

RFB #TENDER\_14693  
ATTACHMENT #2 – FORM OF AGREEMENT

A G R E E M E N T

THIS AGREEMENT made in duplicate on the \_\_\_\_ day of \_\_\_\_\_, 20\_\_ (this “Agreement”).

**BETWEEN:**

HER MAJESTY THE QUEEN in right of Ontario as represented by the  
Minister of Natural Resources and Forestry (the “Owner”)

- and –

**[Insert legal name of Preferred Bidder selected to enter the Agreement]**, (the  
“Contractor”)

WHEREAS the Owner issued a Request for Bids tender\_15270 on **[Insert date]**;

AND WHEREAS the Contractor was selected by the Owner as the successful Bidder;

NOW THEREFORE for good and valuable consideration (the receipt and sufficiency of which is acknowledged), the parties agree as follows:

**1. Definitions**

Capitalized terms used but not defined herein have the meaning attributed to them in the General Conditions and the Special Provisions (with the order of precedence being determined as set forth in the General Conditions).  
Otherwise, the following terms have the following meanings:

“**Company Level Check**” is a Security Screening Check of a company, which requires checks to be conducted on all Directors and Officers of the company, regardless of whether they will have direct involvement in the Work which was deemed to require security screening, and requires the consent of the directors, officers and Company Security Officer of such company;

“**Company Security Officer**” is an individual employed by the Contractor who:  
(i) holds that standing in the CSS Contractor Security Screening Program; (ii)

plays an administrative role in the security screening process on behalf of the Contractor, including verifying the identify of workers requiring screening for contracted work, where required; (iii) holds a valid Security Clearance issued by CSS prior to performing and at all times during the performance of that role;

“**CPIC**” means the Canadian Police Information Centre;

“**CRJMC**” means a criminal record and judicial matters check through the Canadian Police Information Centre (CPIC) maintained by the Royal Canadian Mounted Police (RCMP) and a search through provincial and municipal police databases, using an individual’s name and date of birth, for information relating to the offence provisions of federal legislation including the *Criminal Code* (Canada), the *Controlled Drugs and Substances Act* (Canada) and the (Canada) and the *Youth Criminal Justice Act* (Canada), and which includes records of previous convictions, convictions for which a pardon has been granted (where disclosure is authorized under the *Criminal Records Act* (Canada)), findings of guilt under the *Youth Criminal Justice Act* (Canada), findings of guilt that have resulted in absolute or conditional discharges (disclosed within 1 and 3 years, respectively), any outstanding charges and related information (e.g. an arrest warrant), as well as court orders (excludes mental health related orders and family court restraining orders);

“**Crown**” means Her Majesty the Queen in right of Ontario;

“**CSS**” means Contractor Security Screening, Supply Chain Ontario, Ministry of Government and Consumer Services;

“**Driver’s Record Check**” means a check of provincial databases for information regarding driving history using the individual’s driver licence number, providing a 3, 5 or 10 year history of *Highway Traffic Act* (Ontario) and *Criminal Code of Canada* convictions and any current suspensions, along with the driver’s current listed address and licence status;

“**General Conditions**” means the general conditions set forth in Schedule 7;

“**Other Security Screening Checks**” means higher level security screening checks that may be required when the duties or tasks establish a risk level greater than can be addressed through a CRJMC, Driver’s Record, Out-of-Country Driver’s Record (US and/or International) or Out-of-Country Police Certificate (US and/or International) check, and including those conducted under the *Police Record Checks Reform Act*, outside the scope of such Act, or permitted by regulatory exemption to the Act, as determined on the basis of a Owner risk assessment;

**“Out-of-Country Driver’s Record Check (US and/or International)”** means a driver’s record check from the jurisdiction(s) in which the individual resided, where the individual resided outside of Canada for more than 6 months consecutively within the last 5 years, including information such as current suspensions, along with the driver’s listed address and licence status;

**“Out-of-Country Police Certificate (US and/or International)”** means a summary of an individual’s criminal record or a declaration of an absence of any criminal record from a law enforcement agency in a country outside of Canada, where the individual has lived outside of Canada for more than 6 months consecutively within the last 5 years, and which may also be known as police clearance certificates, good conduct certificates, judicial record extracts, etc.;

**“Project”** means the performance of the Work as contemplated by the Contract, being generally described as **Kawagama Lake Dam Structure Repairs and Weir Modifications** as more particularly described in the RFB and this Agreement;

**“RFB”** means the Request for Bid **Tender\_15270** issued on or about **[Insert Date]** applicable to the Work, as issued by the Owner, to which the Contractor responded with its Bid, as amended by any addenda thereto issued by the Owner;

**“Security Clearance”** means a decision made by CSS following receipt of the Security Screening Check documents that will permit the person being cleared to engage in the performance of the Work; and

**“Security Screening Check”** means the process conducted by the Contractor to gather information on designated persons for submission to the Ministry in order to obtain a Security Clearance and includes all of the following: (i) a written declaration by an individual disclosing any unresolved charges and previous convictions under the offence provisions of federal statutes, including but not limited to the *Criminal Code (Canada)*, for which a pardon under the *Criminal Records Act (Canada)* has not been granted; and (ii) Other Security Screening Checks.

## **2. Performance of Work**

- (a) The Work shall be performed by the Contractor in accordance with the Requirements of Law and the Contract Documents.
- (b) The Contractor shall:
  - (i) substantially perform the Work on or before **September 30th**,

2022, and

- (ii) complete the Work on or before, **November 30th 2022**.
- (c) The Contractor shall complete all Work to the satisfaction of the Owner, and in a diligent and competent manner, using only personnel duly qualified and skilled in their occupations.

**3. Payment for Work; Total Bid Price; Performance Securities**

- (a) The Contractor shall perform the Work for the Total Bid Price specified in the Contractor's Bid, on a lump sum basis.
- (b) Notwithstanding anything else in the Contract to the contrary, the Owner will not be required to pay the Contractor in excess of **[insert Total Bid Price] (\$xxx)**, excluding HST, it being understood and agreed that only Extra Work, Additional Work or any Change in the Work shall be paid for on a Time and Material basis or by a negotiated settlement, and then only in accordance with the Contract.
- (c) The Owner may make periodic payments to the Contractor on account of the Total Bid Price in accordance with the Contract for those portions of the Work that have been duly completed to the satisfaction of the Owner.
- (d) All sums of money to be paid or calculated pursuant to the Contract shall be calculated and paid in Canadian currency.
- (e) The following Performance Securities were required by the RFB and are delivered herewith by the Contractor to the Owner:
  - (i) a Performance Bond for 50% of the Total Bid Price (**[\$insert amount that is 50% of the Total Bid Price above]**); and
  - (ii) a Labour and Material Payment Bond for 50% of the Total Bid Price (**[\$insert amount that is 50% of the Total Bid Price above]**).

Copies of the Performance Securities are attached as Schedule 8. The originals are held by the Ministry.

**4. Taxes**

The Contractor shall pay or charge and remit, as required, all applicable taxes, including excise taxes incurred by or on the Contractor's behalf with respect to the Contract.

5. **Set-Off**

The Owner shall have the right, where the Contractor is or becomes indebted to the Crown in any amount, to deduct and set off, to the extent possible, such amount from any amounts owing or payable to the Contractor under the Contract; provided the Contractor shall remain liable to the Crown for any balance of its indebtedness still then outstanding after such deduction or set off.

6. **Proof of Insurance**

Concurrently with execution and delivery of this Agreement by the Contractor, the Contractor shall provide the Owner with proof of the insurance required by the General Conditions in the form of valid certificates of insurance that reference this Agreement and confirm the required coverage. The Contractor shall provide renewal replacements of such certificates on or before the expiry of any such insurance. Upon the request of the Owner, a copy of each insurance policy maintained by the Contractor shall be made available to it.

7. **Subcontractor Insurance**

The Contractor shall ensure that each of its Subcontractors obtains and maintains all the necessary and appropriate insurance that a prudent person in the business of the Subcontractor would obtain and maintain and that the Indemnified Parties and the Contract Administrator, its agents, officers, and employees are named as additional insureds with respect to any liability arising in the course of performance of the Subcontractor's obligations under the subcontract for the provision of the Work. The maintenance of insurance by the Contractor's Subcontractors shall not relieve the Contractor from its obligation to maintain such insurance as is specified in the Contract.

8. **Security Screening Checks**

- (a) Security Clearances are not provided in perpetuity and are subject to revocation by the Owner at its sole discretion at any time. Security Screening Checks shall be renewed at the intervals as may be specified by CSS.
- (b) On notification from the Ministry of Government and Consumer Services, the Contractor shall provide to the CSS completed Security Screening Checks for all persons engaged in the performance of the Work who are either not cleared or for whom a renewal is required. All documents shall be provided through the Contractor's designated Company Security Officer. Where Other Security Screening Checks are required, CSS will advise on process.
- (c) All Security Screening Checks shall be provided in form and content acceptable to the CSS and shall include all required consents.

- (d) If a person or company has been deemed by the Ministry to require a Security Clearance, they shall not engage in the provision of the Deliverables unless they have been provided a Security Clearance by the CSS.
- (e) During the Term, the Vendor shall report to the CSS, within 5 business days thereof, any change to:
  - (i) Any information provided as part of a Security Screening Check process;
  - (ii) Employees, agents and subcontractors or, where a Company Level Check is required, partners, directors and officers, who are or will be engaged in providing the security screening documents or engaged in the performance of the Work.
- (f) The CSS shall assess any information provided pursuant to Section 8(e) and may instruct the Contractor to comply with any instructions arising out of such assessment, which may include requests for provision of information to amend existing Security Clearances or provide for new Security Clearances.
- (g) The Contractor shall be in default under this Contract if it fails to comply with the requirements of this Section 8.

**9. Accessibility**

The Province of Ontario is committed to the highest possible standard for Accessibility. Without limiting the Contractor's obligations to comply with all Requirements of Law, the Contractor is responsible for complying with the requirements of the Ontario Human Rights Code, the Ontarians with Disabilities Act, 2001 and Accessibility for Ontarians with Disabilities Act, 2005 ("AODA") and its regulations.

**10. Open Data Directive**

It is the Province of Ontario's intention, in accordance with the [Open Data Directive](#) and as part of its commitment to open data, to publish and allow the public to use:

- (i) procurement contract data, including the name of the Contractor and total contract value; and,
- (ii) data created or collected as an output of a contract,

except where the Province of Ontario chooses not to publish the data in accordance with the [Open Data Directive](#), such as for privacy, confidentiality,

security, legal or commercially-sensitive reasons. The Contractor acknowledges and agrees that any of the above may be disclosed by the Province of Ontario in accordance with the [Open Data Directive](#).

**11. Notices**

The Owner's address for receipt of notices shall be:

Ministry of Natural Resources and Forestry  
[insert address]

To the attention of:

[Insert Name]  
Telephone number:  
Fax number for receipt of notices:  
E-mail:

or such other person the Owner may designate upon notice to the Contractor.

The Contractor's address for receipt of notices shall be:

[insert address]

To the attention of:

[insert name]  
Telephone number:  
Fax number for receipt of notices:  
E-mail:

or such other person the Contractor may designate upon notice to the Owner and Contract Administrator.

The Contract Administrator's address for receipt of notices shall be:

[insert address]

To the attention of:

[insert name]  
Telephone number:  
Fax number for receipt of notices:  
E-mail:

or such other person the Contract Administrator may designate upon notice to the Owner and Contractor.

**12. Contractor Representation**

The Contractor represents that its representative has the authority to legally bind it to the extent permissible by the Requirements of Law.

**13. Governing Law**

The Contract shall be interpreted in accordance with the laws of Ontario; and the parties agree to attorn to the sole and exclusive jurisdiction of the courts of the Province of Ontario.

**14. Binding Nature**

The provisions of the Contract shall operate for the benefit of and be binding upon the Owner and the Contractor and their respective heirs, legal representatives, successors and assigns.

**15. Schedules**

The Schedules and Appendices to this Agreement constitute an integral part hereof and are incorporated into and deemed to be a part of this Agreement.

**16. Entire Agreement; Written Amendments**

The Contract represents the complete understanding between the parties with respect to the Work and no deviation from the requirements thereof shall be permitted without the consent of both parties evidenced by a written amending agreement signed by both parties to the Contract.

**17. Counterparts**

This Agreement may be executed by the parties in one or more counterparts, each of which when so executed and delivered shall be deemed an original, but all such counterparts taken together shall constitute one and the same instrument.

**IN WITNESS WHEREOF** the parties have caused this Agreement to be executed by their duly authorized representatives.

<p><b>[CONTRACTOR]</b></p>  <p>Per: _____ (Signature of Contractor's Representative)</p>	<p><b>Her Majesty the Queen in right of Ontario as represented by the Minister of Northern Development, Natural Resources and Forestry</b></p>  <p>Per: _____</p>
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<p>Name: _____ (Please Print)</p> <p>Title: _____ (Company Signing Officer)</p> <p>Date of Signature: _____</p> <p>I have authority to bind the Contractor.</p>	<p>(Signature of Ministry Representative)</p> <p>Name: _____ (Please Print)</p> <p>Title: _____ (Delegation Authority Signing Officer)</p> <p>Date of Signature: _____</p> <p>Pursuant to delegated authority.</p>
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Schedule 1 – Schedule of Work

Schedule 2 - Schedule of Forms

Schedule 3 – Special Provisions

Schedule 4 – Contractor’s Bid dated [MM, DD, YYYY] submitted in response to RFB tender\_14693

Schedule 5 – Contract Drawings

Schedule 6 – Standard Specifications

Schedule 7 – General Conditions

Schedule 8 – Copies of Performance Securities

## Schedule 1 - Schedule of Work

*[Drafter to insert a general description of the Work (not detailed specifications or requirements). Detailed conditions, terms, requirements, etc. should be put in either Schedule 3 (Special Provisions) or Schedule 6 (Standard Specifications).]*

*Note that specific Contract Drawings and Standard Specifications may be referred to in this Schedule, but should be attached as Schedules 5 (Contract Drawings) and 6 (Standard Specifications). To the extent that the Project requires special contract provisions, contact Legal Services for assistance and insert such provisions in Schedule 3 (Special Provisions).]*

**Schedule 2 – Schedule of Forms**

User to insert any technical forms returned by the Contractor as part of the Bid – otherwise enter “N/A”

### Schedule 3 – Special Provisions

[Note #1: This schedule should be used for any necessary amendments to the General Conditions or any additional or supplementary terms or requirements. Changes should NOT be made directly to the General Conditions themselves. If no special provisions are required, insert “N/A”]

[Note #2: If the project will be in respect of the construction, reconstruction, alteration, repair, maintenance or improvement of surface roads or a bridge, and the value of the procurement contract is expected to be \$1 million USD or more, then the Ministry must include a provision in this Agreement that states that any structural iron used or supplied in the performance of the Contract and permanently incorporated into the surface road or bridge will be fabricated in a jurisdiction other than New York. Please contact Legal Services for appropriate language to be inserted in this schedule.]

**Schedule 4 – Bid**

The Contractor's Bid is incorporated herein by reference as Schedule 4 of the Agreement.

## Schedule 5 – Contract Drawings

[User to insert contract drawings – note that to keep file size down, the Agreement document should be first converted to a PDF document, and the Contract Drawings inserted as a PDF using the “Edit – Organize Pages – Insert from File” function.]

## Schedule 6 – Standard Specifications

[User to insert specifications – note that to keep file size down, if the specifications are part of the contract drawings, then the Agreement document should be first converted to a PDF document, and the specifications inserted as a PDF using the “Edit – Organize Pages – Insert from File” function.]

