBITRATION” to “GC 8.2 – ADJUDICATION”.

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

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

GC 8.2 NEGOTIATION, MEDIATION AND ARBITRATION

Change heading to read “GC 8.2 DISPUTE RESOLUTION”

Delete GC 8.2 in its entirety and replace with the following:

Prior to *Substantial Performance of the Work*, the following dispute process shall apply:

- 8.2.1 In the event of any dispute arising between the *Owner* and the *Contractor* as to their respective rights and obligations under the *Contract* which is not resolved in the first instance by the *Consultant*, if applicable, either party hereto may give the other *Notice in Writing* of such dispute. The *Notice in Writing* shall be made within two (2) weeks of the dispute arising. The *Owner* and the *Contractor* shall meet, along with any other parties involved in the *Project* that either party believes will contribute to a resolution of the dispute including the *Consultant* and any *Subcontractor* or *Supplier*, to attempt to resolve the dispute. If the dispute cannot be resolved within two (2) weeks of the *Notice in Writing*, then the *Owner* and the *Contractor* shall elevate the dispute for resolution by adjudication pursuant to GC 8.2.2.

- 8.2.2 Any dispute that is not resolved pursuant to paragraph 8.2.1 shall be referred to adjudication in accordance with the *Adjudication Rules*. The *Contractor* shall continue to perform the *Work* during the adjudication process. Any and all determinations made by an adjudicator under the *Adjudication Rules* shall be

binding upon the parties until the *Substantial Performance of the Work*, whereupon the parties may resubmit any dispute for resolution to arbitration or to a court of competent jurisdiction as provided for in paragraph 8.2.3. In such event, there shall be no reference in any subsequent proceedings to the adjudication process or any determinations made thereunder.

8.2.3 If either party is dissatisfied with the decision of the adjudicator, then, within two (2) weeks following the date of *Substantial Performance of the Work*, the dissatisfied party shall so advise the other party by *Notice in Writing*. The parties may, between themselves, agree to submit the particular matter to arbitration in accordance with the applicable laws of Ontario. If no agreement is made for arbitration within two (2) weeks of the aforementioned notice, then the dissatisfied party may submit the dispute or claim to such judicial tribunal as the circumstances may require.

8.2.4 The *Contractor* shall complete the *Work*, in accordance with the directions of the *Consultant*, notwithstanding any dispute, claim, arbitration, or any legal action initiated by either or both of the parties.

After *Substantial Performance of the Work*, the following dispute resolution process shall apply:

8.2.5 The parties shall make all reasonable efforts to resolve their dispute by amicable negotiations and agree to provide, without prejudice, frank, candid and timely disclosure of relevant facts, information and documents to facilitate these negotiations.

8.2.6 In the event the dispute is not resolved after the negotiations referred to in paragraph 8.2.5, the parties will refer the dispute to a third party, mutually agreed upon between the parties, to assist the parties in concluding an agreement on the dispute.

8.2.7 In the event that the dispute is not resolved after the mediated negotiations referred to in paragraph 8.2.6, the parties may refer the dispute to binding arbitration, upon the mutual agreement of the parties. If the parties agree to refer the dispute to arbitration, the decision of the arbitrator shall be final and binding upon the parties and the arbitration shall be conducted in the jurisdiction of the *Place of the Work*. The Rules for Arbitration of Construction Disputes as provided in CCDC 40 shall govern the arbitration process, unless the parties mutually agree that a different set of rules are to govern.

GC 8.3 RETENTION OF RIGHTS

8.3.2 Change the words “8.2.6 of GC 8.2 – NEGOTIATION, MEDIATION AND ARBITRATION” to “8.2.3 of GC 8.2 – ADJUDICATION”.

GC 9.1 PROTECTION OF WORK AND PROPERTY

Delete subparagraph 9.1.1.1 in its entirety and substitute the following:

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

Delete paragraph 9.1.2 in its entirety and substitute as follows:

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

Add new paragraph 9.1.5 as follows:

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

Add new paragraph 9.1.6 as follows:

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

GC 9.2 TOXIC AND HAZARDOUS SUBSTANCES

Add a new subparagraph 9.2.5.5 as follows:

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

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

9.2.6 If the *Owner* and the *Contractor* do not agree on any one or more of the following:

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

the *Owner* shall retain and pay for an independent qualified expert to investigate and determine such matters. The expert's report shall be delivered to the *Owner* and the *Contractor*.

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

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

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

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

- .1 take all necessary steps, in accordance with applicable legislation and regulations in force at the *Place of the Work*, to safely remove and dispose of the toxic or hazardous substances;

- .2 make good any damage to the *Work*, the *Owner's* property or property adjacent to the *Place of the Work* as provided in paragraph 9.1.3 of GC 9.1 PROTECTION OF WORK AND PROPERTY;
- .3 reimburse the *Owner* for reasonable costs incurred under paragraph 9.2.6 and as a result of the delay; and
- .4 indemnify the *Owner* as required by GC 12.1 INDEMNIFICATION.

GC 9.4 CONSTRUCTION SAFETY

Delete paragraph 9.4.1 in its entirety and substitute as follows:

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

Add new paragraphs 9.4.2, 9.4.3 and 9.4.4 as follows:

- 9.4.2 Within seven (7) days of receipt of written notice to do so and prior to the commencement of the *Work*, the *Contractor* shall submit to the *Owner*:
- .1 a current Workplace Safety & Insurance Board Clearance Certificate, as required by paragraph 10.4.1;
 - .2 certificates of insurance as required by paragraph 11.1.2;
 - .3 documentation setting out the *Contractor's* in-house safety programs;
 - .4 a copy of the Notice of Project filed with the Ministry of Labour naming itself as "constructor" under the *OHS*A.
- 9.4.3 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* under the *OHS*A, including the payment of legal fees and disbursements on a solicitor and client basis. Such indemnity shall apply to the extent to which the *Owner* is not covered by insurance, provided that the indemnity contained in this paragraph shall be limited to costs and damages resulting directly from such infractions and shall not extend to any consequential, indirect or special damages.
- 9.4.4 The *Owner* undertakes to include in its contracts with other contractors and in its instructions to its own forces the requirement that the other contractor or its own forces, as the case may be, comply with the policies and procedures of and the directions and instructions from the *Contractor* with respect to occupational health and safety and related matters.