## Schedule 7 - General Conditions

### SECTION GC 1.0 - INTERPRETATION

#### GC 1.01 Captions

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

#### GC 1.02 Abbreviations

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

"AASHTO"	American Association of State Highway Transportation Officials
"ACI"	American Concrete Institute
"ANSI"	American National Standards Institute
"ASTM"	ASTM International
"AWG"	American Wire Gauge
"AWWA"	American Water Works Association
"CCIL"	Canadian Council of Independent Laboratories
"CCDC"	Canadian Construction Documents Committee
"CGSB"	Canadian General Standards Board
"CSA"	CSA Group, formerly the Canadian Standards Association
"CWB"	Canadian Welding Bureau
"GC"	General Conditions
"IBC"	Insurance Bureau of Canada
"ISO"	International Organization for Standardization
"MECP"	Ontario Ministry of the Environment, Conservation and Parks
"MTO"	Ontario Ministry of Transportation
"MUTCD"	Manual of Uniform Traffic Control Devices (Published by MTO)
"OHSA"	Ontario Occupational Health and Safety Act
"OPS"	Ontario Provincial Standard
"OPSD"	Ontario Provincial Standard Drawing
"OPSS"	Ontario Provincial Standard Specification



"OTM"	Ontario Traffic Manual
"PEO"	Professional Engineers of Ontario
"SAE"	SAE International, formerly Society of Automotive Engineers
"SCC"	Standards Council of Canada
"SSPC"	The Society for Protective Coatings
"UL"	Underwriters Laboratories
"ULC"	Underwriters Laboratories Canada
"WHMIS"	Workplace Hazardous Materials Information System
"WSIB"	Workplace Safety and Insurance Board

### **GC 1.03 Gender and Singular References**

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

### **GC 1.04 Definitions**

.01 For the purposes of this Contract, in addition to the definitions found in the Agreement and the Special Provisions (if any), the following definitions apply:

**"Abnormal Weather"** means an extreme climatic condition characterized by wind speed, air temperature, or snow fall depth, that is less than or greater than 1-1/2 standard deviations from the mean determined from the weather records of the 25 year period immediately preceding the Tender closing date.

**"Accessibility"** means a general term which is used to describe the degree of ease that something (e.g., device, service, and environment) can be used and enjoyed by persons with a disability. The term implies conscious planning, design and/or effort to ensure it is barrier-free to persons with a disability, and by extension, usable and practical for the general population as well.

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

**Addendum** means an addition or change in the RFB documents issued prior to RFB Closing and **Addenda** is the plural thereof.

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

**Adjudication** has the meaning set forth under Part II.1 of the *Construction Act*.

**Agreement** means the agreement between the Owner and the Contractor for the performance of the Work that is included in the Contract, to which these General Conditions are attached.

**Base** means a layer of Material of specified type and thickness placed immediately below the pavement wearing surface layers, curb and gutter, or sidewalk.

**Bid** is the offer from the Contractor to the Owner to complete the Work.

**Business Day** means any Day except Saturdays, Sundays, and statutory holidays.

**Certificate of Subcontract Completion** means the certificate issued by the Contract Administrator in accordance with clause GC 8.02.03.02, Certification of Subcontract Completion.

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

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

**Change in the Work** means: (i) the deletion, extension, increase, decrease, or alteration of lines, grades, dimensions, quantities, methods, or drawings; (ii) substantial changes in geotechnical, subsurface, surface, or other conditions; (iii) changes in the character of the Work to be done or Materials of the Work or part thereof, within the intended scope of the Contract.

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

**Claim** means the submission of a dispute for review under the Claim Review Process.

**Claim Review Process** means the process described in clause GC 3.16.01.

**Compensation Request** means a request submitted to the Contract Administrator in writing, for a modification in payment and/or Contract Time, from that set forth in the original Tender.

**Completion** means contract completion as set out in the *Construction Act*.

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

**Conflict of Interest** includes, but is not limited to, any situation or circumstance where in relation to the performance of its contractual obligations in a Crown contract, the Contractor's other commitments, relationships or financial interests: (i) could or could be seen to exercise an improper influence over the objective, unbiased and impartial exercise of its independent judgment; or (ii) could or could be seen to compromise, impair or be incompatible with the effective performance of its contractual obligations.

**Construction Act** means the *Construction Act*, R.S.O. 1990, c. C.30, as amended.

**Constructor** means, for the purposes of, and within the meaning of the *Occupational Health and Safety Act*, R.S.O. 1990, c.O.1, as amended and amendments thereto, the Contractor who executes the Contract.

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

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

**Contract Documents** means, collectively, the below documents:

- (a) the Agreement;
- (b) the RFB;
- (c) Special Provisions;
- (d) the Contract Drawings;
- (e) the Standard Specifications;
- (f) the General Conditions;
- (g) Working Drawings (where applicable);
- (h) the Bid; and
- (i) subsequent amendments to any of the foregoing made pursuant to the provisions of the Contract.

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

cross-sections, and includes the drawings attached as Schedule 5 to the Agreement.

**Contract Time** means the time stipulated in the Agreement for completion of the Work, including any extension of time made pursuant to the Contract Documents.

**Contractor** means the person, partnership, or corporation undertaking the Work as identified in the Agreement.

**Controlling Operation** means any component of the Work that, if delayed, may delay the completion of the Work.

**Cut-Off Date** means the date up to which payment shall be made for Work performed.

**Crown** means Her Majesty the Queen in right of Ontario;

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

**Day** means a calendar day.

**Decision** means a written response to the Contractor in respect of a Compensation Request or a Claim, that includes the Rationale.

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

**End Result Specification** means specifications that require the Contractor to be responsible for supplying a product or part of the Work. The Owner accepts or rejects the final product or applies a price adjustment that is commensurate with the degree of compliance with the specification.

**Engineer** means a professional engineer licensed by the Professional Engineers of Ontario to practice in the Province of Ontario.

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

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

**Extra Work** means work not provided for in the Contract as awarded but considered by the Contract Administrator to be essential to the satisfactory

completion of the Contract within its intended scope, including unanticipated work required to comply with legislation and regulations that affect the Work.

**Final Acceptance** means the date on which the Contract Administrator determines that the Work has passed all inspection and testing requirements and the Contract Administrator is satisfied that the Contractor has rectified all imperfect Work and has discharged all of the Contractor's obligations under the Contract Documents.

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

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

**Fiscal Year** means the Government of Ontario's fiscal year (April 1 to the following March 31).

**Geotechnical Report** means a report or other information identifying soil, rock, and ground water conditions in the area of any proposed Work.

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

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

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

**Inclement Weather** means weather conditions or conditions directly resulting from weather conditions that prevent the Contractor from proceeding with a Controlling Operation.

**Indemnified Parties** means Her Majesty the Queen in right of Ontario and the members of the Executive Council of Ontario, and their respective directors, officers, advisors, agents, appointees and employees.

**Information Request** means a written request submitted to the Contract Administrator seeking clarification of or information regarding the Contract Documents.

**Labour and Material Payment Bond** means the type of security provided to the Owner to guarantee payment of prescribed debts (i.e., in respect of labour and Materials) of the Contractor covered by the bond.

**Lot** means a specific quantity of Material or a specific amount of construction normally from a single source and produced by the same process.

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

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

- a. \$100,000, or
- b. 5% of the total Bid value calculated on the basis of the total of all the estimated Bid quantities and the Bid unit prices.

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

**Notice of Adjudication** means a notice issued under Section 13.7 of the *Construction Act*.

**Notice of Project** means written notice of the Project to the Ministry of Labour (Ontario) in accordance with the OHSA and its regulations.

**OHSA** means the *Occupational Health and Safety Act*, R.S.O. 1990, c. O.1, and its regulations, as they may be modified, amended or replaced from time to time.

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

**Pavement** means a wearing course or courses placed on the Roadway and consisting of asphaltic concrete, hydraulic cement concrete, Portland cement concrete, or plant or road mixed mulch.

**Performance Bond** means the type of security furnished to the Owner to guarantee completion of the Work in accordance with the Contract and to the extent provided in the bond.

**Performance Securities** means the Performance Bond and the Labour and Material Payment Bond or any other type of financial security provided by the Contractor to the Owner to guarantee performance of the Work.

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

**Proper Invoice** means a “proper invoice” as set forth in the *Construction Act*.

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

**Quarried Rock** means material removed from an open excavation made in a solid mass of rock that, prior to removal, was integral with the parent mass.

**Quarry** means a place where aggregate has been or is being removed from an open excavation made in a solid mass of igneous, sedimentary, or metamorphic rock or any combination of these that, prior to removal, was integral with the parent areas.

**Rate of Interest** means the rate of interest as determined under the *Financial Administration Act* by the Minister of Finance of Ontario and issued by, and available from, the Owner.

**Rationale** means the reason(s) given to explain a particular decision, response or action.

**ready for use** means having passed inspection, testing, and commissioning; operations personnel have been trained; and equipment manuals and record drawings depicting as-built conditions have been submitted; all to the satisfaction of the Contract Administrator.

**Records** mean any books, payrolls, accounts, or other information that relate to the Work or any Change in the Work, Extra Work or Additional Work, or claims arising therefrom.

**Requirements of Law** means all applicable requirements, laws, statutes, codes, acts, ordinances, orders, decrees, injunctions, by-laws, rules, regulations, official plans, permits, licences, authorizations, and directions, whether federal, provincial, municipal or otherwise, that now or at any time may be applicable to either the Contract or the Work or any part of them.

**RFB** means the Request for Bid applicable to the Work, as issued by the Owner, to which the Contractor responded with its Bid, as amended by any Addenda thereto issued by the Owner.

**Roadway** means that part of the Highway designed or intended for use by vehicular traffic and includes the Shoulders.

**Shoulder** means that portion of the Roadway between the edge of the travelled portion of the wearing surface and the top inside edge of the ditch or fill slope.

**Special Provisions** mean directions containing requirements specific to the Work, and includes the provisions set forth in Schedule 3 to the Agreement.

**Standard Specification** means a standard practice required and stipulated by the Owner for performance of the Work, and include the specifications set forth in Schedule 6 to the Agreement.

**Statutory Holdback** means a holdback required under the *Construction Act*.

**Subbase** means a layer of material of specified type and thickness between the Subgrade and the Base.

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

**Subgrade** means the earth or rock surface, whether in cut or fill, as prepared to support the pavement structure, consisting of Base, Subbase, and Pavement.

**Substantial Performance** has the meaning set out in the *Construction Act*.

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

**Superintendent** means the Contractor's authorized representative in responsible charge of the Work, and who is a "competent person" within the meaning of the same definition contained in the Occupational Health and Safety Act.

**Surety** means the person, partnership or corporation, other than the Contractor, licensed in Ontario to transact business under the *Insurance Act*, R.S.O. 1990, c.I.8, as amended, executing a bond provided by the Contractor.

**Tender** means the RFB.

**Time and Material** means costs calculated according to clause GC 8.02.04, Payment on a Time and Material Basis.

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

**Warranty Period** means the period of twelve (12) months following the date of completion set out by the Contract Administrator in the Completion Certificate, whether or not Final Acceptance has been achieved.

**Work** means the total construction and related services required by the Contract, and includes everything developed for or provided to the Owner in the course of



performing under the Contract or agreed to be provided to the Owner under the Contract by the Contractor, including any goods or services.

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

**Working Day** means any Day,

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

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

**WSIA** means the *Workplace Safety and Insurance Act*, 1997, S.O. 1997, c. 16, Sched. A, and its regulations, as they may be modified, amended or replaced from time to time.

#### **GC 1.05 Final Acceptance**

- .01 Achievement of Final Acceptance does not relieve the Contractor of obligations arising during or after the Warranty Period.

#### **GC 1.06 Interpretation of Certain Words**

- .01 The words "acceptable," "approval," "authorized," "considered necessary," "directed," "required," "satisfactory," or words of like import, shall mean approval of, directed, required, considered necessary, or authorized by and acceptable or

satisfactory to the Contract Administrator, unless the context clearly indicates otherwise.

- .02 Throughout the Agreement, the word “includes” shall mean “including, without limitation” unless explicitly stated to the contrary.

**GC 1.07 Contractor Not a Partner, Agent or Employee**

- .01 The Contractor shall have no power or authority to bind the Owner or to assume or create any obligation or responsibility, express or implied, on behalf of the Owner. The Contractor shall not hold itself out as an agent, partner or employee of the Owner. Nothing in the Contract shall have the effect of creating an employment, partnership or agency relationship between the Owner and the Contractor (or any Subcontractor) or constitute an appointment under the *Public Service of Ontario Act, 2006*, S.O. 2006, c. 35, Schedule A, as it may be amended, modified, supplemented or replaced from time to time.

**SECTION GC 2.0 - CONTRACT DOCUMENTS**

**GC 2.01 Reliance on Contract Documents**

- .01 The Owner warrants that the information furnished in the Contract Documents can be relied upon except that:
- a. the Contractor shall assume full responsibility for obtaining the exact locations of underground utilities;
  - b. the Owner does not warrant the correctness or completeness of the Plans with respect to existing public utilities and services whether underground or on the surface; and
  - c. the Owner does not warrant or make any representation with respect to interpretations of data or opinions expressed in any Subsurface Report available for the perusal of the Contractor, whether or not such report is included as part of the Contract.
- .02 The Contractor shall have no claim for additional compensation, if, in uncovering and carrying out the Work, it should find that the actual location of existing utilities does not correspond with the locations shown on the Plans.

**GC 2.02 Order of Precedence**

- .01 If there is an inconsistency in or conflict within the Contract, precedence shall be determined in the following descending order:
- a. the Agreement (excluding its Schedules);
  - b. the RFB (excluding such portions of the RFB as are specifically set forth in (c) through (g) below);
  - c. Special Provisions, if any;
  - d. Contract Drawings;

- e. Standard Specifications;
- f. General Conditions; and
- g. Working Drawings (where applicable).

Later dates shall govern within each of the above categories.

- .02 In the event of any conflict among or inconsistency in the information shown on Drawings, the following rules shall apply:
  - a. Dimensions shown in figures on a Drawing shall govern where they differ from dimensions scaled from the same Drawing;
  - b. Drawings of larger scale shall govern over those of smaller scale;
  - c. Detailed Drawings shall govern over general Drawings; and
  - d. Drawings of a later date shall govern over those of an earlier date in the same series.
- .03 In the event of any inconsistency or conflict in the contents of Standard Specifications the following descending order of precedence shall govern:
  - a. Owner's Standard Specifications;
  - b. Ontario Provincial Standard Specifications; and
  - c. Other standard specifications, such as those referred to in the Owner's Standard Specifications or Ontario Provincial Standard Specifications (e.g. those produced by CSA, CGSB, ASTM, and ANSI).
- .04 The Contract Documents are complementary, and what is required by any one shall be as binding as if required by all.

## **SECTION GC 3.0 - ADMINISTRATION OF THE CONTRACT**

### **GC 3.01 Contract Administrator's Authority**

- .01 The Contract Administrator shall be the Owner's representative during construction and until the issuance of the Completion Certificate or the issuance of the Final Acceptance Certificate, whichever is later. All instructions to the Contractor, including instructions from the Owner, shall be issued by the Contract Administrator. The Contract Administrator shall have the authority to act on behalf of the Owner only to the extent provided in the Contract Documents.
- .02 All claims, disputes and other matters in question relating to the performance and the quality of the Work or the interpretation of the Contract Documents shall be referred to the Contract Administrator in writing pursuant to the applicable provisions of these GCs.
- .03 The Contract Administrator may inspect the Work for its conformity with the Plans and Standard Specifications, and to record the necessary data to establish payment quantities under the schedule of tender quantities and unit prices or to make an assessment of the value of the Work completed in the case of a lump sum price Contract.