GC 9.5 MOULD

Delete subparagraph 9.5.3.3 and replace with the following:

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

9.5.3.4 Delete subparagraph 9.5.3.4 in its entirety.

GC 10.1 TAXES AND DUTIES

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

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

Add new paragraph 10.1.3 as follows:

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

GC 10.2 LAWS, NOTICES, PERMITS, AND FEES

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

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

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

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

In the event the *Owner* suffers loss or damage as a result of the *Contractor's* failure to comply with paragraph 10.2.5 and notwithstanding any limitations described in paragraph 12.1.1, the *Contractor* agrees to indemnify and to hold harmless the *Owner* and the *Consultant* from and against any claims, demands, losses, costs, damages, actions, suits or proceedings resulting from such failure by the *Contractor*.

10.2.8 Add new paragraph 10.2.8 as follows:

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

GC 10.4 WORKERS' COMPENSATION

10.4.1 Delete paragraph 10.4.1 and replaces with the following:

Within seven (7) days of receipt of written notice to do so and prior to commencing the *Work*, and with each and every application for payment thereafter, including the *Contractor's* application for payment of the holdback amount following *Substantial Performance of the Work* and again with the *Contractor's* application for final payment, the *Contractor* shall provide a Clearance Certificate from WSIB.

GC 11.1 INSURANCE

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

11.1.1 The *Contractor* shall obtain and maintain at its own expense, including the cost of any applicable deductible, the following policies of insurance.

.1 Commercial General Liability Insurance, written on IBC Form 2100 or its equivalent, including but not limited to bodily and personal injury liability, broad form property damage, broad form products liability, a twenty-four (24) month completed operations liability extension, owners & contractors protective liability, blanket contractual liability, premises liability, and contingent employer's liability coverage. The policy shall have an inclusive limit of not less than Ten Million Dollars (\$10,000,000.00) per occurrence and Ten Million Dollars (\$10,000,000.00) in the aggregate. To achieve the desired limit, Umbrella or Excess liability insurance may be used. Coverage shall be subject to the following:

- (1) where the *Work* involves one or more of the following activities:
 - (i) the use of explosives for blasting;
 - (ii) vibration from pile driving or caisson work;

- (iii) the removal or weakening of support of any property, building or land whether such support be natural or otherwise, explosion, collapse and underground (“XCU”) coverages shall be added by endorsement to the policy and noted on the certificate of insurance;
 - (2) where the Work provides for or contemplates the handling of asbestos, coverage shall not contain an asbestos exclusion and same shall be noted on the certificate of insurance. Alternatively, coverage may be provided under Contractors Pollution Liability Insurance providing coverage in an amount of not less than Two Million Dollars (\$2,000,000.00) per claim. Such Contractors Pollution Liability Insurance coverage shall remain in effect for twenty-four (24) months following the completion of the Work.
 - (3) the policy shall include coverage for pollution from "hostile fires";
 - (4) damage to existing structures must be included;
 - (5) unless otherwise approved by the *Owner*, the *Contractor's* deductible on the Commercial General Liability policy and, if applicable, Contractors Pollution Liability Insurance shall be not more than One Hundred Thousand Dollars (\$100,000.00); and
 - (6) the insurance coverage shall remain in effect throughout the time that the *Contract* is in effect plus two (2) years thereafter.
- .2 Standard Form Automobile Liability Insurance that complies with all requirements of the current legislation of the Province of Ontario, having an inclusive limit of not less than Five Million Dollars (\$5,000,000.00) per occurrence for third party liability, in respect of the use or operation of vehicles owned, operated or leased by the *Contractor* for the performance of the *Work* under the *Contract*. The insurance coverage shall remain in effect throughout the time that the *Contract* is in effect, including the *Warranty Period*. To achieve the desired limit, Umbrella or Excess liability insurance may be used;
- .3 Non-Owned Automobile Liability Insurance in standard form having an inclusive limit of not less than One Million Dollars (\$1,000,000.00) per occurrence, in respect of vehicles not owned by the *Contractor*, that are used or operated on its behalf for the performance of the *Work* under the *Contract*. The insurance coverage shall remain in effect throughout the time that the *Contract* is in effect, including the *Warranty Period*. To achieve the desired limit, Umbrella or Excess liability insurance may be used;
- .4 Builders Risk Insurance which covers the *Place of Work* for the full amount of the *Contract Price*, inclusive of all *Change Orders* that increase the *Contract Price*, plus the full value of any optional features or other options that the *Owner* elects to order (but the *Owner* may require insurance up to the amount of the replacement cost of any building or structure in, on, or upon which any *Work* is to be done under the *Contract*, where in the reasonable opinion of the *Owner* there is a sufficient risk of damage to the same). Such policy shall:

- (1) apply to all risks of direct loss or damage (including theft, vandalism and sinkhole) subject to the actual policy form;
 - (2) unless otherwise directed in writing by the *Owner*, or stipulated elsewhere herein, be in force and be maintained from the commencement date of the *Contract* until the day of issue of the certificate of *Substantial Performance of the Work*;
 - (3) apply to all *Products*, labour, equipment and supplies of every nature, the property of the *Owner* or *Contractor* or for which the *Owner* or *Contractor* may have assumed responsibility (whether on site or in transit), that is to be used in or pertaining to site preparation, and the erection, fabrication, construction, reconstruction, re-modeling or repair of any building, structure, other fixture or thing;
 - (4) include the installation, testing and any subsequent use of machinery and equipment, including boilers, pressure vessels or vessels under vacuum;
 - (5) include damage to the *Work* caused by an accident to or the explosion of any boiler or other pressure vessel or equipment forming part of the *Work*;
 - (6) include off-site storage, transit and installation risks;
 - (7) include flood and earthquake insurance;
 - (8) include coverage for loss of income, extra expense and/or expediting expense if such exposures exist;
 - (9) be subject to a waiver of coinsurance;
 - (10) include By-Laws and Professional Service Fees Coverage;
 - (11) include Sewer Back-up Coverage;
 - (12) include Off Premises Service Interruption Coverage (24 hour waiting period);
 - (13) permit use and occupancy of the *Project*, or any part thereof, where such use and occupancy is for the purposes for which the *Project* is intended upon completion;
 - (14) be endorsed to cover the interest of the *Owner* ;
 - (15) unless otherwise approved by the *Owner*, provide for a deductible of not more than Twenty Five Thousand Dollars (\$25,000.00); and
 - (16) provide that in the case of a loss or damage, payment shall be made to the *Owner* as their interest may appear. The *Contractor* shall act on behalf of the *Owner* for the purpose of adjusting the amount of such loss or damage payment with the insurer. When the extent of the loss or damage is determined, the *Contractor* shall proceed to restore the *Work*. Loss or damage shall not affect the rights and obligations of either party under the *Contract* except that the *Contractor* shall be entitled to a reasonable extension of *Contract Time*.
- .5 Property Insurance with respect to loss or damage (including fire, theft, burglary, etc.) of the *Contractor's* own property and property in its care, custody and control, including its equipment, tools and stock, used in connection with the *Contract*.

- .6 Contractor's Pollution Liability having an inclusive limit of not less than Two Million Dollars (\$2,000,000.00) per occurrence to insure the *Contractor's* liability for third-party claims caused by pollution events arising out of operations performed by or on behalf of the insured in the performance of the *Work* under the *Contract*. The applicable deductible shall not be more than One Hundred Thousand Dollars (\$100,000.00).
- .7 Aircraft Liability Insurance and Watercraft Liability Insurance, as may be applicable, with respect to any owned or non-owned aircraft or watercraft as may be used directly or indirectly in connection with the *Project* or *Work*, having an inclusive limit of not less than Five Million Dollars (\$5,000,000.00) per occurrence for third party liability, including if applicable passenger liability. The insurance coverage shall remain in effect throughout the time that the *Contract* is in effect, including the *Warranty Period*.

11.1.2 All policies of insurance required under paragraph 11.1.1 shall,

- .1 be recorded as being a primary policy and shall be in a form and issued by an insurance company satisfactory to the *Owner*, that is licensed to carry on business in Ontario;
- .2 be maintained continuously during the course of carrying out the *Work*, or for such period of time as may be required after completion of the *Work* as deemed necessary by the *Owner*;
- .3 except in the case of standard form automobile liability insurance and non-owned automobile liability insurance, include the *Owner*, the *Consultant* and any *Other Party* named as additional insureds, to the extent of the *Contractor's* obligations to the *Owner* under the *Contract Documents*;
- .4 contain cross liability and severability of interest provisions, as may be applicable;
- .5 preclude subrogation claims against the *Owner*, the *Consultant*, any *Other Party* and any other person insured under the policy; and
- .6 provide that at least 30 days prior written notice (15 days in the case of standard form automobile liability insurance, and 15 days in the event of non-payment of premiums) shall be given to the *Owner* by the insurer before the insurer or *Contractor* takes any steps to cancel, terminate, fail to renew, amend or otherwise change or modify the insurance or any part thereof.

11.1.3 The *Contractor* shall be responsible for deductible amounts under all of the policies of insurance required under paragraph 11.1.1.

11.1.4 The *Owner* reserves the right to require the *Contractor* to purchase such additional insurance coverage as the *Owner* may reasonably require. The *Owner* reserves the right to request such higher limits of insurance or otherwise alter the types of coverage requirements due to material or significant change arising from such matters as the nature of the work, agreement value, industry standards, and availability of insurance, as the *Owner* may reasonably require from time to time. Where such a right is exercised by the *Owner*, the *Owner* will compensate the

Contractor for any resulting increase in applicable insurance premiums only where the *Contractor* can establish to the satisfaction of the *Owner*, acting reasonably, that such increase in applicable insurance premiums for the insurance required pursuant to the *Contract* does not result from the actions or omissions, negligence, claims history or reassessment by the insurer of the insurable risk posed by the *Contractor*.

11.1.5 Any insurance coverage acquired under the *Contract* shall in no manner discharge, restrict or limit the liabilities assumed by the *Contractor* under the *Contract*. The dollar limit of insurance coverage shall not be limited to the *Contract Price*.

11.1.6 The *Contractor* shall pay all premiums on the policies as they become due provided that, should the *Contractor* fail to do so, the *Owner* may pay premiums as they become due and deduct the amount thereof from monies due from the *Owner* to the *Contractor*.