- .04 The Contract Administrator shall issue certificates for payment in such amounts as provided for in clause GC 8.0, Measurement and Payment.
- .05 The Contract Administrator shall, with reasonable promptness, review and take appropriate action upon the Contractor's submissions such as shop drawings, product data, and samples in accordance with the Contract Documents.
- .06 The Contract Administrator shall investigate all allegations of a Change in the Work made by the Contractor and issue appropriate instructions.
- .07 The Contract Administrator shall prepare Change Directives and Change Orders for the Owner's approval.
- .08 Upon written application by the Contractor, the Contract Administrator and the Contractor shall jointly conduct an inspection of the Work to establish the date of Substantial Performance of the Work or the date of Completion of the Work or both.
- .09 The Contract Administrator shall be, in the first instance, the interpreter of the Contract Documents and the judge of the performance thereunder by both parties to the Contract. Interpretations and decisions of the Contract Administrator shall be consistent with the intent of the Contract Documents.
- .10 The Contract Administrator shall have the authority to reject any part of the Work or Material that does not conform to the Contract Documents.
- .11 In the event that the Contract Administrator determines that any part of the Work performed by the Contractor is defective, whether the result of poor workmanship; the use of defective Material; or damage through carelessness or other act or omission of the Contractor and whether or not incorporated in the Work; or otherwise fails to conform to the Contract Documents, then the Contractor shall if directed by the Contract Administrator (and as directed by the Contract Administrator), promptly remove the Work and replace, make good, or re-execute the Work at no additional cost to the Owner.
- .12 Any part of the Work destroyed or damaged by such removals, replacements, or re-executions shall be made good, promptly, at no additional cost to the Owner.
- .13 If, in the opinion of the Contract Administrator, it is not expedient to correct defective Work or Work not performed in accordance with the Contract Documents, the Owner may deduct from monies otherwise due to the Contractor the difference in value between the Work as performed and that called for by the Contract Documents, the amount that will be determined in the first instance by the Contract Administrator.
- .14 Notwithstanding any inspections made by the Contract Administrator or the issuance of any certificates or the making of any payment by the Owner, the failure of the Contract Administrator to reject any defective Work or Material shall not constitute acceptance of defective Work or Material.
- .15 The Contract Administrator shall have the authority to temporarily suspend the Work for such reasonable time as may be necessary:

- a) to facilitate the checking of any portion of the Contractor's construction layout;
- b) to facilitate the inspection of any portion of the Work; or
- c) for the Contractor to remedy its non-compliance with any of the provisions of the Contract Documents.

The Contractor shall not be entitled to any compensation for suspension of the Work in these circumstances.

- .16 The Owner has the right to terminate the Contract for wilful or persistent violation by the Contractor or its workers of any applicable laws or by-laws, including but not limited to, the Occupational Health and Safety Act and its regulations, the Workplace Safety and Insurance Board Act and its regulations, and the Environmental Protection Act and its regulations.
- .17 If the Contract Administrator determines that any worker employed on the Work is incompetent, as defined by the Occupational Health and Safety Act, or is disorderly, then the Contract Administrator shall provide written notice to the Contractor and the Contractor shall immediately remove the worker from the Working Area. Such worker shall not return to the Working Area without the prior written consent of the Contract Administrator.

### **GC 3.02 Working Drawings**

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

Contract Documents and resubmit, unless otherwise directed by the Contract Administrator. When resubmitting, the Contractor shall notify the Contract Administrator in writing of any revisions other than those requested by the Contract Administrator.

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

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

- .01 The Contractor shall, when requested in writing, make alterations in the method, Equipment, or work force at any time the Contract Administrator considers the Contractor's actions to be unsafe, or damaging to either the Work or existing facilities or the environment.
- .02 The Contractor shall, when requested in writing, alter the sequence of its operations on the Contract so as to avoid interference with work being performed by others.
- .03 Notwithstanding the foregoing, the Contractor shall ensure that all necessary safety precautions and protection are maintained throughout the Work.
- .04 The Contractor shall comply with Ontario's *Clean Equipment Protocol for Industry*, as may be amended from time to time. The *Clean Equipment Protocol for Industry* and the *Clean Equipment for Industry – Summary* are found at: <http://www.ontarioinvasiveplants.ca/resources/technical-documents>.

### **GC 3.04 Emergency Situations**

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

### **GC 3.05 Layout**

- .01 The Contract Administrator shall provide background information, including baseline and benchmark information, to facilitate the general location, alignment, elevation and layout of the Work.
- .02 The Owner shall be responsible only for the correctness of the information provided by the Contract Administrator, subject to clause GC 2.01.01.

**GC 3.06 Extension of Contract Time**

- .01 An application for an extension of Contract Time or any interim dates shall be made in writing by the Contractor to the Contract Administrator, as soon as the need for such extension becomes evident and at least 15 Days prior to the expiration of the Contract Time or interim date in question. The application for an extension of Contract Time or an interim date shall enumerate the reasons and impact on the critical path schedule, and state the length of extension required.
- .02 Circumstances suitable for consideration of an extension of Contract Time or any interim date include the following:
  - a) Delays: See clause GC 3.07 (Delays).
  - b) Changes in the Work: See clause GC 3.10.01 (Changes in the Work).
  - c) Extra Work: See clause GC 3.10.02 (Extra Work).
  - d) Additional Work: See clause GC 3.10.03 (Additional Work).

If the Contract Time or interim date specified is not sufficient to permit completion of the Work by the Contractor working a normal number of hours each day or week on a single daylight shift basis, it is expected that additional and/or augmented daylight shifts will be required throughout the duration of the Contract or interim period to the extent deemed necessary by the Contractor to ensure that the Work will be completed within the time limit specified. Any additional costs occasioned by compliance with these provisions will be considered to be included in the prices bid for the various items of Work and no additional compensation will be allowed therefore.

- .03 The Contract Time or interim date in question shall be extended for such additional time and upon such conditions as recommended by the Contract Administrator and approved by the Owner, taking into account whether the circumstance leading to the request for extension of Contract Time or interim date involved a Controlling Operation.
- .04 Any extension granted is contingent on the provision to the Contract Administrator of proof of extension of the date of expiry of all Performance Securities, insurance policies and other security furnished to the Owner by the Contractor, which extensions shall be obtained at the expense of the Contractor.
- .05 The terms and conditions of the Contract shall continue during any extension of Contract Time or interim date, as the case may be.
- .06 Any extension of the Contract Time or any interim date shall not prejudice any rights or remedies of the Owner or Contract Administrator that may have vested prior to such extension having been granted, nor shall such extension act to

extend any notice or cure period that may have commenced, which notice or cure period was contingent upon the occurrence of some event of default or other breach of the Contract by the Contractor.

**GC 3.07 Delays**

- .01 If the Contractor is delayed in the performance of the Work by,
- a) war, blockades, and civil commotions, errors in the Contract Documents;
  - b) an act or omission of the Owner or Contract Administrator, or anyone employed or engaged by them directly or indirectly, contrary to the provisions of the Contract Documents;
  - c) a stop work order issued by a court or public authority, provided that such order was not issued as the result of an act or omission of the Contractor or anyone employed or engaged by the Contractor directly or indirectly;
  - d) the Contract Administrator giving notice under clause GC 7.10 (Suspension of Work);
  - e) Abnormal Weather; or
  - f) archaeological finds in accordance with clause GC 3.16 (Archaeological Finds),

then the Contractor shall be reimbursed by the Owner for reasonable costs incurred by the Contractor as the result of such delay, provided that in the case of an application for an extension of Contract Time due to Abnormal Weather, the Contractor shall, with the Contractor's application, submit evidence from Environment Canada in support of such application. Extension of Contract Time may be granted in accordance with clause GC 3.06 (Extension of Contract Time).

- .02 If the Work is delayed by labour disputes, strikes or lock-outs, including lock-outs decreed or recommended to its members by a recognized contractor's association, of which the Contractor is a member or to which the Contractor is otherwise bound, and which are beyond the Contractor's control, then the Contract Time shall be extended in accordance with clause GC 3.06 (Extension of Contract Time). In no case shall the extension of Contract Time be less than the time lost as the result of the event causing the delay, unless a shorter extension is agreed to by the Contractor. The Contractor shall not be entitled to payment for costs incurred as the result of such delays unless such delays are the result of actions by the Owner.
- .03 The Contractor shall not be entitled to payment for the cost of delays incurred as a result of a dispute between the Contractor and Owner. The Contractor shall execute the Work and may pursue resolution of the dispute in accordance with clause GC 3.15 (Dispute Resolution).

**GC 3.08 Assignment of Contract**



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

**GC 3.09 Subcontracting by the Contractor**

- .01 The Contractor may subcontract any part of the Work, subject to these General Conditions and any limitations specified in the Contract Documents.
- .02 The Contractor shall notify the Contract Administrator 10 Days prior to the start of construction, in writing, of the intention to subcontract. Such notification shall identify the part of the Work, and the Subcontractor with whom it is intended.
- .03 The Contract Administrator shall, within 5 Days of receipt of such notification, accept or reject the intended Subcontractor. The rejection shall be in writing and shall include the reasons for the rejection.
- .04 The Contractor shall not, without the written consent of the Owner, change a Subcontractor who has been engaged in accordance with this subsection.
- .05 The Contractor shall preserve and protect the rights of the Owner under the Contract with respect to that part of the Work to be performed under subcontract and shall,
  - a) enter into agreements with the intended Subcontractors to require them to perform their Work in accordance with the Contract Documents; and
  - b) be as fully responsible to the Owner for acts and omissions of the Contractor's Subcontractors and of persons directly or indirectly employed by them as for acts and omissions of persons directly employed by the Contractor.
- .06 The Owner's consent to subcontracting by the Contractor shall not be construed to relieve the Contractor from any obligation under the Contract and shall not impose any liability upon the Owner. Nothing contained in the Contract Documents shall create a contractual relationship between a Subcontractor and the Owner.

**GC 3.10 Changes**

**GC 3.10.01 Changes in the Work**

- .01 The Owner, or the Contract Administrator where so authorized, may, by order in writing, make a Change in the Work without invalidating the Contract.
- .02 The Contractor shall not be required to proceed with a Change in the Work until in receipt of a Change Order or Change Directive. Upon the receipt of such Change Order or Change Directive the Contractor shall proceed with the Change in the Work.
- .03 The Contractor may apply for an extension of Contract Time or any interim date associated with a Change Order or Change Directive according to the terms of clause GC 3.06 (Extension of Contract Time).

**GC 3.10.02 Extra Work**

- .01 The Owner, or Contract Administrator where so authorized, may instruct the

Contractor to perform Extra Work without invalidating the Contract.

- .02 The Contractor shall not be required to proceed with the Extra Work until in receipt of a Change Order or Change Directive. Upon receipt of such Change Order or Change Directive the Contractor shall proceed with the Extra Work.
- .03 The Contractor may apply for an extension of Contract Time or any interim date associated with a Change Order or Change Directive according to the terms of clause GC 3.06 (Extension of Contract Time).

**GC 3.10.03 Additional Work**

- .01 The Owner, or Contract Administrator where so authorized, may request the Contractor to perform Additional Work without invalidating the Contract.
- .02 If the Contractor agrees to perform Additional Work, the Contractor shall proceed with such Additional Work upon receipt of a Change Order.
- .03 The Contractor may apply for an extension of Contract Time or any interim date associated with such Change Order according to the terms of clause GC 3.06 (Extension of Contract Time).

**GC 3.10.04 Costs of Change in the Work, Extra Work or Additional Work**

- .01 If the matter giving rise to a Change in the Work, Extra Work or Additional Work relates solely to quantities, payment for that part of the Work shall be made according to the conditions specified in clause GC 8.01.02 (Variations in Bid Quantities).
- .02 If the matter giving rise to a Change in the Work, Extra Work or Additional Work does not relate solely to quantities, payment for that part of the Work shall be made as follows:
  - a) the prices in the Commercial Response Schedule of Prices or Provisional Items shall apply unless they are clearly not commercially reasonable, as determined by and in the opinion of, the Contract Administrator;
  - b) if the Contract Administrator determines that the prices in the Commercial Response, including Schedule of Prices or Provisional Items are clearly not commercially reasonable, then the Contract Administrator may request a quotation for the proposed Work from the Contractor, which quotation shall comply with the following:
    - i) shall be broken down into labour, material and Contractor's overhead and profit;
    - ii) when a credit is involved, the credit shall be deducted from the labour and material costs before overhead and profit are calculated;
    - iii) total allowance for overhead and profit shall be limited to fifteen percent (15%) of labour and material costs, to cover both Contractor's own work and sub-contracted work; on sub-contracted work, Contractor's overhead and profit is limited to 5% and sub-

contractor's overhead and profit is limited to 10%; and

- iv) allowances for overhead and profit shall cover all of Contractor's and each sub-contractor's administrative and incidental costs related to a Change in the Work, Extra Work or Additional Work, including supervision, production of working drawings, offices, expenses, tools, temporary facilities and controls.

If the above quotation is not accepted by the Contract Administrator, and the Contract Administrator determines that the proposed Work is to proceed, then the actual cost of the proposed Work will be determined on a Time and Material basis; and

- c) where the proposed Work proceeds on a Time and Material basis, the Contractor shall submit daily written reports to the Contract Administrator, indicating the total chargeable costs incurred for the day. Valuation of the addition or deletion being so performed will be made by the Contract Administrator on the basis of approved daily reports.

### **GC 3.11 Notices**

- .01 Any notice permitted or required to be given to the Contract Administrator or the Superintendent in respect of the Work shall be deemed to have been given to and received by the addressee on the date of delivery if delivered by hand, email, or by facsimile transmission and on the fifth Day after the date of mailing, if sent by mail.
- .02 For the purpose of clause GC 3.11.01, notice by email will be effective upon confirmation of receipt. Confirmation may be by reply email, automatic confirmation of receipt at addressee's server, automatic confirmation by addressee's email application that the email has been received or read, verbally, or by other positive means. Notice by postage-prepaid mail will not be effective during an actual or threatened postal disruption.
- .03 When notice is due or is provided on a Day that is not a Business Day, then notice will be due or will be effective on the next Business Day.
- .04 The Contractor and the Owner shall provide each other with the mail and email addresses; pager, cell phone, and telephone numbers; and facsimile terminal numbers for the Contract Administrator and the Superintendent at the commencement of the Work, and update as necessary.
- .05 In the event of an emergency situation or other urgent matter the Contract Administrator or the Superintendent may give a verbal notice, provided that such notice is confirmed in writing within 2 Days.
- .06 Any notice permitted or required to be given to the Owner or the Contractor shall be given in accordance with the notice provision of the Contract.

### **GC 3.12 Use and Occupancy of the Work Prior to Substantial Performance**

- .01 Where it is not contemplated elsewhere in the Contract Documents, the Owner may use or occupy the Work or any part thereof prior to Substantial Performance, provided that at least 30 Days written notice has been given to the Contractor.
- .02 The use or occupancy of the Work or any part thereof by the Owner prior to Substantial Performance shall not constitute an acceptance of the Work or parts so occupied. In addition, the use or occupancy of the Work shall not relieve the Contractor or the Contractor's Surety from any liability that has arisen, or may arise, from the performance of the Work in accordance with the Contract Documents. The Owner shall be responsible for any damage that occurs because of the Owner's use or occupancy. Such use or occupancy of any part of the Work by the Owner does not waive the Owner's right to charge the Contractor liquidated damages in accordance with the terms of the Contract.

**GC 3.13 Information Requests**

- .01 The Contractor shall submit an Information Request as soon as the Contractor becomes aware of the need for information or clarification of any of the following:
  - a) a situation that is different than that represented in the Contract Documents;
  - b) a situation where the Contractor requires additional information; and
  - c) a situation where the Contractor believes the Contract Documents to be ambiguous.
- .02 The Information Request shall include a clear description of the situation with specific references to the Contract Documents.
- .03 The Contract Administrator shall provide a written response to the Contractor on or before the date that is 20 Days following receipt of the Information Request.
- .04 Notwithstanding the submission of an Information Request, the Contractor shall proceed with the Work, except for the activity affected by such Information Request (which shall be halted in accordance with GC 7.01.16).

**GC 3.14 Compensation Request**

- .01 The Contractor shall immediately submit a Compensation Request to the Contract Administrator when the Contractor becomes aware of or ought to be aware of any of the following:
  - a) a Change in the Work or perceived change in the Work;
  - b) a need for an extension of Contract Time or any interim completion dates, according to clause GC 3.06;

- c) an unresolved Change Order price negotiation, according to clause GC 3.10.04; or
- d) other compensation matters.

A Compensation Request must be submitted no later than 30 Days following the first occurrence of the event giving rise to the Compensation Request, in order for the Compensation Request to be eligible for consideration. For the purposes of clause GC 8.01.02, the event giving rise to the Compensation Request shall be deemed to occur upon completion of the affected Work to be done or Material to be supplied. The Contractor shall be deemed to have waived any right to compensation in respect of which it has not submitted a Compensation Request within the foregoing timeframe.

- .02 The Compensation Request shall include a clear description of the matter with specific references to the Contract Documents, including the impacts to the Contractor and the Work (in both time and cost).
- .03 If a Compensation Request related to a previously submitted Information Request, the original Information Request and response shall be included with the Compensation Request submission.
- .04 If a Compensation Request is submitted as the result of an unresolved Change Order price agreement negotiation, the original Change Order shall be provided with the Compensation Request submission.
- .05 After the Compensation Request is submitted, the Contractor shall immediately:
  - a) begin to keep Daily Work Records relating to the Compensation Request as the Work is performed, according to clause GC 8.02.04.02 (Daily Work Records);
  - b) limit such Daily Work Records to the Work directly impacted by the Compensation Request; and
  - c) keep separate Daily Work Records for each individual Compensation Request.
- .06 The keeping of Daily Work Records by the Contractor and any process to review or comment on those records shall not be construed as the Owner's acceptance of the Compensation Request to which the Daily Work Records relate.
- .07 The Contract Administrator shall issue a Decision regarding the Compensation Request within 60 Days of receipt of the Compensation Request.

- .08 If the Contract Administrator requests additional information from the Contractor to justify a Compensation Request, then the calculation of time to render a Decision (as set out in clause GC 3.14.07) shall be suspended from the date of the request until the Contractor has provided the additional information or has notified the Contract Administrator that it does not intend to provide the additional information. If no additional information is received within 20 days of the date of the request for additional information, or if the Contractor notifies the Contract Administrator that it will not be providing additional information, the Contract Administrator shall proceed with the review and issue a Decision. The Contractor shall accept all risk associated with the Contract Administrator making a Decision by reason of the lack of the requested additional information.
- .09 If both parties mutually agree before the expiry of any time period specified for issuing a Decision, then the parties may extend such time to issue a Decision.
- .10 Where a Compensation Request Decision is not issued within the specified time period as may be extended by mutual agreement, the Compensation Request shall be deemed to be rejected, whereupon the Contractor may proceed to Dispute Resolution.
- .11 Upon receipt of a Compensation Request Decision, the matter shall be considered concluded, and the Contractor may either accept the Decision or proceed in accordance with clause GC 3.15 (Dispute Resolution).
- .12 Any compensation offer made as part of the Decision, information or statements made therein, shall be made on a confidential and without prejudice basis, and shall not be considered an undisputed value (and the same shall not be disclosed or relied upon by the Contractor) in any subsequent Dispute Resolution process or legal proceedings.
- .13 Notwithstanding the submission of a Compensation Request, the Contractor shall proceed with the Work to completion with due diligence and in an expeditious manner and such action shall not prejudice the Contractor in respect of the Compensation Request. The Contractor is not relieved from complying with any direction, order, Change Order or Change Directive that relates to the Compensation Request.

**GC 3.15                      Dispute Resolution**

**GC 3.15.01                      Claim Review Process**

- .01 The parties recognize the mutual desire of each of them to resolve any dispute in a timely manner and to exchange such appropriate information relied upon by them for the purpose of engaging in confidential settlement negotiations in order to facilitate resolution of the dispute.
- .02 Any offer of settlement becomes null and void, and shall not be considered an undisputed value, when either party initiates Adjudication or other legal proceedings.
- .03 Neither party shall disclose in any subsequent Adjudication or other legal proceeding any statements made specifically in furtherance of settlement during the Dispute Resolution process that is not otherwise required to be disclosed by law.
- .04 Notwithstanding the use of the Claim Review Process to resolve a dispute, the Contractor shall proceed with the Work to completion with due diligence and in an expeditious manner and such action shall not prejudice the Contractor in respect of the Claim. The Contractor is not relieved from complying with any direction, order, Change Order or Change Directive that relates to the Claim.
- .05 In the event that the Contractor does not accept a Decision in respect of a Compensation Request or the matter remains unresolved, and the Contractor wishes to pursue a Claim Review, the Contractor shall submit a notice of Claim to the Owner. A notice of Claim shall be delivered no later than 10 days following receipt of the Compensation Request Decision (or expiry of the time period in which to render a Compensation Request Decision, if no such Decision is provided).
- .06 The notice of Claim shall contain, at minimum, enough information under the headings described below to permit a detailed review by the Owner:
  - a) date on which the circumstances arose that gave rise to the Claim;
  - b) detailed description of the nature of the Claim, with dates, location, Materials and Equipment involved, and any other items relevant to the Claim;
  - c) relevant provisions of the Contract which support the Claim and the reasons these provisions are relevant, including work affected by the Claim, areas of work incurring additional costs and the change from the tendered Contract;
  - d) originally submitted Compensation Request and any additional information that was submitted in response to Contract Administrator requests;

- e) a detailed summary of the critical path schedule impacts, along with supporting critical path schedule updates that have previously been submitted;
- f) summary of proven actual or estimated additional costs, including direct Labour, Material, Equipment and Subcontractor costs;
- g) summary of proven indirect costs or estimated indirect costs, including standby, site overhead and impact costs;
- h) copies of all supporting documentation and records of the Contractor applicable to the claim, including:
  - i. initial Information Request and response;
  - ii. Change Directives;
  - iii. Change Orders;
  - iv. Daily Work Records as set out in clause GC 8.02.04.02 (Daily Work Records);
  - v. email and other correspondence between or among the Contract Administrator/Owner and Contractor; and
  - vi. minutes of meetings; and
- i) any other information deemed necessary or appropriate to the resolution of the Claim by the Contractor.

.07 After the Contractor has filed a notice of Claim, the Contractor shall be permitted to submit the following:

- a) additional information that supports the Claim; and
- b) updated, actual or additional cost information of items contained in the original notice of Claim,

as such information becomes available during the Claim review, provided that all additional information must be submitted no later than 30 days after completion of the affected work.

.08 When the Contractor completes the work associated with the Claim and the Claim remains unresolved, then the Contractor shall provide details of the actual



costing of the items detailed in the notice of Claim to the Owner, no later than 30 days after completion of the affected Work.

- .09 The Contractor is solely responsible for providing all the information required in the notice of Claim.
- .10 The Contractor's failure to provide any notices as and within the timeframes required shall result in the waiver of any Claim in respect of which the Contractor failed to provide timely notice, and the loss of compensation to the Contractor in respect of such Claim.
- .11 Upon receipt of a complete notice of Claim, the Owner will either begin the Claim review or submit a Notice of Adjudication.
- .12 If the Owner elects to review the Claim, the Owner will provide the Contractor with a Decision within 60 days of receipt of the complete notice of Claim.
- .13 If the Owner requests additional information from the Contractor to justify a the Claim, then the calculation of time to render a Decision (as set out in clause GC 3.15.01.12) shall be suspended from the date of the request until the Contractor has provided the additional information or has notified the Owner that it does not intend to provide the additional information. If no additional information is received within 10 days of the date of the request for additional information, or if the Contractor notifies the Owner that it will not be providing additional information, the Owner shall proceed with the review and issue a Decision. The Contractor shall accept all risk associated with the Owner making a Decision by reason of the lack of the requested additional information.
- .14 If both parties mutually agree before the expiry of any time period specified for issuing a Decision, then the parties may extend such time to issue a Decision.
- .15 Where a Decision is not issued within the specified time period as may be extended by mutual agreement, the Claim shall be deemed to be rejected, whereupon the Contractor may proceed to Adjudication.
- .16 Upon receipt of a Decision, the matter shall be considered concluded, whereupon the Contractor may either accept the Decision or proceed to Adjudication. The Contractor shall provide its written response to the Owner within 10 Days of receipt of a Decision confirming either (a) that the Contractor accepts the Decision; or (b) that the Contractor disagrees with the Decision and intends to pursue Adjudication or other avenues of dispute resolution.

## **GC 3.15.02**

### **Adjudication**

- .01 Pursuant to Section 13.7 of the *Construction Act*, a Notice of Adjudication required to be given to the Owner shall be given to both the Owner and the Contract Administrator.
- .02 If either party gives a Notice of Adjudication to the other, then they shall have departed from the Claim Review Process and shall not be permitted to return to it in respect of the matter that is the subject of Adjudication. The Claim Review Process shall be deemed concluded in respect of any matter that is the subject of Adjudication.
- .03 The parties agree that for the purpose of section 13.5(1)(1.)(2.) and (7.) of the *Construction Act*, a dispute does not arise in respect of those matters and therefore a Notice of Adjudication shall not be given until:
  - a) a Decision has been issued on a Compensation Request; or
  - b) time to issue the Decision on a Compensation Request has expired.
- .04 If the Contractor initiated the Claim Review Process after receipt of a Compensation Request Decision, the parties agree that the Contractor shall not give a Notice of Adjudication until:
  - a) a Decision has been issued by the Owner in respect of a Claim; or
  - b) the time to issue the Decision in respect of a Claim has expired without a Decision being issued.
- .05 The parties agree that:
  - a) further to Section 13.5 of the *Construction Act*, the expiry of the Adjudication period shall be 90 days after Completion of the Contract.
  - b) Further to Section 13.11 of the *Construction Act*, the documents for Adjudication shall include the Compensation Request and the Compensation Request Decision, and, if applicable, the notice of Claim and the Claim Decision. However, if a Claim Decision includes an offer of settlement, the offer of settlement shall be excluded from the documents for Adjudication.
  - c) Further to Section 13.13 of the *Construction Act*, the deadline for the adjudicator's determination shall be extended by 20 days to permit the

party that is given Notice of Adjudication to submit respondent documents to the adjudicator within 20 Days of receiving the Notice of Adjudication.

- .04 Pursuant to Section 13.10 of the *Construction Act*, the Contractor shall pay the total Adjudication fees to the adjudicator when due, and the Owner shall reimburse the Contractor for one-half of those fees upon receipt of a Proper Invoice in accordance with the Contract provisions.

### **3.15.03 Further Avenues of Dispute Resolution**

- .01 If the parties fail in their efforts to resolve the Claim, then the parties agree that prior to resorting to litigation, they may explore further alternative dispute resolution methods that are acceptable to the Owner.

### **3.16 Archaeological Finds**

- .01 If the Contractor's operations expose any items that may indicate an archaeological find, such as building remains, hardware, accumulations of bones, pottery, or arrowheads, the Contractor shall immediately notify the Contract Administrator and suspend operations within the area identified by the Contract Administrator. Notification may be verbal provided that such notice is confirmed in writing within 2 Days. Work shall remain suspended within that area until otherwise directed by the Contract Administrator in writing, in accordance with clause GC 7.10, Suspension of Work.
- .02 Any delay in the completion of the Contract that is caused by such a suspension of Work shall be considered to be an event entitling the Contractor to request payment for the cost of such delays in accordance with clause GC 3.07.01.
- .03 Any Work directed or authorized in connection with an archaeological find shall be considered as Extra Work in accordance with clause GC 3.10.02, Extra Work.
- .04 The Contractor shall take all reasonable action to minimize additional costs that may accrue as a result of any work stoppage.

### **GC 3.17 Co-Ordination of Work**

- .01 To co-ordinate the Work and at no additional cost to the Owner, the Superintendent will attend regular meetings with the Contract Administrator and/or a representative during the period over which the work under the Agreement is carried out, at a time and place to be decided by the Contract Administrator. Following the pre-start or pre-construction meeting, formal meetings may be as often as every two weeks. Minutes from formal meetings will be taken and issued by the Contract Administrator or designate.
- .02 To assist the Owner in inspecting the progress of the Work, the Contractor shall prepare a GANTT Schedule of Work prior to starting the Contract for review at

the pre-start meeting and shall revise the schedule weekly for any changes throughout the Contract.

## **SECTION GC 4.0 - OWNER'S RESPONSIBILITIES AND RIGHTS**

### **GC 4.01 Working Area**

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

### **GC 4.02 Approvals and Permits**

- .01 The Contractor shall arrange, obtain and pay for all inspections, permits, licences and certificates required to complete the Work, other than those items identified in clause GC 4.02.02.
- .02 The Owner will arrange, obtain and pay for the following inspections, permits, licences and certificates, to the exclusion of all others:
- a) long term permits to take water and sewage works approvals required under sections 34 and 52 of the Ontario *Water Resource Act*, and,
  - b) air approvals for the constructed Work required under section 9 of the Ontario *Environmental Protection Act*.

### **GC 4.03 Management and Disposition of Materials**

- .01 The Owner shall identify in the Contract Documents the Materials to be moved within or removed from the Working Area and any characteristics of those Materials that necessitates special materials management and disposition.
- .02 In accordance with regulations under the OHSA, the Owner advises that,
- a) the designated substances silica, lead, and arsenic may be generally present throughout the Working Area occurring naturally or as a result of vehicle emissions;
  - b) the designated substance asbestos may be present in cement products, asphalt, and conduits for Utilities;
  - c) the following hazardous materials are ordinarily present in construction activities: limestone, gypsum, marble, mica, and Portland cement; and
  - d) exposure to these substances may occur as a result of activities by the Contractor such as sweeping, grinding, crushing, drilling, blasting, cutting, and abrasive blasting.
- .03 The Owner shall identify in the Contract Documents any designated substances or hazardous materials other than those identified above and their location in the Working Area.
- .04 If the Owner or Contractor discovers or is advised of the presence of designated

substances or hazardous materials that are in addition to those listed in clause GC 4.03.02, or not clearly identified in the Contract Documents according to clause GC 4.03.03, then verbal notice shall be provided to the other party immediately with written confirmation within 2 Days. The Contractor shall stop Work in the area immediately and shall determine the necessary steps required to complete the Work in accordance with applicable legislation and regulations.

- .05 The Owner shall be responsible for any reasonable additional costs of removing, managing and disposing of any Material not identified in the Contract Documents, or where conditions exist that could not have been reasonably foreseen at the time of tendering. All work under this paragraph shall be deemed to be Extra Work.
- .06 Prior to commencement of the Work, the Owner shall provide to the Contractor a list of those products controlled under the Workplace Hazardous Materials Information System (WHMIS), that the Owner may supply or use on the Contract, together with copies of the Materials Safety Data Sheets for these products. All containers used in the application of products controlled under WHMIS shall be labelled. The Owner shall notify the Contractor in writing of changes to the list and provide relevant Materials Safety Data Sheets.
- .07 Unless expressly permitted in the Contract Documents, the Contractor shall not bring onto the Working Area any designated substance or hazardous material under OHSA without the prior written consent of the Owner.
- .08 The Contractor shall use all reasonable care to avoid spilling or disturbing any designated substances or hazardous materials in, on or around the Working Area.

**GC 4.04 Construction Affecting Railway Property**

- .01 The Owner shall pay the costs of all flagging and other traffic control measures required and provided by the railway company unless such costs are primarily a function of the Contractor's chosen method of completing the Work.
- .02 Every precaution shall be taken by the Contractor to protect all railway property at track crossings; or otherwise, on which construction operations are to take place in accordance with the terms of this Contract.
- .03 The Contractor shall be required to conduct the construction operations in such a manner as to avoid a possibility of damaging any railway property in the vicinity of the Work. Every reasonable precaution shall be taken by the Contractor to ensure the safety of the workers, Subcontractors, and Equipment, as well as railway property throughout the duration of the Contract.

**GC 4.05 Default by the Contractor**

- .01 The Contractor shall be in default of the Contract if the Contractor,
  - a) fails to commence the Work at the time specified by the Owner or to execute the Work properly, diligently and in a timely manner, or otherwise

fails to comply with any of the requirements or obligations of the Contract to a substantial degree;

- b) stops the Work for any reason other than as required at law or as directed by the Contract Administrator; or
- c) fails to resume the Work after receiving notice to proceed.

.02 Despite anything to the contrary or otherwise in the Contract, the Contractor shall be in default and the Owner may, without prejudice to any of its other rights and remedies, forthwith on notice and without regard to clause GC 4.06, terminate the Contract if:

- a) the Contractor or anyone for whom the Contractor may be responsible at law or under the Contract, fails to comply with any of the Requirements of Law;
- b) without limiting the generality of subsection (a) immediately above, the Contractor violates or fails to comply with any of the provisions of the OHSA, or its responsibilities thereunder, or otherwise breaches or fails to comply with any of the provisions of the Contract relating to OHSA;
- c) the Contractor fails to comply with any of the insurance provisions and requirements in clause GC 6.03 (Contractor's Insurance);
- d) the Contractor or any Subcontractor breaches any of the provisions of the Contract relating to Conflict of Interest;
- e) the Contractor, prior to or after executing the Contract, makes a material misrepresentation or omission or provides materially inaccurate or misleading information to the Owner;
- f) is adjudged bankrupt or makes a general assignment for the benefit of creditors because of insolvency or if a receiver is appointed because of insolvency (provided such termination is permitted by law); or
- g) if the Contractor ceases for any reason to carry on business.