11.1.7 The *Contractor* shall deposit with the *Owner* such evidence of its insurance policies required under paragraph 11.1.1 at the time of execution of the Agreement and thereafter during the term of the *Contract*, no later than 20 Working Days prior to the renewal date of each applicable policy, a certificate of insurance originally signed by an authorized insurance representative confirming thereon relevant coverage information including but not limited to the *Contract* name and description, name of insurer, name of insurance broker, name of insured, name of additional insured's as may be applicable, commencement and expiry dates of coverage, dollar limits of coverage, deductible levels as may be applicable, cancellation/termination provisions; or at the *Owner's* election, a certified copy of the insurance policy or policies required under paragraph 11.1.1. The *Contractor* shall ensure that the certificate holder is identified on each certificate of insurance as follows:

The Corporation of the City of Mississauga
300 City Centre Drive
Mississauga
Ontario L5B 3C1
Attention: Project Manager
Owner's Procurement Number

or at such other address as the *Owner* may advise in writing.

The *Contractor* shall also ensure that all certificates, cancellation, nonrenewal or adverse change notices are mailed to that address.

11.1.8 The *Contractor* shall not do or omit to do anything that would impair or invalidate the insurance policies.

11.1.9 Delivery to and examination or approval by the *Owner* of any certificates of insurance or policies of insurance or other evidence of insurance does not relieve

the *Contractor* of any of its indemnification or insurance obligations under the *Contract*. The *Owner* is not under a duty either to ascertain the existence of or to examine such certificates of insurance or policies of insurance, nor to advise the *Contractor* in the event such insurance coverage is not in compliance with the requirements set out in the *Contract*.

- 11.1.10 The *Contractor* shall promptly investigate claims reported to the *Contractor* by a third party or by the *Owner*. The *Contractor* shall make contact with the claimant within forty-eight (48) hours of the *Contractor*'s receipt of notice of a claim. The *Contractor* shall initiate an investigation of the claim immediately upon notice, and advise the claimant by letter of its position regarding resolution of the claim within twenty (20) *Working Days* of the notice. The *Contractor* shall include in its letter of resolution the reasons for its position. Failing acceptance of the resolution by the claimant of the proposed resolution, the *Contractor* agrees to report the claim to its insurer for further review and response to the claimant. Should the *Contractor* fail to follow this procedure, the *Owner* may investigate and resolve such claims, and offset the resultant costs against any monies due to the *Contractor*, from time to time, under the *Contract*.

GC 11.2 CONTRACT SECURITY

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

- 11.2.1 The *Contractor* shall, prior to the execution of the *Contract* and within seven (7) days of receiving written notice to so do, furnish a performance bond and a labour and material payment bond (the "Bonds") in the form of the *Owner*'s current bond forms. The Bonds shall be for fifty per cent (50%) of the *Contract Price* or such other amount as may be specified in the *Contract Documents*.
- 11.2.2 The Bonds shall be issued by a duly licensed surety company that is approved by the *Owner* and is authorized to transact the business of suretyship in the Province of Ontario. The performance bond shall be applicable to all of the *Contractor*'s obligations under the *Contract*, including its obligations pursuant to GC 12.3 WARRANTY during the *Warranty Period* (as defined in paragraph 12.3.1). The *Contractor* shall maintain the Bonds in good standing and keep them in force and effect until the *Contractor* has fulfilled all of its obligations under the *Contract* and the *Contract Documents*, including its obligations pursuant to GC 12.3 WARRANTY during the *Warranty Period*.
- 11.2.3 The *Contractor* represents and warrants that it has provided its surety with a copy of the *Contract* prior to the issuance of the Bonds. In addition, the *Contractor* shall provide written notice to the surety for the performance bond, (with a copy to the *Owner*) of any *Change Orders* to the *Contract* so that the validity of coverage of the performance bond is at no time impaired or in jeopardy. The *Contractor* shall provide to the *Owner* at *Substantial Performance of the Work* a rider

indicating any increase in the penal amount of the bond as a result of such *Change Orders*.

11.2.4 Where required by the *Contract Documents*, the *Contractor* shall obtain a 50% performance and a 50% labour & material payment bond from required *Subcontractors*, and shall provide copies of such bonds to the *Owner* upon receipt. Each of such bonds shall be in the form of the *Owner's* then current bond forms and issued by a duly licensed surety company authorized to transact the business of suretyship in the Province of Ontario, and shall be maintained in good standing until the fulfillment of the respective subcontract.

11.2.4 Subcontractor default insurance will not be accepted as a substitute to surety bonds.

GC 12.1 INDEMNIFICATION

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

:

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

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

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

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

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

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

- (a) any and all Claims or Losses whatsoever which may be brought against upon the Indemnified Parties or any one or more of them, and
- (b) any and all Claims or Losses which the Indemnified Parties or any one or more of them may sustain, suffer, incur or be liable for,

arising out of, resulting from or attributable to the *Contractor's* or any *Subcontractor's* or *Supplier's* performance or non-performance of the *Contract*, or failure to exercise reasonable care, skill or diligence in the performance of the *Contract*, regardless of whether or not caused in part by a party indemnified hereunder. It is expressly understood that the *Contractor* will save harmless the Indemnified Parties from all Claims made by any party other than the *Contractor* itself, financial or otherwise, relating to labour and materials furnished by the *Contractor* or by others for the *Work*.

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

GC 12.2 WAIVER OF CLAIMS

- 12.2.1 In the fourth line, add the words “claims for delay pursuant to GC 6.5 DELAYS, claims for an increase in the *Contract Price*, pursuant to GC 6.6 CLAIMS FOR A

CHANGE IN THE CONTRACT PRICE” after the word “limitation”. Add the words “(collectively “Claims”)” after “*Substantial Performance of the Work*” in the sixth line.

12.2.1.1 Change the word “claims” to “Claims” and change the word “claim” to “Claim”.

12.2.1.2 Change the word “claims” to “Claims”.

12.2.1.3 Delete paragraph 12.2.1.3 in its entirety.

12.2.1.4 Change the word “claims” to “Claims”.

12.2.2 Change the words “in paragraphs 12.2.1.2 and 12.2.1.3” to “in paragraph 12.2.1.2”. Change the word “claims” to “Claims” in both instances and change the word “claim” to “Claim”.

12.2.3 Delete paragraph 12.2.3 in its entirety.

12.2.4 Delete paragraph 12.2.4 in its entirety.

12.2.5 Delete paragraph 12.2.5 in its entirety.

12.2.6 Change the word “claim” to “Claim” in all instances in the paragraph.

12.2.7 Change “The party” to “The *Contractor*”. Change the word “claim” to “Claim” in all instances in the paragraph.

12.2.8 Change “under paragraphs 12.2.1 or 12.2.3” to “under paragraph 12.2.1”. Change both instances of the words “the party” to “the *Contractor*”. Change the word “claim” to “Claim” in all instances in the paragraph.

12.2.9 Delete paragraph 12.2.9 in its entirety.

12.2.10 Delete paragraph 12.2.10 in its entirety.

GC 12.3 WARRANTY

12.3.1 Delete paragraph 12.3.1 in its entirety and replace with the following:

12.3.1 Except for extended warranties as described in paragraph 12.3.6, the warranty period under the Contract is one year from the date of *Substantial Performance of the Work* (the “*Warranty Period*”).

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

12.3.3 Delete paragraph 12.3.3 in its entirety and replace with the following:

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

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

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

.1 where the defect in the *Work* may affect the health and safety of any persons, the defect shall be corrected, repaired or replaced in accordance with the above immediately upon (i) the *Contractor* becoming aware of such defect or (ii) the receipt of verbal notice from the *Owner* as to the existence of such defect, followed by a written notice from the *Owner* verifying the defect (the “Warranty Notice”);

.2 where the defect in the *Work* involves any mechanical or electrical system component or *Product*, the defect shall be corrected, repaired or replaced in accordance with the above within 24 hours from (i) the time the *Contractor* becomes aware of such defect, or (ii) the receipt of verbal notice from the *Owner* as to the existence of such defect followed by the *Contractor's* receipt of a Warranty Notice;

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

Where the *Contractor* at any time fails to comply with its obligations noted above, the *Owner* shall be entitled, notwithstanding the provisions of GC 7.1 OWNER'S RIGHT TO PERFORM THE WORK, TERMINATE THE CONTRACTOR'S RIGHT TO CONTINUE WITH THE WORK OR TERMINATE THE CONTRACT without further notice to the *Contractor*, to undertake all work, measures, and actions necessary to correct, repair, or replace the defect or deficiency in the *Work*, and the *Contractor* shall pay to the *Owner* immediately upon written demand all costs and expenses incurred by the *Owner* in undertaking such correction, repairs or replacements to the *Work*, and upon failure to pay by the *Contractor*, the *Owner* shall recover such costs and expenses by drawing upon and utilizing the *Warranty Reserve* and the *Contractor* shall be

liable for and shall immediately pay to the *Owner* any amounts outstanding which have not been recovered under the *Warranty Reserve*.

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

Add new paragraphs 12.3.7, 12.3.8 and 12.3.9 as follows:

12.3.7 Where required by the *Contract Documents*, the *Contractor* shall provide a maintenance bond as security for the performance of the *Contractor's* obligations as set out in GC 12.3 WARRANTY.

12.3.8 If any defects and/or deficiencies are to be remedied after *Substantial Performance of the Work*, the same period of warranty in reference to the material and workmanship in accordance with the provisions of GC 12.3 - WARRANTY shall run from the date when such defects and/or deficiencies shall be remedied.

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

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

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

CCDC 41 – CCDC INSURANCE REQUIREMENTS, PUBLICATION DATE: JANUARY 21, 2008

Delete CCDC 41 – CCDC INSURANCE REQUIREMENTS, PUBLICATION DATE: JANUARY 21, 2008 in its entirety.

ADJUDICATION RULES

DEFINITIONS

1. In these Rules, unless inconsistent with the subject matter or context:
 - (i) "Adjudicator" means a person appointed in accordance with these Rules;
 - (ii) "Contract" means the agreement to which these Rules are attached, which includes the agreement to adjudicate in accordance with these Rules;
 - (iii) "days" means calendar days , but excludes statutory holidays;
 - (iv) "Party" means any party to the Contract, and Parties shall have a corresponding meaning;
 - (v) words denoting gender shall include the masculine, feminine and neuter genders;
 - (vi) words importing the singular number shall include the plural and *vice versa*;
 - (vii) words importing persons shall include individuals, partnerships, associations, trusts, municipal corporations, unincorporated organizations and corporations.

APPLICATION

2. These Rules shall apply upon any Party ("Referring Party") giving written notice requiring adjudication and identifying, in general terms, the dispute in respect of which adjudication is required ("Initial Notice") to the other Party ("Responding Party"). The Adjudicator for the dispute shall be appointed in accordance with paragraphs 3, 4, 5 and 6 of these Rules unless the Parties shall have previously agreed on a person to be the Adjudicator for any disputes arising under the Contract.

APPOINTMENT AND REPLACEMENT OF ADJUDICATOR

3. In the Initial Notice, the Referring Party shall nominate three (3) persons to adjudicate the dispute ("Referring Party's Nominees"). Within 3 days of receipt of the Initial Notice, the Responding Party shall give written notice to the Referring Party (the "First Response") either (i) that the Responding Party accepts one of the Referring Party's Nominees or (ii) that none of the Referring Party's Nominees are acceptable, in which case the Responding Party shall nominate three (3) other persons to adjudicate the dispute ("Responding Party's Nominees").