**GC 4.06 Contractor's Right to Correct a Default**

.01 The Contractor shall have the right within the 5 Working Days following the receipt of a notice of default to correct the default and provide the Owner with satisfactory proof that appropriate corrective measures have been taken.

.02 If the Owner determines that the correction of the default cannot be completed within the 5 Working Days following receipt of the notice, the Contractor shall not be in default if the Contractor,

- a) commences the correction of the default within the 5 Working Days following receipt of the notice;

- b) provides the Owner with a schedule acceptable to the Owner for the progress of such correction; and
- c) completes the correction in accordance with such schedule.

**GC 4.07 Owner's Right to Correct Default**

.01 If the Contractor fails to correct the default within the time specified in clause GC 4.06 (Contractor's Right to Correct a Default) or subsequently agreed upon, the Owner, without prejudice to any other right or remedy the Owner may have, may correct such default and deduct the cost thereof, as certified by the Contract Administrator, from any payment then or thereafter due to the Contractor.

**GC 4.08 Termination of Contractor's Right to Continue the Work**

.01 Where the Contractor fails to correct a default within the time specified in clause GC 4.06 (Contractor's Right to Correct a Default) or subsequently agreed upon, the Owner, without prejudice to any other right or remedy the Owner may have, may terminate the Contractor's right to continue the Work in whole or in part by giving written notice to the Contractor.

.02 If the Owner terminates the Contractor's right to continue with the Work in whole or in part, the Owner shall be entitled to,

- a) take possession of the Working Area or that portion of the Working Area devoted to that part of the Work terminated;
- b) use the Equipment of the Contractor and any Material within the Working Area that is intended to be incorporated into the Work, the whole subject to the right of third parties;
- c) withhold further payments to the Contractor with respect to the Work or the portion of the Work withdrawn from the Contractor until the Work or portion thereof withdrawn is completed;
- d) charge the Contractor the additional cost over the Contract price of completing the Work or portion thereof withdrawn from the Contractor, as certified by the Contract Administrator and any additional compensation paid to the Contract Administrator for such additional service arising from the correction of the default;
- e) charge the Contractor a reasonable allowance, as determined by the Contract Administrator, to cover correction to the Work performed by the Contractor that may be required under clause GC 7.16 (Warranty);
- f) charge the Contractor for any damages the Owner sustained as a result of the default; and
- g) charge the Contractor the amount by which the cost of corrections to the Work under clause GC 7.16 (Warranty) exceeds the allowance provided for such corrections.

**GC 4.09 Final Payment to Contractor**

- .01 If the Owner's cost to correct and complete the Work in whole or in part is less than the amount withheld from the Contractor under clause GC 4.08 (Termination of Contractor's Right to Continue the Work) the Owner shall pay the balance to the Contractor as soon as the final accounting for the Contract is complete.

**GC 4.10 Termination of the Contract**

- .01 Where the Contractor is in default of the Contract the Owner may, without prejudice to any other right or remedy the Owner may have, terminate the Contract by giving written notice of termination to the Contractor, the Surety, and/or any trustee or receiver acting on behalf of the Contractor's estate or creditors.
- .02 The Owner may terminate the Contract at any time for any reason determined by the Owner to be in its best interest without any liability of any kind save and except as set out below in this clause GC 4.10.02 upon delivering to the Contractor a written notice that the Contract is terminated. Upon receipt of such notice of termination, the Contractor shall immediately stop work and place no further subcontracts or orders for materials or services except as allowed by the Owner. The Contractor shall then, subject to specific instructions of the Owner, proceed to vacate the site as soon as possible and in any event within ten (10) days of receipt of such notice after cleaning up the site and removing all debris and fulfilling such conditions as the Owner may specify in writing. Further, the Contractor, after receipt of such notice shall forthwith minimize and mitigate any and all costs, liabilities, damages and expenses resulting from such termination. The Owner shall pay the Contractor for the Work duly performed to the effective date of termination and for every proven unavoidable direct loss or expense in connection therewith with respect to approved subcontracts, tools, materials, machinery, and equipment, including reasonable overhead and profit, and including reasonable costs and expenses for the above noted due and timely clean-up of the site, but to the exclusion of all other types of loss or damages.
- .03 If the Contract extends into a Fiscal Year subsequent to that of its execution, continuation of the Contract is conditional upon an appropriation of monies by the Legislature of Ontario sufficient to satisfy payments due under the Contract. In the event that such monies are not available as a result of both:
- a) non-appropriation by the Legislature for the Fiscal Year in which payment becomes due; and
  - b) the payment being neither charged nor chargeable to an appropriation of the Legislature of Ontario for a previous Fiscal Year,

then the Owner may then terminate the Contract without any liability of any kind upon giving notice to the Contractor. The Contractor shall then take the same



action as would have been taken had the Contract been terminated in accordance with clause GC 4.10.02. The Owner shall pay the Contractor for the Work duly performed to the effective date of termination and for reasonable proven costs and expenses for the due and timely clean-up of the site, but to the exclusion of all other types of loss or damages.

- .04 The Owner's express rights of termination in the Contract are in addition to and shall in no way limit any rights or remedies of the Owner under the Contract.
- .05 On any termination of the Contract, the Contractor shall, in addition to its other obligations under the Contract and at law:
  - a) provide the Owner with a report detailing the current state of the construction at the date of termination and any other information requested by the Owner pertaining to the Contractor's obligations and performance of the Contract;
  - b) execute such documentation as may be required by the Owner to give effect to the termination of the Contract; and
  - c) comply with any other instructions provided by the Owner, including but not limited to instructions for facilitating the transfer of its obligations to another party.
- .06 Upon termination, the Owner may: (1) provide the Contractor and the trustee or receiver with a complete accounting to the date of termination, and/or (2) require the Contractor to provide the Owner and the trustee or receiver with a complete accounting to the date of termination; in either or both cases, at no further cost to the Owner.

**GC 4.11 Continuation of Contractor's Obligations**

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

**GC 4.12 Use of Performance Bond**

- .01 If the Contractor is in default of the Contract and the Contractor has provided a Performance Bond, the provisions of Section GC 4.0 (Owner's Responsibilities and Rights) shall be exercised in accordance with the conditions of the Performance Bond.

**GC 4.13 Payment Adjustment**

- .01 If any situation should occur in the performance of the Work that would result in a Change in the Work, the Owner shall be entitled to an adjustment and those

adjustments shall be managed in accordance with clause GC 3.10.01 (Changes in the Work).

## **SECTION GC 5.0 - MATERIAL**

### **GC 5.01 Supply of Material**

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

### **GC 5.02 Quality of Material**

- .01 All Material supplied by the Contractor shall be new, unless otherwise specified in the Contract Documents.
- .02 Material supplied by the Contractor shall conform to the requirements of the Contract.
- .03 As specified in the Contract Documents or as requested by the Contract Administrator, the Contractor shall make available, for inspection or testing, a sample of any Material to be supplied by the Contractor.
- .04 The Contractor shall obtain for the Contract Administrator the right to enter onto the premises of the Material manufacturer or supplier to carry out such inspection, sampling, and testing as specified in the Contract Documents or as requested by the Contract Administrator.
- .05 The Contractor shall notify the Contract Administrator of the sources of supply sufficiently in advance of the Material shipping dates to enable the Contract Administrator to perform the required inspection, sampling, and testing.
- .06 The Owner shall not be responsible for any delays to the Contractor's operations where the Contractor fails to give sufficient advance notice to the Contract Administrator to enable the Contract Administrator to carry out the required inspection, sampling, and testing before the scheduled shipping date.
- .07 The Contractor shall not change the source of supply of any Material without the written authorization of the Contract Administrator.
- .08 Material that is not specified shall be of a quality best suited to the purpose required, and the use of such Material shall be subject to the approval of the Contract Administrator.
- .09 All Material inspection, sampling, and testing shall be carried out on random basis in accordance with the standard inspection or testing methods required for the Material. Any approval given by the Contract Administrator for the Materials to be used in the Work based upon the random method shall not relieve the Contractor from the responsibility of incorporating Material that conforms to the Contract Documents into the Work or properly performing the Contract and of any liability arising from the failure to properly perform as specified in the

Contract Documents.

**GC 5.03 Rejected Material**

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

**GC 5.04 Substitutions**

- .01 Where the Specifications require the Contractor to supply a Material, article or group of related articles, the Contractor may apply to the Contract Administrator to substitute as a “reviewed equivalent” any other Material, article or group of related articles that the Contractor believes is functionally equivalent to the Specification. The application shall be in writing and shall state the price for the proposed substitute and such other information as the Contract Administrator may require.
- .02 Substitutions shall not be made without the prior acceptance of the Contract Administrator. Acceptance or rejection of a proposed substitution will be made solely at the discretion of the Contract Administrator. The Contractor will be notified of the ruling by the Contract Administrator in writing. Acceptance of a proposed substitution is not an approval of the proposed substitution’s suitability, and the Contractor will be solely liable for any failure or costs arising from substitution.
- .03 If the proposed substitution is accepted by the Contract Administrator, the Contractor shall be entitled to the first \$1000 of the aggregate savings in cost by reason of such substitution and to 50% of any additional savings in cost in excess of \$1000, but less the costs for Contract Administrator’s and/or Owner’s review of the proposed substitution. If any adjustment to the Contract price is made by reason of such substitution, a Change Order shall be issued.

**GC 5.05 Owner Supplied Material**

**GC 5.05.01 Ordering of Excess Material**

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

**GC 5.05.02 Care of Material**

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

Owner.

## **SECTION GC 6.0 - INSURANCE, PROTECTION AND DAMAGE**

### **GC 6.01 Protection of Work, Persons and Property**

- .01 The Contractor, the Contractor's agents, and all workers employed by or under the control of the Contractor, including Subcontractors, shall protect the Work, persons, and property from damage or injury. The Contractor shall be responsible for all losses and damage that may arise as the result of the Contractor's operations under the Contract, unless indicated to the contrary below.
- .02 The Contractor is responsible for the full cost of any necessary temporary protective Work and the restoration of all damage where the Contractor damages the Work or property in the performance of the Contract. If the Contractor is not responsible for the damage that occurs to the Work or property, the Contractor shall restore such damage, and such Work and payment shall be administered according to these General Conditions.
- .03 The Contractor shall immediately inform the Contract Administrator of any damage and injuries to person or property that occur during the course of the Contract. The Contractor shall then investigate the cause of such incident and report back to the Contract Administrator within 15 Days of occurrence of incident, or as soon as possible. The Owner or the Contract Administrator may conduct its own investigation and the Contractor shall provide all assistance to the Owner and the Contract Administrator as may be necessary for that purpose.
- .04 The Contractor shall not be responsible for loss and damage that occurs as a result of,
  - a) war;
  - b) blockades and civil commotions;
  - c) errors in the Contract Documents; or
  - d) acts or omissions of the Owner, the Contract Administrator, their agents and employees, or others not under the control of the Contractor, but within the Working Area with the Owner's permission.
- .05 The Contractor and the Contractor's Surety shall not be released from any term or provision of any responsibility, obligation, or liability under the Contract or waive or impair any of the rights of the Owner, except by a release duly executed by the Owner.

### **GC 6.02 Indemnification**

- .01 The Contractor shall indemnify and hold harmless the Indemnified Parties, the Contract Administrator, its agents, officers, and employees from and against all

claims, demands, losses, expenses, costs, damages, actions, suits, or proceedings by third parties, hereinafter called "claims", directly or indirectly arising or alleged to arise out of the performance of or the failure to perform the Work, provided such claims are,

- a) attributable to bodily injury, sickness, disease, or death or to damage to or destruction of tangible property;
  - b) caused by any acts or omissions of the Contractor or anyone for whose acts the Contractor may be liable (whether negligent or otherwise); and
  - c) made in writing within a period of 6 years from the date of Substantial Performance of the Work as set out in the Certificate of Substantial Performance of the Work or, where so specified in the Contract Documents, from the date of certification of Final Acceptance.
- .02 The Contractor shall indemnify and hold harmless the Indemnified Parties from all and every claim for damages, royalties or fees for the infringement of any patented invention or copyright occasioned by the Contractor in connection with the Work performed or Material furnished by the Contractor under the Contract. This section is deemed to apply to all forms of intellectual property and is not limited to patent and copyright.
- .03 The Indemnified Parties expressly waive the right to indemnity for claims other than those stated in clauses GC 6.02.01 and GC 6.02.02.
- .04 Notwithstanding anything else in the Contract to the contrary, any express or implied reference to the Indemnified Parties providing an indemnity or any other form of indebtedness or contingent liability that would directly or indirectly increase the indebtedness or contingent liabilities of the Owner, whether at the time of execution of the Contract or at any time during the term of the Contract, shall be void and of no legal effect.

### **GC 6.03 Contractor's Insurance**

#### **GC 6.03.01 General**

- .01 Without restricting the generality of clause GC 6.02 (Indemnification) the Contractor shall provide, maintain, and pay for:
- a) the insurance coverage listed under clauses GC 6.03.02, GC 6.03.03 and GC 6.03.04;
  - b) to the extent applicable to the Project, the insurance coverage listed under clauses GC 6.03.05, GC 6.03.06 and GC 6.03.07; and
  - c) all other necessary and appropriate insurance that a prudent person in the business of the Contractor would maintain.

- .02 The Contractor shall provide the Owner with an original Certificate of Insurance for each type of insurance coverage that is required by the Contract Documents. The Contractor shall ensure that the Owner is, at all times in receipt of a valid Certificate of Insurance for each type of insurance coverage, in such amounts as specified in the Contract Documents. The Contractor will not be permitted to commence Work until the Owner is in receipt of such proof of insurance. The Contract Administrator may withhold payments of monies due to the Contractor until the Contractor has provided the Contract Administrator with original valid Certificates of Insurance as required by the provisions of the Contract Documents.
- .03 All insurance maintained by the Contractor under this clause GC 6.03 shall be with insurers having a secure A.M. Best rating of B + or greater, or the equivalent.

**GC 6.03.02 General Liability Insurance**

- .01 If the Project cost is less than \$5,000,000 then general liability insurance shall be required. This insurance will be in the name of the Contractor, with the Indemnified Parties and the Contract Administrator named as additional insureds, with limits of not less than five million dollars inclusive per occurrence for bodily injury, death, personal injury and damage to property including loss of use thereof, with a property damage deductible of not more than \$5,000. In any case, all deductibles are the sole responsibility of the Contractor. The form of this insurance shall be the Insurance Bureau of Canada Form IBC 2100. To achieve the desired limit, umbrella or excess liability insurance may be used. The insurance coverage shall include at least the following extensions on a broad form base where applicable:
- a) products and completed operations;
  - b) blanket contractual;
  - c) employers liability or WSIA as set out in clause GC 6.05;
  - d) cross liability/severability of interests;
  - e) non-owned automobile liability including blanket contractual coverage for hired automobiles; and
  - f) coverage for each of the following operations, when part of the Work: elevator and hoist liability, shoring, blasting, excavating, underpinning, demolition, pile driving and caisson work, work below ground surface, tunneling and grading.
- .02 If the estimated Project cost is \$5,000,000 or more, wrap-up general liability insurance shall be required, in the joint names of the Contractor, the Indemnified

Parties and the Contract Administrator, and any and all Subcontractors and subconsultants involved in the Work, with limits of not less than \$5,000,000 (five million) per occurrence for bodily injury, death, personal injury, property damage including loss of use thereof and with a property damage deductible not exceeding \$5,000. The insurance coverage shall include at least the following extensions on a broad form base where applicable:

- a) products and completed operations;
- b) blanket contractual;
- c) employers liability or WSIA as set out in clause GC 6.05;
- d) cross liability/severability of interests;
- e) non-owned automobile liability including blanket contractual coverage for hired automobiles; and
- f) coverage for each of the following operations, when part of the Work:  
elevator and hoist liability, shoring, blasting, excavating, underpinning, demolition, pile driving and caisson work, work below ground surface, tunneling and grading.

All wrap-up general liability coverage shall be maintained for the completed operations hazard for twenty-four (24) months, commencing on the date of Substantial Performance of the Work.

- .03 Another form of insurance equal to or better than that required in IBC Form 2100 may be used, provided all the requirements listed in the Contract are included. Approval of this insurance shall be conditional upon the Contractor obtaining the services of an insurer licensed to underwrite insurance in the Province of Ontario and obtaining the insurer's certificate of equivalency to the required insurance.
- .04 The Contractor shall maintain in force such policies of insurance specified by the Contract Documents at all times from the commencement of the Work until the later of the end of any Warranty Period or as otherwise required by the Contract Documents.
- .05 The Contractor shall submit annually to the Owner, proof of continuation of the completed operations coverage and, if the Contractor fails to do so, the limitation period for claiming indemnity described in clause GC 6.02.01 c), shall not be binding on the Owner.
- .06 Should the Contractor decide not to employ Subcontractors for operations requiring the use of explosives for blasting, pile driving or caisson work, removal or weakening of support of property building or land, IBC Form 2100 as required shall include the appropriate endorsements.



- .07 The policies shall be endorsed to provide the Owner with not less than 30 Days written notice in advance of cancellation, change or amendment restricting coverage.
- .08 "Claims Made" insurance policies shall not be permitted.

**GC 6.03.03 Environmental or Pollution Liability Insurance**

- .01 Where pollutants, contaminants, deleterious substances or dangerous goods (each as defined in applicable laws) are used or employed in the Work or Work is being carried out near an aquifer or water source, the Contractor shall maintain a contractor's pollution liability policy, for a limit of no less than five million dollars (\$5,000,000) on an occurrence or claims made basis providing third party bodily injury, property damage or defense and clean-up as a result of sudden or accidental or gradual pollution conditions arising from contracting operations performed by or on behalf of the Contractor. The Indemnified Parties shall be listed as additional insureds on such policy.

**GC 6.03.04 Automobile Liability Insurance**

- .01 The Contractor shall maintain automobile insurance as per statutory requirements in Ontario, including Ontario Automobile Policy (OAP1) Owner's Policy Sections 3 and 4, auto liability for a limit not less than \$2,000,000 (two million) per occurrence including Accident Benefits and where applicable Section 7, Loss or Damage Coverage.

**GC 6.03.05 Aircraft and Watercraft Liability Insurance**

- .01 If the Project is accessible only by air (or is or will be accessed by air), the Contractor shall maintain aircraft liability insurance with respect to owned or non-owned aircraft used directly or indirectly in the performance of the Work, including use of additional premises, which shall be subject to limits of not less than five million dollars inclusive per occurrence for bodily injury, death, and damage to property including loss of use thereof, and limits of not less than five million dollars for aircraft passenger hazard. Such insurance shall be in a form acceptable to the Owner. The policies shall be endorsed to provide the Owner with not less than 30 Days written notice in advance of cancellation, change, or amendment restricting coverage.
- .02 If the Project is accessible only by the water (or is or will be accessed by water), the Contractor shall maintain watercraft liability insurance with respect to owned or non-owned watercraft used directly or indirectly in the performance of the Work, including use of additional premises, shall be required and shall be subject to limits of not less than five million dollars inclusive per occurrence for bodily injury, death, and damage to property including loss of use thereof. Such

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

**GC 6.03.06 Builder's Risk and Boiler Insurance**

**GC 6.03.06.01 Builder's Risk and Boiler Insurance**

- .01 The Contractor shall maintain builder's risk insurance where the Work includes construction or reconstruction of any building, structure or other improvement or renovations or additions to any building, structure or other improvement, which policy shall be in the joint names of the Contractor, Owner and the Contract Administrator. Such policy shall insure not less than the sum of the amount of the Contract price and the full value, as may be stated in the Contract Documents, of Material that is specified to be provided by the Owner for incorporation into the Work, with a deductible not exceeding 1% of the amount insured at the site of the Work. This insurance shall be in a form acceptable to the Owner and shall be maintained continuously until 10 Days after the date of Final Acceptance of the Work, as set out in the Final Acceptance Certificate.
- .02 The Contractor shall maintain boiler (mechanical breakdown) insurance where the Work includes work with or on machinery, valves, gauges, measuring equipment, boilers or other pressure vessels, which policy shall be in the joint names of the Contractor, Owner, and the Contract Administrator. Such policy shall be for not less than the replacement value of the boilers, pressure vessels and machinery forming part of the Work, and shall be in a form acceptable to the Owner. This insurance shall be maintained continuously from commencement of use or operation of the property insured until 10 Days after the date of Final Acceptance of the Work, as set out in the Final Acceptance Certificate.

**GC 6.03.06.02 Use and Occupancy of Work Prior to Completion**

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

termination of coverage. The Owner may self-insure in lieu of providing, maintaining, and paying for property and boiler and machinery insurance.

- .02 The policies maintained under this clause GC 6.03.06 shall provide that, in the event of a loss or damage, payment shall be made to the Owner and the Contractor as their respective interests may appear. The Contractor shall act on behalf of both the Owner and the Contractor for the purpose of adjusting the amount of such loss or damage payment with the insurers. When the extent of the loss or damage is determined, the Contractor shall proceed to restore the Work. Loss or damage shall not affect the rights and obligations of either party under the Contract, except that the Contractor shall be entitled to such reasonable extension of Contract Time relative to the extent of the loss or damage as the Contract Administrator may decide in consultation with the Contractor.

**GC 6.03.06.03 Payment for Loss or Damage**

- .01 The Contractor shall be entitled to receive from the Owner, in addition to the amount due under the Contract, the amount at which the Owner's interest in restoration of the Work has been appraised, such amount to be paid as the restoration of the Work proceeds, and in accordance with the requirements of Section GC 8.0 (Measurement and Payment). In addition, the Contractor shall be entitled to receive from the payments made by the insurers the amount of the Contractor's interest in the restoration of the Work.
- .02 The Contractor shall be responsible for deductible amounts under the policies, except where such amounts may be excluded from the Contractor's responsibility by the terms of this Contract.
- .03 In the event of a loss or damage to the Work arising from the action or omission of the Owner or others, the Owner shall pay the Contractor the cost of restoring the Work as the restoration of the Work proceeds and in accordance with the requirements of Section GC 8.0 (Measurement and Payment).

**GC 6.03.07 Contractor's Equipment Insurance**

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

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

**GC 6.03.08 Insurance Requirements and Duration**

- .01 Unless specified otherwise, the duration of each insurance policy shall be from the date of commencement of the Work until 10 Days after the date of Final Acceptance of the Work, as set out in the Final Acceptance Certificate.
- .02 The Contractor shall provide the Owner, on a form acceptable to the Owner, proof of insurance prior to commencement of the Work and signed by an officer of the Contractor and either the underwriter or the broker.
- .03 The Contractor shall, on request, promptly provide the Owner with a certified true copy of each insurance policy exclusive of information pertaining to premium or premium bases used by the insurer to determine the cost of the insurance. The certified true copy shall include a signature by an officer of the Contractor and, in addition, a signature by an officer of the insurer or the underwriter or the broker.
- .04 Where a policy is renewed, the Contractor shall provide the Owner, on a form acceptable to the Owner, renewed proof of insurance immediately following completion of renewal.
- .05 Unless specified otherwise, the Contractor shall be responsible for the payment of deductible amounts under the policies.
- .06 If the Contractor fails to provide or maintain insurance as required in subsection GC 6.03, Contractor's Insurance, or elsewhere in the Contract Documents, then the Owner shall have the right to provide and maintain such insurance and give evidence thereof to the Contractor. The Owner's cost thereof shall be payable by the Contractor to the Owner on demand.
- .07 If the Contractor fails to pay the cost of the insurance placed by the Owner within 30 Days of the date on which the Owner made a formal demand for reimbursement of such costs, the Owner may deduct the costs thereof from monies which are due or may become due to the Contractor.

**GC 6.04 Bonding**

- .01 The Contractor shall provide the Owner with the Performance Securities as required and in the amounts required by the Contract Documents.
- .02 Such Performance Securities shall be issued by a duly licensed surety company authorized to transact a business of suretyship in the Province of Ontario and

shall be to the satisfaction of the Owner. The Performance Securities shall be maintained in good standing until Final Acceptance.

- .03 The Contractor acknowledges and agrees that the Owner shall be entitled, from time to time, to disclose information regarding the Contract (including the progress of the Work and any amendments to the Contract, including any Change Orders or Change Directives) to the surety company who issued the Performance Securities. The provision of such information by the Owner shall not relieve the Contractor of its obligation to maintain the Performance Securities in good standing until Final Acceptance.

**GC 6.05 Workplace Safety and Insurance Board**

- .01 The Contractor shall provide the Contract Administrator with a copy of a Certificate of Clearance indicating the Contractor's good standing with the Workplace Safety and Insurance Board, as follows:
- a) Immediately prior to the Contract Administrator authorizing the Contractor to commence Work;
  - b) Prior to issue of the Certificate of Substantial Performance;
  - c) Prior to expiration of the Warranty Period; and
  - d) At any other time when requested by the Contract Administrator.
- .02 The Contractor shall pay when due, and shall ensure that each of its subcontractors pays when due, all amounts required to be paid under the WSIA from time to time during the term of the Contract, failing which the Owner shall have the right, in addition to and not in substitution for any other right it may have pursuant to the Contract or otherwise at law or in equity, to pay to the Workplace Safety and Insurance Board any amount due pursuant to the WSIA and unpaid by the Contractor or its subcontractors and to deduct such amount from any amount due and owing from time to time to the Contractor under the Contract together with all costs incurred by the Owner in connection therewith.

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

**GC 7.01 General**

- .01 The Contractor warrants that the site of the Work has been visited during the preparation of the Bid and the character of the Work and all local conditions that may affect the performance of the Work are known.
- .02 The Contractor shall not commence the Work nor deliver anything to the Working Area until the Contractor has received a written order to commence the

Work, signed by the Contract Administrator. The Contractor shall commence the Work no later than 7 Days after receiving written notice from the Contract Administrator. Time is of the essence. For the purpose of determining the start of the Contract Time, the seventh Day following receipt of the written notice to commence Work will be considered the first Working Day of the Contract.

- .03 The Contractor shall have complete control of the Work and shall effectively direct and supervise the Work so as to ensure conformity with the Contract Documents. The Contractor shall be responsible for construction means, methods, techniques, sequences, and procedures and for coordinating the various parts of the Work.
- .04 The Contractor shall provide adequate labour, Equipment, and Material to ensure the completion of the Contract in accordance with the Contract Documents. The Work shall be performed as vigorously and as continuously as weather conditions or other interferences may permit.
- .05 The Contractor shall have the sole responsibility for the design, erection, operation, maintenance, and removal of temporary structures and other temporary facilities and the design and execution of construction methods required in their use.
- .06 Notwithstanding clause GC 7.01.05, where the Contract Documents include designs for temporary structures and other temporary facilities or specify a method of construction in whole or part, such facilities and methods shall be considered to be part of the design of the Work, and the Contractor shall not be held responsible for that part of the design or the specified method of construction. The Contractor shall, however, be responsible for the execution of such design or specified method of construction in the same manner that the Contractor is responsible for the execution of the Work. The Contractor shall also work in accordance with the Owner's additional requirements for workplace safety, whether provided by the Owner before or after execution of the Agreement.
- .07 The Contractor shall comply with all Requirements of Law applicable to the Work to be provided by, and the undertakings and obligations of, the Contractor under this Contract.
- .08 Without limiting the generality of clause GC 7.01.07, the Contractor shall execute the terms of the Contract in strict compliance with the requirements of the OHS Act and its regulations that may affect the performance of the Work, and shall be the "constructor" of the Project and "employer" each as defined by the OHS Act. Without limiting its obligations under OHS Act and its regulations, the Contractor shall ensure that:
  - a) worker safety is given first priority in planning, pricing, and performing the Work;
  - b) its officers and supervisory employees have a working knowledge of the duties of a "constructor" and "employer" as defined by the OHS Act, and a personal commitment to comply with them;

- c) a copy of the most current version of the OHSA are available at the Contractor's office within the Working Area, or, in the absence of an office, in the possession of the supervisor responsible for the performance of the Work;
  - d) workers employed to carry out the Work possess the knowledge, skills, and protective devices required by law or recommended for use by a recognized industry association to allow them to work in safety;
  - e) its supervisory employees are "competent persons" as defined in the OHSA, and carry out their duties in a diligent and responsible manner with due consideration for the health and safety of the workers;
  - f) all Subcontractors and their workers are properly protected from injury while they are at the Working Area; and
  - g) following execution of the Contract and prior to the issuance of the order to commence Work by the Owner, submit to the Contract Administrator a copy of the Notice of Project issued to the Ministry of Labour.
- .09 The Contractor, when requested, shall provide the Owner with a copy of its health and safety policy and program at the pre-start meeting and shall respond promptly to requests from the Owner for confirmation that its methods and procedures for carrying out the Work comply with OHSA and its regulations. The Contractor shall cooperate with representatives of the Owner and the inspectors appointed to enforce OHSA and its regulations in any investigations of worker health and safety in the performance of the Work. The Contractor shall indemnify and save the Owner harmless from any additional expense that the Owner may incur to have the Work performed as a result of the Contractor's failure to comply with the requirements of OHSA and its regulations.
- .10 Prior to commencement of the Work, the Contractor shall provide to the Contract Administrator a list of those products controlled under the Workplace Hazardous Materials Information System or WHMIS, which the Contractor expects to use on the Contract. Related Materials Safety Data Sheets shall accompany the submission. All containers used in the application of products controlled under WHMIS shall be labelled. The Contractor shall notify the Contractor Administrator in writing of changes in the products to be used and provide relevant Material Safety Data Sheets.
- .11 During the course of the Work, the Contractor shall furnish forthwith to the Contract Administrator a copy of all correspondence, reports, order or charges respecting occupational health and safety, including under the OHSA, the Technical Standards and Safety Act, 2000, and the Criminal Code, which are received by, or which come to the attention of the Contractor and that apply to are relevant to any of the Work or activities conducted under the Contract.
- .12 The Contractor shall have an authorized representative on the site while any Work is being performed, to supervise the Work and act for or on the Contractor's behalf. Prior to commencement of construction, the Contractor shall notify the Contract Administrator of the names; addresses; positions; and cell phone and

- telephone numbers of the Contractor's representatives who can be contacted at any time to deal with matters relating to the Contract, and update as necessary.
- .13 The Contractor shall designate a person to be responsible for traffic control and work zone safety. The designated person shall be a competent worker who is qualified because of knowledge, training, and experience to perform the duties; is familiar with Book 7 of the Ontario Traffic Manual; and has knowledge of all potential or actual danger to workers and motorists. Prior to the commencement of construction, the Contractor shall notify the Contract Administrator of the name; address; position; cell phone and telephone numbers of the designated person, and update as necessary. The designated person may have other responsibilities, including other construction sites, and need not be present in the Working Area at all times.
- .14 The Contractor shall, at no additional cost to the Owner, furnish all reasonable aid, facilities, and assistance required by the Contract Administrator for the proper inspection and examination of the Work or the taking of measurements for the purpose of payment.
- .15 The Contractor shall prepare and update, as required, a construction schedule of operations, indicating the proposed methods of construction and sequence of Work and the time the Contractor proposes to complete the various items of Work within the time specified in the Contract Documents. The schedule shall be submitted to the Contract Administrator within 14 Days from the Contract award. If the Contractor's schedule is materially affected by a Change in the Work, Extra Work or Additional Work, or if an extension to any Contract Time or interim milestones is approved by the Contract Administrator, the Contractor shall promptly submit an updated construction schedule to the Contract Administrator. This updated schedule shall show how the Contractor proposes to perform the balance of the Work, so as to complete the Work within the time specified in the Contract Documents.
- .16 Where the Contractor finds any error, inconsistency, or omission relating to the Contract, the Contractor shall promptly report it to the Contract Administrator and shall not proceed with the activity affected until receiving direction from the Contract Administrator.
- .17 The Contractor shall promptly notify the Contract Administrator in writing if the subsurface conditions observed in the Working Area differ materially from those indicated in the Contract Documents.
- .18 The Contractor shall be responsible for any damage done to underground utilities or service connections by the Contractor's forces during construction. The Contractor shall attend such meetings with the Contract Administrator and the Utility Authorities as may be required by the Contract Administrator to ensure coordination of activities among the Contractor and Utility Authorities for each utility affected by the Contract.

**GC 7.02                      Layout**

- .01 Prior to commencement of construction, the Contract Administrator and the



Contractor shall locate on site those property bars, baselines, and benchmarks that are necessary to delineate the Working Area and to lay out the Work, all as shown on the Contract Drawings.