4. If the First Response states that the Responding Party accepts one of the Referring Party's Nominees, then such person shall be the Adjudicator. If, however, the First Response states that none of the Referring Party's Nominees are acceptable and provides the Responding Party's Nominees, the Referring Party shall, within 3 days of receipt of the First Response, provide written notice to the Responding Party (the "Second Response") whether or not the Referring Party accepts any of the Responding Party's Nominees.
5. If the Referring Party accepts one of the Responding Party's Nominees, that person shall be the Adjudicator. If, however, the Referring Party rejects the Responding Party's Nominees, the Parties shall meet within 4 days following receipt of the Second Response and negotiate in good faith to select a person acceptable to both Parties to act as Adjudicator. If, at the expiry of 7 days following receipt of the Second Response, the Parties are unable to agree on any person to adjudicate the dispute, then the Responding Party shall select the person to act as Adjudicator from among the nominees put forward by either party either in the Initial Notice or the First Response or at the subsequent meeting referred to in this paragraph 5. The person so selected by the Responding Party shall be the Adjudicator.
6. The Referring Party shall give a copy of the Initial Notice to the Adjudicator selected in accordance with paragraphs 3, 4, 5 and 6 of these Rules.
7. The Adjudicator shall give written notice of his acceptance of appointment to all parties within 3 days of receipt of the Initial Notice indicating that he is willing and able to embark upon the adjudication within 7 days of the Notice. If the Adjudicator is unwilling or unable to embark upon the adjudication, or is unable to do so within 7 days of the Notice, then the Parties shall (i) agree to extend the time for the adjudication or (ii) select an alternative Adjudicator within 7 days.
8. If the parties do not extend the time for the adjudication and are unable to agree on the selection of an alternative Adjudicator within such 7 days, the selection shall be made by a Justice of the Ontario Superior Court of Justice, following the same procedure set out for the appointment of an arbitral tribunal under section 10 of the Ontario *Arbitration Act, 1991*, S.O. 1991, C-17. In such event, all time limits set out herein shall be modified to run from the day following the day on which the alternative Adjudicator is selected.
9. Unless the Parties otherwise agree, the Adjudicator shall (i) be experienced in adjudicating or arbitrating disputes similar in nature to the one giving rise to the Initial Notice; and (ii) have a professional designation (such as Professional Engineer (Civil or Structural), Architect, Landscape Architect or Barrister & Solicitor) and experience that are relevant to the nature of the Contract.
10. Sections 13, 14, 15, and 16 of the Ontario *Arbitration Act, 1991*, S.O. 1991, C-17 apply with all necessary modifications in respect of the challenge, termination, removal, and appointment of a substitute Adjudicator.
11. More than one Initial Notice requiring adjudication may be given in respect of disputes arising out of the Contract.

SCOPE OF THE ADJUDICATION

12. The scope of the adjudication shall be the matters identified in the Notice, together with,
 - (i) any further matters which the Parties agree should be within the scope of the adjudication, and
 - (ii) any further matters which the Adjudicator determines must be included in order that the adjudication may be effective and meaningful.
13. The Adjudicator may decide upon his own substantive jurisdiction and as to the scope of the adjudication.

THE PURPOSE OF THE ADJUDICATION AND THE ROLE OF THE ADJUDICATOR

14. The underlying purpose of the adjudication is to resolve disputes between the Parties that are within the scope of the adjudication on an interim basis as rapidly and economically as is reasonably possible and to ensure that work under the Contract continues and cash flows in an uninterrupted fashion pending resolution of the dispute.
15. Unless the Parties expressly agree in writing that any decisions of the Adjudicator shall be final and binding, any decision of the Adjudicator shall be binding only until the dispute is finally determined by arbitration (if the Contract provides for arbitration or the parties otherwise agree to arbitration), by other legal proceedings, or by agreement. In the event that the dispute becomes the subject of arbitration or litigation, there shall be no reference made in the subsequent proceedings to the adjudication process having occurred or to any determinations made thereunder.
16. Wherever possible, any decision of the Adjudicator shall reflect the legal entitlements of the Parties. Where it appears to the Adjudicator impossible to reach a concluded view upon the legal entitlements of the Parties within the practical constraints of a rapid and economical adjudication process, any decision shall represent his fair and reasonable view, in light of the facts and the law insofar as they have been ascertained by the Adjudicator, of how the disputed matter should lie unless and until resolved by arbitration or litigation.
17. The Adjudicator shall have the like power to open up and review any certificates or other things issued or made pursuant to the Contract, as would an arbitrator appointed pursuant to the Contract or a court.
18. The Adjudicator shall act fairly and impartially, but shall not be obliged to act as though he were an arbitrator.

CONDUCT OF THE ADJUDICATION

19. The Adjudicator shall establish the procedure and timetable for the adjudication.

20. Without prejudice to the generality of Rule 19, the Adjudicator may, if he thinks fit:
- (i) Require the delivery of written statements of the case;
 - (ii) Require any Party to produce to him and to the other Party key documents, whether helpful or otherwise to that Party's case, other than documents that would be privileged from production to a court and to draw such inference as may seem proper from any imbalance in that production that may become apparent;
 - (iii) Limit the length of any written or oral submission;
 - (iv) Require the attendance before him for questioning of any Party or employee or agent of any Party;
 - (v) Make site visits;
 - (vi) Make use of his own specialized knowledge;
 - (vii) Obtain advice from specialist consultants, provided that at least one of the Parties so requests or consents;
 - (viii) Make directions for the conduct of the adjudication orally or in writing;
 - (ix) Review and revise any of his own previous directions;
 - (x) Conduct the adjudication inquisitorially and take the initiative in ascertaining the facts and the law;
 - (xi) Reach any decision with or without holding an oral hearing and with or without having endeavoured to facilitate an agreement between the Parties.
21. The Adjudicator shall exercise such powers with a view to fairness and impartiality, giving each Party a reasonable opportunity, in light of a timetable, of putting its case and dealing with that of its opponent.
22. The Adjudicator may not:
- (i) Receive any written or oral submissions from one Party that are not also made available to the other Party;
 - (ii) Refuse any Party the right at any hearing or meeting to be represented by any representative of that Party's choosing who is present,
 - (iii) Act or continue to act in the face of the Adjudicator's conflict of interest,
 - (iv) Except pursuant to a pre-existing agreement between the Parties, pursuant to Rule 24, require any Party to pay or contribute to the legal costs of another Party arising in the adjudication.