- .02 The Contractor shall be responsible for the preservation of all property bars while the Work is in progress, except those property bars that must be removed to facilitate the Work. Any other property bars disturbed, damaged, or removed by the Contractor's operations shall be replaced under the supervision of an Ontario Land Surveyor, at the Contractor's expense.
- .03 At no extra cost to the Owner, the Contractor shall lay out the baseline and benchmarks and shall provide the Contract Administrator with such materials and devices as may be necessary to check the layout and for the inspection of the Work. The Contractor will give the Contract Administrator at least 48 hours' notice in writing before requiring the checking of any levels, lines, or stakes, in connection with the work. The Contractor shall clearly state in such notice the exact location where levels, lines, or stakes are required to be checked. The Contractor must satisfy itself before commencing work as to the meaning and correctness of all stakes and marks, and no claim will be entertained by the Owner for or on account of any alleged inaccuracies, unless the Contractor notified the Contract Administrator of such inaccuracies in writing before commencing the Work.
- .04 The Contractor shall provide qualified personnel to lay out and establish all lines and grades necessary for construction. The Contractor shall notify the Contract Administrator of any layout work carried out, so that the same may be checked by the Contract Administrator.
- .05 The Contractor shall install and maintain substantial alignment markers and secondary benchmarks as may be required for the proper execution of the Work. The Contractor shall supply one copy of all alignment and grade sheets to the Contract Administrator.
- .06 The Contractor shall assume full responsibility for alignment, elevations, and dimensions of each and all parts of the Work, regardless of whether the Contractor's layout work has been checked by the Contract Administrator.
- .07 All stakes, marks, and reference points shall be carefully preserved by the Contractor. In the case of their destruction or removal, such stakes, marks, and reference points shall be replaced at the Contractor's expense.
- .08 Benchmarks and survey monuments identified in the Contract Documents shall be protected by the Contractor. In the case of their destruction or removal, such benchmarks and survey monuments shall be replaced by the Owner at the Contractor's expense.

**GC 7.03 Working Area**

- .01 The Contractor's sheds, site offices, toilets, other temporary structures, and storage areas for Material and Equipment shall be grouped in a compact manner and maintained in a neat and orderly condition at all times.

- .02 The Contractor shall confine the construction operations to the Working Area. Should the Contractor require more space than that shown on the Contract Drawings, the Contractor shall obtain such space at no additional cost to the Owner.
- .03 The Contractor shall not enter upon or occupy any private property for any purpose, unless the Contractor has received prior written permission from the property owner.
- .04 The location of all temporary buildings used for construction purposes must be submitted to the Contract Administrator for approval before erection work commences.
- .05 Upon completion of the Contract, the Working Area used by the Contractor shall be restored to its original condition or better unless otherwise specified in the Contract Documents, including the removal of all excavated and stockpiled Materials, at the Contractor's expense.

**GC 7.04                      Damage by Vehicles or Other Equipment**

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

**GC 7.05                      Excess Loading of Motor Vehicles**

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

**GC 7.06                      Condition of the Working Area**

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

- .02 The Contractor shall ensure that during night work the site of the Work is adequately floodlit to the Contract Administrator's satisfaction for Work operations, inspections and advance warning to traffic.
- .03 Roads beyond the limits of the Work and other construction areas shall be kept clean. Dusty materials shall be transported in covered haulage vehicles. Wet materials shall be transported in suitable watertight haulage vehicles.
- .04 The Contractor shall take such steps as may be required to prevent dust nuisance resulting from its operations either within the limits of the Work or elsewhere or by public traffic where it is the Contractor's responsibility to maintain a roadway through the Work.
- .05 Where the Work requires the sawing of asphalt or the sawing or grinding of concrete, blades and grinders of the wet type shall be used together with sufficient water to prevent the incidence of dust, wherever dust would affect traffic or wherever dust would be a nuisance to residents of the area where the Work is being carried out.
- .06 The only permitted dust control treatment is the application of water; the use of calcium chloride, oil, or other treatments is prohibited.

**GC 7.07                      Maintaining Roads and Detours**

- .01 Unless otherwise specified in the Contract Documents, if an existing Roadway is affected by construction, it shall be kept open to both vehicular and pedestrian traffic.
- .02 Subject to the approval of the Contract Administrator, the Contractor shall, at no additional cost to the Owner, be responsible for providing and maintaining for the duration of the Work an alternative route for both pedestrian and vehicular traffic through the Working Area in accordance with the OTM, which may, if applicable, utilize the existing and/or detour routes.
- .03 Subject to the approval of the Contract Administrator, the Contractor may block traffic for short periods of time to facilitate construction of the Work in accordance with the OTM. Any temporary lane closures shall be kept to a minimum.
- .04 The Contractor shall not be required to maintain a road through the Working Area until such time as the Contractor has commenced operations or during seasonal shut down or on any part of the Contract that has been accepted in accordance with these General Conditions. The Contractor shall not be required to apply de-icing chemicals or abrasives or carry out snowplowing.
- .05 Where localized and separated sections of the Highway are affected by the Contractor's operations, the Contractor shall not be required to maintain intervening sections of the Highway until such times as these sections are located within the limits of the Highway affected by the Contractor's general operations under the Contract.

- .06 Where the Contract Documents provide for or the Contract Administrator requires detours at specific locations, payment for the construction of the detours and, if required, for the subsequent removal of the detours, shall be made at the Contract prices appropriate to such Work.
- .07 Compensation for all labour, Equipment, and Materials to do this Work shall be at the Contract prices appropriate to the Work and, where there are no such prices, at negotiated prices. Notwithstanding the foregoing, the cost of blading required to maintain the surface of such roads and detours shall be deemed to be included in the prices bid for the various tender items and no additional payment shall be made.
- .08 Where Work under the Contract is discontinued for any extended period, including seasonal shutdown, the Contractor shall, when directed by the Contract Administrator, open and place the Roadway and detours in a passable, safe, and satisfactory condition for public travel.
- .09 Where the Contractor constructs a detour that is not specifically provided for in the Contract Documents or required by the Contract Administrator, the construction of the detour and, if required, the subsequent removal shall be performed at the Contractor's expense. The detour shall be constructed and maintained to structural and geometric standards approved by the Contract Administrator. Removal and site restoration shall be performed as directed by the Contract Administrator.
- .10 Where, with the prior written approval of the Contract Administrator, the Highway is closed and the traffic diverted entirely off the Highway to any other Highway, the Contractor shall, at no extra cost to the Owner, supply, erect, and maintain traffic control devices in accordance with the OTM.
- .11 Compliance with the foregoing provisions shall in no way relieve the Contractor of its obligations under clause GC 6.01 (Protection of Work, Persons, and Property) dealing with the Contractor's responsibility for damage claims, except for claims arising on sections of Highway within the Working Area that are being maintained by others.
- .12 The Contractor will plan for and ensure proper traffic control and safety, and will submit a sketch indicating its proposed method of barricades and/or signage for each site included in the Contract. This information shall be available for review and approval by the Contract Administrator at the Contract pre-construction meeting.

**GC 7.08                      Access to Properties Adjoining the Work and Interruption of Utility Services**

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

- .02 The Contractor shall provide at all times and at no extra cost to the Owner access to fire hydrants, water and gas valves, and all other Utilities located in the Working Area.
- .03 Where any interruptions in the supply of Utility services are required and are authorized by the Contract Administrator, the Contractor shall give the affected property owners notice in accordance with clause GC 7.12 (Notices by the Contractor) and shall arrange such interruptions so as to create a minimum of interference to those affected.

**GC 7.09 Approvals and Permits**

- .01 Except as specified in clause GC 4.02 (Approvals and Permits), the Contractor shall obtain and pay for any permits, licences, and certificates, which at the date of tender closing, are required for the performance of the Work.
- .02 The Contractor shall arrange for all necessary inspections required by the approvals and permits specified in clause GC 7.09.01.
- .03 The Contractor will notify, arrange inspections by and obtain approvals from, and co-operate with, all other organizations involved in or affected by the Work, such as telephone, light and power, gas, and railway companies, and government agencies.

**GC 7.10 Suspension of Work**

- .01 The Contractor shall, upon written notice from the Contract Administrator, discontinue or delay any or all of the Work and work shall not be resumed until the Contract Administrator so directs in writing. Delays, in these circumstances, shall be administered according to subsection GC 3.07, Delays.

**GC 7.11 Contractor's Right to Stop the Work or Terminate the Contract**

- .01 If the Owner is adjudged bankrupt or makes a general assignment for the benefit of creditors because of insolvency or if a receiver is appointed because of insolvency, the Contractor may, without prejudice to any other right or remedy the Contractor may have, by giving the Owner or receiver or trustee in bankruptcy written notice, terminate the Contract.
- .02 If the Work is stopped or otherwise delayed for a period of 30 Days or more under an order of a court or other public authority and provided that such order was not issued as the result of an act or fault of the Contractor or of anyone directly employed or engaged by the Contractor, the Contractor may, without prejudice to any other right or remedy the Contractor may have, by giving the Owner written notice, terminate the Contract.
- .03 The Contractor may notify the Owner in writing, with a copy to the Contract Administrator, that the Owner is in default of contractual obligations if,
  - a) the Owner fails to pay the Contractor, within 28 Days of the due dates identified in clause GC 8.02.03 (Certification and Payment) unless the Owner has delivered notice to the Contractor as required under clause

GC 8.02.03.01.05;

- b) the Owner fails to pay the Contractor, within 60 Days of an award in favour of the Contractor, by an arbitrator or court; or
  - c) the Owner fails to comply with the material requirements of the Contract.
- .04 The Contractor's written notice to the Owner shall advise that if the default is not corrected in the 7 Days immediately following receipt of the written notice, the Contractor may, without prejudice to any other right or remedy the Contractor may have, stop the Work or terminate the Contract.
- .05 If the Contractor terminates the Contract under the conditions set out in clause GC 7.11, the Contractor shall be entitled to be paid for all Work performed according to the Contract Documents and for any losses or damage as the Contractor may sustain as a result of the termination of the Contract.

**GC 7.12 Notices by the Contractor**

- .01 Before work is carried out that may affect the property or operations of any Ministry or agency of government or any person; company; partnership; or corporation, including a municipal corporation or any board or commission thereof, and in addition to such notices of the commencement of specified operations as are prescribed elsewhere in the Contract Documents, the Contractor shall give at least 48 hours advance written notice of the date of commencement of such work to the person, company, partnership, corporation, board, or commission so affected.
- .02 In the case of damage to or interference with any Utilities, pole lines, pipe lines, conduits, farm tiles, or other public or privately owned works or property, the Contractor shall immediately notify the Owner, Contract Administrator, and the owner of the works of the location and details of such damage or interference.

**GC 7.13 Obstructions**

- .01 Except as otherwise noted in these General Conditions, the Contractor assumes all the risks and responsibilities arising out of any obstruction encountered in the performance of the Work and any traffic conditions, including traffic conditions on any Highway or road giving access to the Working Area caused by such obstructions, and the Contractor shall not make any claim against the Owner for any loss, damage, or expense occasioned thereby.
- .02 Where the obstruction is a man-made object other than an Underground Utility, the Contractor shall not be required to assume the risks and responsibilities arising out of such obstruction, unless the presence and location of the obstruction has otherwise been made known to the Contractor or could have been determined by the visual site investigation made by the Contractor in accordance with these General Conditions.
- .03 During the course of the Contract, it is the Contractor's responsibility to consult with Utility companies or other appropriate authorities for further information in regard to the exact location of these Utilities, to exercise the necessary care in

construction operations, and to take such other precautions as are necessary to safeguard the Utilities from damage.

**GC 7.14 Limitations of Operations**

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

**GC 7.15 Cleaning Up Before Acceptance**

- .01 Upon attaining Substantial Performance of the Work, the Contractor shall remove surplus materials, tools, construction machinery and equipment not required for the performance of the remaining Work. The Contractor shall also remove all temporary works and debris other than that caused by the Owner or others and leave the Work and Working Area clean and suitable for occupancy by the Owner, unless otherwise specified.
- .02 The Work shall not be deemed to have reached Completion until the Contractor has removed surplus materials, tools, construction machinery, and equipment. The Contractor shall also have removed debris, other than that caused by the Owner, or others.

**GC 7.16 Warranty**

- .01 Unless otherwise specified in the Contract Documents for certain Materials or components of the Work, the Contractor shall be responsible for the proper performance of the Work only to the extent that the design and standards permit such performance.
- .02 Subject to the previous paragraph, and without regard to whether or not Final Acceptance has been achieved, the Contractor shall correct promptly, at no additional cost to the Owner, defects or deficiencies in the Work which appear:
  - a) prior to and during the period of 12 months from the date of the Completion Certificate; or
  - b) such longer periods as may be specified for certain Materials or some of the Work.

The Contract Administrator will promptly give the Contractor written notice of observed defects or deficiencies.

- .03 The Contractor shall correct or pay for damage resulting from corrections made under the requirements of clause GC 7.16.02.

**GC 7.17 Contractor's Workers**

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

**GC 7.18 Drainage**

- .01 During construction and until the Work is completed, the Contractor shall make all reasonable efforts to keep all portions of the Work properly and efficiently drained, to at least the same degree as that of the existing drainage conditions.
- .02 The Contractor will be responsible for all damage which may be caused through its failure to provide proper drainage facilities. The Contractor shall restore any existing drainage works which are disturbed as a result of its construction activities.

**GC 7.19 Certain Safety Measures**

- .01 Sheeting and Shoring

The Contractor shall install at its own expense all sheeting and shoring required to support trenches or to protect existing structures or works. The Contractor must obtain a Professional Engineer's certification that all shoring will meet Ministry of Labour safety requirements. Evidence of such certification shall be provided to the Contract Administrator.

- .02 Use of Explosives

When explosives are necessary for the execution of the Work, the Contractor shall exercise the utmost care and diligence not to endanger life or property. The Contractor shall comply with all Requirements of Law regarding the use of explosives (including OPSS 515 – Construction Specification for Rock Excavation for Pipelines and Associated Structures in Open Cut (Latest Revision) for Rock Blasting Procedures, available upon request). The Contractor will provide a copy of the Pre-blast survey to the Contract Administrator. **The Contractor shall be responsible for any and all losses and damages (including without limitation injuries and death) to persons and property arising in connection with the use of explosives.**

**GC 7.20 Environmental Protection**

- .01 Protection of Water Quality and Wetlands

If the Work or any part thereof is carried out in or about any wetland or body of water, including without limitation any stream, river or lake, the Contractor shall



undertake and maintain at its own expense and at all material times such measures (including those directed by the Contract Administrator or the Owner) as may be necessary to control and contain fill materials, soil erosion, sedimentation and other harmful wastes resulting from construction operations that could result in harm to or pollution of such wetlands or bodies of water.

.02 Forest Protection

When any part of the Work takes place within or adjacent to a forested area, the Contractor shall ensure that all reasonable precautions are taken to prevent forest fires.

.03 Incident Management and Compliance With Environmental and Natural Resource Legislation

.01 For the purpose of this provision, "Incident" means an event such as a spill, discharge, emission, release or escape of a material, pollutant, contaminant, deleterious substance or dangerous good as may be more particularly defined in applicable legislation.

.02 Without limiting the generality of the Contractor's obligation to comply with all of the Requirements of Law, the Contractor shall strictly comply with the following legislation regarding Incidents under the control of the Contractor or resulting from Contractor's operations:

- a) *Environmental Protection Act*, RSO 1990;
- b) *Fisheries Act*, RSC 1985;
- c) *Gasoline Handling Act*, RSO 1990;
- d) *Pesticides Act*, RSO 1990;
- e) *Ontario Water Resources Act*, RSO 1990; and
- f) *Transportation of Dangerous Goods Act*, RSC 1992

.03 The requirements set forth in clause GC 7.20.03.02 include but are not restricted to:

- a) immediate containment of the material, pollutant, contaminant, deleterious substance or dangerous good;
- b) immediate notification of the Incident to the proper authority; and
- c) clean-up and restoration of the environment to pre-Incident conditions.