23. The Adjudicator shall reach a decision within 30 days after Initial Notice of the dispute has been referred to him or such longer period as is agreed by the Parties. The Adjudicator shall be entitled to extend the said period of 30 days by up to 15 days in his sole and absolute discretion.

PARTIES' AND ADJUDICATOR'S COSTS, FEES, AND EXPENSES

24. If the Parties so agree in advance, the Adjudicator shall have jurisdiction to award costs to the successful party. Failing that, each party shall be responsible for its own expenses and costs of the adjudication. The Parties shall be equally responsible for the Adjudicator's fees and expenses, including those of any specialist consultant.

DECISIONS

25. The Adjudicator may in any decision direct the payment of such interest as may be commercially reasonable.
26. The Adjudicator shall give reasons for any decisions, and all decisions and the reasons shall be in writing.
27. The Adjudicator may, on his own initiative or on the application of any Party made within 5 days of the date that a decision is delivered to the Parties, correct his decision to remove any clerical mistake or error arising from an accidental slip or omission. Any correction of a decision shall be made as soon as possible after the date that the application was received by the Adjudicator or, where the correction is made by the Adjudicator on his own initiative, as soon as possible after he becomes aware of the need to make a correction.

ENFORCEMENT

28. Every decision of the Adjudicator shall be implemented immediately. The Parties shall be entitled to such relief and remedies as are set out in the decision and shall be entitled to summary enforcement thereof, regardless of whether such decision is or is to be the subject of any subsequent challenge or review.

IMMUNITY, CONFIDENTIALITY, AND NON-COMPELLABILITY

29. The Adjudicator shall not be liable for anything done or not done in the discharge or purported discharge of his functions as Adjudicator, whether in negligence or otherwise, unless liability is grounded in an act or omission made in bad faith.
30. The adjudication and all matters arising in the course of thereof are and will be kept confidential by the Parties, except insofar as necessary to implement or enforce any decision of the Adjudicator.

31. If any Party seeks to challenge or review any decision by the Adjudicator in any subsequent litigation or arbitration, the Adjudicator shall not be joined as a party to, nor shall he be summoned or otherwise required to give evidence or provide his notes in, such litigation or arbitration.

LAW

32. These Rules shall be governed by Ontario law and under the jurisdiction of the Ontario Superior Court of Justice.

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TAB: HUMAN RESOURCES
SECTION: EMPLOYEE CONDUCT
SUBJECT: CONFLICT OF INTEREST

POLICY STATEMENT City of Mississauga employees must avoid conflict of interest situations where possible and, if a conflict of interest cannot be avoided, it must be declared.

PURPOSE This policy identifies the Corporation's expectations of employees, and establishes guidelines for the appropriate conduct of employees regarding conflict of interest.

SCOPE This policy applies to all union and non-union employees. Elected officials are not subject to this policy, but must comply with the *Municipal Conflict of Interest Act*.

WHAT IS CONFLICT OF INTEREST? Conflict of interest is any situation in which an individual is in a position to exploit a professional or official capacity in some way for their personal benefit. Even if there is no evidence of improper actions, a conflict of interest can create an appearance of impropriety that can undermine confidence in the ability of that person to act properly.

Following are types of situations in which an employee may have a conflict of interest, whether or not any improper acts occur:

- being in a position to make a decision or influence a decision that will affect, in either a positive or negative way, the personal, financial, or business interests of either the employee, or of a friend, relative or associate of the employee; or
- being in a position to use information or resources, which are available to the employee solely through his or her employment, for the purpose of financial gain, either to the

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benefit of the employee or of a friend, relative or associate of the employee; or

- engaging in employment outside the Corporation; or
- soliciting or being offered gifts or favours of any kind from persons doing business with the City, or seeking to do business with the City, or seeking employment with the City; or
- engaging in political activity which would bring into question the employee's neutrality with respect to political issues or particular elected municipal officials.

A personal interest in common with all or most residents or taxpayers of the City of Mississauga, due to Mississauga residency, or a personal interest in common with all or a substantial number of employees, does not constitute a conflict of interest.

WHAT ARE THE CITY'S EXPECTATIONS?

The public must have confidence in the integrity of City employees, and in their dedication to the City's best interests. The Corporation expects employees to be, and to be seen by others to be, independent, impartial, and responsible to the public in carrying out their duties.

The Corporation's expectations of its employees in common conflict of interest situations are outlined in the guidelines below.

CONFLICT OF INTEREST GUIDELINES

The following guidelines represent the maximum level of tolerance with respect to conflicts of interest.

Individual departments or divisions may establish more stringent requirements (i.e. lower tolerance levels) based on operational needs and, if they do so, the department or division head is responsible for ensuring that all affected employees have been

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advised of their requirements.

In addition, from time to time by-laws may be enacted or policies adopted that will establish a lower tolerance level – in these cases, the requirements of the by-law or other policy will apply.

The employee is ultimately responsible and accountable for using good judgment in the course of the exercise of Corporate duties. If an employee is in doubt about any of the following, or if the particular situation is not covered in this policy, the employee should ask his or her supervisor for assistance in determining whether a conflict of interest exists, and appropriate action to be taken with respect to disclosure.

Avoid/Disclose Conflicts of Interest

Whenever possible, employees must avoid situations with the potential for conflict of interest. However, some conflicts of interest are unavoidable. These must be disclosed to the employee's supervisor and department head, in writing, as soon as the employee is aware of the conflict. The department head will determine appropriate action to mitigate the conflict, which may include re-assignment of the employee.

Making or Influencing Decisions

Employees must not allow their personal interests to influence their decisions, nor may they use their positions as City employees to influence the decisions of others.

Examples include:

- **Financial Interests in Another Organization**
An employee, or friends, relatives or associates of the employee, may have a financial interest in another organization. If the employee is in a position to make a decision or to influence a decision regarding the organization's business dealings with the City (eg. the award of a licence, permit, contract etc.) there is a conflict of interest. In this case, the employee must not participate in

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discussions or processes related to the decision, and must immediately disclose the conflict of interest to the employee's supervisor and commissioner. The commissioner will determine appropriate steps to mitigate the conflict.

If the employee is in no position to make or influence decisions affecting the other organization, there is no conflict and the relationship need not be disclosed. At any time, if the employee is in doubt about how the relationship with the other organization would be viewed by an outside party, the employee should disclose the relationship.

- **Hiring Decisions**

The City's recruitment processes must be, and must be seen to be, fair and impartial. Employees must not attempt to influence hiring decisions in favour of family members or associates.

Use of City Property or Confidential Information

City property, including facilities, assets and supplies, and confidential information available to City employees by virtue of their employment, must not be used by employees for the purposes of benefiting in any way either themselves or anyone associated with them.

Engaging in Outside Employment

An employee must not engage in any outside employment or business undertaking that interferes with the performance of his or her duties as a City employee, or from which an economic advantage may be derived solely as a result of information gained from employment with the City.

An employee may be permitted to provide his or her expertise to another government body, on the approval of the City Manager. For example, the provision of consulting services to another municipality on an established City of Mississauga program may be approved.

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Acceptance of Gifts, Benefits, or Favours

Employees must avoid being influenced, and they must avoid the appearance of being influenced. An employee should not accept any gifts, benefits or favours from any person or organization whose business or financial interests may be impacted in any fashion by the employee in the course of the exercise of the employee's Corporate duties.

The City will tolerate the acceptance of gifts, benefits or favours only when they can be viewed to be within the boundaries of generally accepted business practices. Employees may not solicit gifts, benefits or favours, except in conjunction with donations or sponsorship as outlined in the next section of this policy.

Acceptable practices are outlined below. (With respect to acceptable practice during an acquisition process, refer to the Purchasing By-law.)

An employee who is in doubt about whether he or she should accept a gift, benefit or favour should politely decline, or pay for his or her own entertainment. Legitimate business expenses will be reimbursed in accordance with the City's policies dealing with expense reimbursement.

- **Business Meals:**
From time to time, it may be necessary to conduct a business meeting over lunch. Employees may accept occasional business meals from a person doing business with the City or seeking to do business with the City.
- **Social/Sporting/Charity Events:**
Employees may accept tickets to social or sporting events from a business contact, provided:
 - 1) acceptance of such tickets is infrequent, and
 - 2) the business contact attends the event with the employee, and
 - 3) the employee's immediate supervisor has approved.

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Where the event is a tournament involving prizes, and the employee's supervisor has approved attendance, the employee may keep any prizes won.

- **Gifts of a Nominal Value:**
Individual employees may accept an occasional gift, provided the gift has a nominal value only. A gift that exceeds a nominal value should be refused. Gift baskets, boxes of chocolates, and the like may be accepted on behalf of all employees within a work group, even if the gift exceeds a nominal value, provided that appropriate action is taken to ensure that no individual employee can be seen to have a conflict of interest. For example, the gift may be opened and shared with all members of the work group, or used in support of a charitable cause.
- **Speaking Engagements:**
Employees may accept a gift or honorarium given in return for a speaking engagement.

Donations and Sponsorship

Employees must avoid situations in which they could be viewed as providing preferential treatment in exchange for a gift or favour.

- **Donations and Sponsorship of City Programs and Charities:**
Employees may solicit and accept donations or sponsors in support of City facilities, programs or services, through City-sanctioned sponsorship programs and/or in accordance with the City's policies and procedures on donations. Employees may solicit and accept donations for charitable events (e.g. the United Way Campaign, charity golf tournaments, etc.) provided the event has been sanctioned by the commissioner of the department organizing the event, or the City Manager.
- **Sponsorship of Staff Teams:**

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Employees may solicit and accept sponsors for staff teams (such as staff baseball teams). Where the team will be identified as a “City of Mississauga” team, the commissioner’s approval is required prior to obtaining a sponsor.

Political Activity

City employees must be impartial and must be seen by the public as being impartial. City employees must take steps to ensure that no personal bias interferes, or appears to interfere, with the performance of their official duties.

- **Election Campaigns:**
An employee may campaign for an election candidate provided the campaigning does not interfere with the employee’s normal duties and the campaigning is done without reference to the fact that the employee is a City employee. Specifically, an employee who chooses to work on an election campaign:
 - may work on the campaign only when not at work for the City; and
 - must not use City resources, assets, or equipment of any kind for campaign purposes; and
 - must not campaign while wearing a City uniform, badge, crest or any other item that would identify the employee as City staff.
- **Political Issues:**
City employees may not publicly state an opinion which is in opposition to an official City position on an issue.

DISCIPLINARY ACTION

Any employee who fails to act in accordance with the provisions of this policy will be subject to appropriate disciplinary action including termination of employment.

REFERENCE:

GC-0485-2006 – 2006 07 05

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CONTACT: For more information, contact the departmental Human Resources Manager or your supervisor.