.04 The Contractor shall inform the Contract Administrator and the Owner forthwith and in writing of:

- a) any Incident, when it occurs; and
  - b) any actions taken or intended to be taken by the Contractor regarding the Incident.
- .05 Spills or discharge of pollutants or contaminants under the control of the Contractor, and spills or discharges of pollutants or contaminants that are a result of the Contractor's operations that cause or are likely to cause adverse effects shall be reported forthwith to the Contract Administrator in writing. Such spills or discharges and their adverse effects shall be as defined in the *Environmental Protection Act*, R.S.O. 1990, Chapter E.19.
- .06 All spills or discharges of liquid, other than accumulated rainwater, from luminaires, internally illuminated signs, lamps and liquid type transformers, whether the equipment is under the control of the Contractor or the spill is a result of the Contractor's operations shall, unless otherwise indicated in the Contract, be assumed to contain PCB's and shall be reported forthwith to the Contract Administrator in writing.
- .07 The reporting required by this clause GC 7.20.03 will not relieve the Contractor of any legal or contractual responsibilities regarding such spills or discharges.

**GC 7.21 Conflict of Interest**

- .01 The Contractor shall:
- a) avoid any Conflict of Interest in the performance of its contractual obligations;
  - b) disclose to the Owner without delay any actual or potential Conflict of Interest that arises during the performance of its contractual obligations; and
  - c) comply with any requirements prescribed by the Owner to resolve any Conflict of Interest.
- .02 In addition to all other contractual rights or rights available at law or in equity, the Owner may terminate the Contract in accordance with GC 4.05.02 where:
- a) the Contractor fails to disclose any actual or potential Conflict of Interest;
  - b) the Contractor fails to comply with any requirements prescribed by the Owner to resolve a Conflict of Interest; or
  - c) the Contractor's Conflict of Interest cannot be resolved.
- .03 The Contractor shall not employ or hire any employees who are employed full time or part-time by the Owner; the hiring of Owner's employees will be

deemed to be a Conflict of Interest.

- .04 Clause GC 7.21 shall survive any termination or expiry of the Contract.

## **SECTION GC 8.0 - MEASUREMENT AND PAYMENT**

### **GC 8.01 Measurement**

#### **GC 8.01.01 Quantities**

- .01 The Contract Administrator shall make an Estimate once a month, in writing, of the quantity of Work performed. The first Estimate shall be the quantity of Work performed since the Contractor commenced the Contract to the Cut-Off Date, and every subsequent Estimate, except the final one, shall be of the quantity of Work performed since the preceding Estimate was made to the subsequent Cut-Off Date. The Contract Administrator shall provide the copy of each Estimate to the Owner and Contractor no later than five (5) days prior to the end of each month.
- .02 Such quantities for progress payments shall be construed and held to be approximate. The final quantities for the issuance of the Completion Payment Certificate shall be based on the measurement of Work completed.
- .03 Measurement of the quantities of the Work performed may be either by Actual Measurement or by Plan Quantity principles as indicated in the Contract. Adjustments to Plan Quantity measurements shall normally be made using Plan Quantity principles but may, where appropriate, be made using Actual Measurements. Those items identified on the Tender by the notation (P) in the unit column shall be paid according to the Plan Quantity. Items where the notation (P) does not occur shall be paid according to Actual Measurement or lump sum.
- .04 At the Contract Administrator's discretion, the Contractor will prepare a draft Estimate for the Contract Administrator's review, verification by checking measurements, discussion and agreement on Owner's set-off, and ultimate acceptance. The Contract Administrator shall provide each finalized Estimate to the Owner and the Contractor within 2 days after receipt of the draft Estimate.

#### **GC 8.01.02 Variations in Bid Quantities**

- .01 Where it appears that the quantity of Work to be done or Material to be supplied or both by the Contractor under a unit price Bid item may exceed or be less than the Bid quantity, the Contractor shall proceed to do the Work or supply the Material or both required to complete the Bid item and payment shall be made for the actual amount of Work done or Material supplied or both at the unit prices stated in the Bid except as provided below:
- a) In the case of a Major Item where the quantity of Work performed or Material supplied or both by the Contractor exceeds the tender quantity by more than 15%:

- i. either party to the Contract may make a written request to the other party to negotiate a revised unit price for that portion of the Work performed or Material supplied or both which exceeds 115% of the Bid quantity;
  - ii. the negotiation shall be carried out as soon as reasonably possible. Any revision of the unit price shall be based on the actual cost of doing the Work or supplying the Material or both under the Bid item plus a reasonable allowance for profit and applicable overhead.
- b) In the case of a Major Item where the quantity of Work performed or Material supplied or both by the Contractor is less than 85% of the Bid quantity:
- i. the Contractor may make a written request to negotiate for the portion of the actual overheads and fixed costs applicable to the amount of the underrun in excess of 15% of the Bid quantity;
  - ii. for purposes of the negotiation, the overheads and fixed costs applicable to the item are deemed to have been prorated uniformly over 100% of the Bid quantity for the item;
  - iii. overhead costs shall be confirmed by a statement certified by the Contractor's senior financial officer or auditor and may be audited by the Owner; and
  - iv. alternatively, where both parties agree, an allowance equal to 10% of the unit price on the amount of the underrun in excess of 15% of the Bid quantity shall be paid.
- c) Written requests for compensation must be delivered in the manner and within the timeframes set forth in GC 3.14 (Compensation Request).

**GC 8.02 Payment**

**GC 8.02.01 Price for Work**

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

**GC 8.02.02 Advance Payments for Material**

- .01 The Owner shall make advance payments for Material intended for incorporation in the Work upon the written request of the Contractor and according to the following terms and conditions:
  - a) The Contractor shall deliver the Material to a site approved by the Contract Administrator and the Contractor shall, in advance of receipt of the shipment

- of the Material, arrange for adequate and proper storage facilities.
- b) The value of aggregates, processed and stockpiled, shall be assessed by the following procedure:
    - i. Sources Other Than Commercial
      - (1) Granular A, B, BI, BII, BIII, M, and O shall be assessed at the rate of 60% of the Contract price.
      - (2) Coarse and fine aggregates for hot mix asphaltic concrete, surface treatment and Portland cement concrete shall be assessed at the rate of 25% of the Contract price for each aggregate stockpiled.
    - ii. Commercial Sources

Payment for separated coarse and fine aggregates shall be considered at the above rate when such materials are stockpiled at a commercial source where further processing is to be carried out before incorporating such materials into a final product. Advance payments for other materials located at a commercial source shall not be made.
  - c) Payment for all other materials, unless otherwise specified elsewhere in the Contract Documents, shall be based on the invoice price, and the Contractor shall submit proof of cost to the Contract Administrator before payment can be made by the Owner.
  - d) The payment for all Materials shall be prorated against the appropriate Bid item by paying for sufficient units of the item to cover the value of the Material. Such payment shall not exceed 80% of the Contract price for the item.
  - e) All Materials for which the Contractor wishes to receive advance payment shall be placed in the designated storage location immediately upon receipt of the Material and shall thenceforth be held by the Contractor in trust for the Owner as collateral security for any monies advanced by the Owner and for the due completion of the Work. The Contractor shall not exercise any act of ownership inconsistent with such security, or remove any Material from the storage locations, except for inclusion in the Work, without the consent, in writing, of the Contract Administrator.
  - f) Such materials shall remain at the risk of the Contractor who shall be responsible for any loss, damage, theft, improper use, or destruction of the Material however caused.
- .02 Where the Owner makes advance payments subject to the conditions listed in paragraph GC 8.02.02.01, such payment shall not constitute acceptance of the Material by the Owner. Acceptance shall only be determined when the Material meets the requirements of the appropriate specification.

**GC 8.02.03 Certification and Payment**

**GC 8.02.03.01 Monthly Progress Payment**

- .01 The Contractor shall deliver a Proper Invoice to the Owner on a monthly basis

by no later than the 5<sup>th</sup> Day of each month, in respect of the work done in the preceding month to the agreed to monthly Cut-Off Date. For clarity, none of the time periods set forth in this Section 8.02.03.01 shall commence until the invoice delivered by the Contractor is in form and substance a Proper Invoice within the meaning of the *Construction Act*.

- .02 Upon receipt of the Proper Invoice, the value of the Work performed and Material supplied shall be verified by the Contract Administrator in accordance with the Contract Documents and clause GC 8.01.01 (Quantities).
- .02 The Contract Administrator shall produce a progress payment certificate within five (5) Days of receipt of the Proper Invoice, which certificate shall show,
  - a) the quantities of Work performed;
  - b) the value of Work performed;
  - c) any advanced payment for Material;
  - d) the amount of Statutory Holdback, liens, Owner's set-off;
  - e) the amount of any applicable taxes; and
  - f) the amount due to the Contractor.
- .03 One copy of the progress payment certificate shall be sent to each of the Owner and the Contractor.
- .04 Subject to clauses GC 8.02.03.01.05 and .06 below, the Owner will process payment within 28 days after receipt of the Proper Invoice.
- .05 Notwithstanding clause GC 8.02.03.01.04, the Owner may dispute the Proper Invoice and refuse to pay all or any portion of the amount payable under the Proper Invoice, provided that it delivers to the Contractor notice of such dispute and non-payment within 14 days after receipt of the Proper Invoice from the Contractor, in the prescribed form and manner under the *Construction Act*, specifying the amount of the Proper Invoice that is not being paid and detailing all of the reasons for non-payment.
- .06 The Owner shall retain the required Statutory Holdback(s) from funds owing under the Contract.

**GC 8.02.03.02 Certification of Subcontract Completion**

- .01 Before the Work has reached the stage of Substantial Performance, the Contractor may notify the Contract Administrator in writing that a subcontract is completed satisfactorily and ask that the Contract Administrator certify the completion of such subcontract.
- .02 The Contract Administrator shall issue a Certificate of Subcontract Completion, if the subcontract has been completed satisfactorily to the Contract Administrator, and all required inspection and testing of the works covered by the subcontract have been carried out and the results are satisfactory to the

Contract Administrator.

- .03 The Contract Administrator shall set out in the Certificate of Subcontract Completion the date on which the subcontract was completed and, within 7 Days of the date the subcontract is certified complete, the Contract Administrator shall give a copy of the certificate to the Contractor and to the Subcontractor concerned.

**GC 8.02.03.03 Subcontract Statutory Holdback Release Certificate and Payment**

- .01 Following receipt of the Certificate of Subcontract Completion, the Owner shall release and pay the Contractor the Statutory Holdback retained in respect of the subcontract. Such release shall be made following the expiry of the statutory lien period prescribed by the *Construction Act* and providing the Contractor submits the following to the Contract Administrator:
- a) a document satisfactory to the Contract Administrator that shall release the Owner from all further claims relating to the subcontract;
  - b) evidence satisfactory to the Contract Administrator that the Subcontractor has discharged all liabilities incurred in carrying out the subcontract;
  - c) confirmation that the subcontract is not the matter of a dispute proceeding through Adjudication;
  - d) a satisfactory clearance certificate or letter from the Workplace Safety and Insurance Board relating to the subcontract; and
  - e) a copy of the contract between the Contractor and the Subcontractor and a satisfactory statement showing the total amount due the Subcontractor from the Contractor.
- .02 Clause GC 8.02.03.03.01 d), shall only apply to Lump Sum Items and then only when the Contract Administrator specifically requests it.
- .03 Upon receipt of the Statutory Holdback, the Contractor shall forthwith give the Subcontractor the payment due under the subcontract.
- .04 Release of Statutory Holdback by the Owner in respect of a subcontract shall not relieve the Contractor, or the Contractor's Surety, of any of their responsibilities.

**GC 8.02.03.04 Certification of Substantial Performance**

- .01 Upon application by the Contractor and when the Contract Administrator has verified that the Contract has been substantially performed, the Contract Administrator shall issue a Certificate of Substantial Performance.
- .02 Upon verifying that the Contract has been substantially performed, the Contract Administrator shall issue a certificate of Substantial Performance and shall set out in the Certificate of Substantial Performance the date on which the Contract

was substantially performed and, within 7 Days after signing the said certificate, the Contract Administrator shall provide a copy to the Contractor.

- .03 Upon receipt of a copy of the Certificate of Substantial Performance, the Contractor shall forthwith, as required by Section 32(1) Paragraph 5 of the *Construction Act*, publish a copy of the certificate in the manner set out in the regulations to the *Construction Act*.
- .04 Where the Contractor fails to publish a copy of the Certificate of Substantial Performance as required above within 7 Days after receiving a copy of the certificate signed by the Contract Administrator, the Owner may publish a copy of the certificate at the Contractor's expense.
- .05 Except as otherwise provided for in Section 31 of the *Construction Act*, the statutory lien period prior to the release of Statutory Holdbacks as referred to in clause GC 8.02.03.05 (Substantial Performance Statutory Holdback Release Payment Certificate), shall commence from the date of publication of the Certificate of Substantial Performance as provided for above.

**GC 8.02.03.05 Substantial Performance Statutory Holdback Release Payment Certificate**

- .01 When the Contract Administrator issues the Certificate of Substantial Performance, the Contract Administrator shall also issue the Substantial Performance Statutory Holdback Release Payment Certificate. The Substantial Performance Statutory Holdback Release Payment Certificate shall be a payment certificate releasing to the Contractor the Statutory Holdbacks due in respect of Work performed up to the date of Substantial Performance.
- .02 The Substantial Performance Statutory Holdback Release Payment Certificate will not be issued before the Contractor provides the updated GANTT Schedule for Completion of the Work to the Contract Administrator.
- .03 Provided that no notice of lien has been received, payment of such Statutory Holdback shall be due on the day following the later of:
  - a) the expiry of the statutory lien periods prescribed by Sections 31 and 34(10) of the *Construction Act*; and
  - b) receipt of the following:
    - i. a release by the Contractor in a form satisfactory to the Contract Administrator releasing the Owner from all further claims relating to the Contract, qualified by stated exceptions such as outstanding work or matters arising out of GC 3.14 (Compensation Request) or GC 3.15 (Dispute Resolution);
    - ii. a statutory declaration in a form satisfactory to the Contract Administrator that all liabilities incurred by the Contractor and the Contractor's Subcontractors in carrying out the Contract have



been discharged, except for Statutory Holdbacks properly retained;

- iii. a satisfactory Certificate of Clearance from the Workplace Safety and Insurance Board; and
- iv. proof of publication of the Certificate of Substantial Performance.

**GC 8.02.03.06 Certification of Completion**

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

**GC 8.02.03.07 Completion Statutory Holdback Release Payment Certificates**

- .01 When the Contract Administrator issues the Completion Certificate, the Contract Administrator shall also issue the Completion Statutory Holdback Release Payment Certificate. The Completion Statutory Holdback Release Payment Certificate shall be a payment certificate releasing to the Contractor the further Statutory Holdback.
- .02 Payment of such Statutory Holdback shall be due on the Day immediately following the later of:
  - a) the expiry of the statutory lien periods prescribed by the provisions of Sections 31 and 34(10) of the *Construction*; and
  - b) receipt of the following documents:
    - (i) a release by the Contractor in a form satisfactory to the Contract Administrator releasing the Owner from all further claims relating to the Contract, qualified by stated exceptions such as outstanding work or matters arising out of GC 3.14 (Compensation Request) or GC 3.15 (Dispute Resolution);
    - (ii) a statutory declaration in a form satisfactory to the Contract Administrator that all liabilities incurred by the Contractor and the Contractor's Subcontractors in carrying out the Contract have been discharged, qualified by stated exceptions where appropriate; and
    - (iii) a satisfactory Certificate of Clearance from the Workplace Safety and Insurance Board.

**GC 8.02.03.08 Interest**

- .01 Interest due the Contractor is based on simple interest and is calculated using the applicable Rate of Interest.

**GC 8.02.03.09 Interest for Late Payment**

- .01 The Contractor shall be entitled to receive interest on late payments by the Owner in accordance with Section 6.9 of the *Construction Act*.

**GC 8.02.03.10 Interest for Claims**

- .01 Except as hereinafter provided, where a notice of Claim is submitted in accordance with the time limits or procedure or both described by subsection GC 3.15.01 (Claim Review Process), the Owner shall pay the Contractor the Rate of Interest on the amount of the allowed price for that part of the Work or on the amount of the settled claim. Such interest shall not commence until 30 Days after the satisfactory completion of that part of the Work.
- .02 Where the Contractor does not attempt to resolve the Claim in an expeditious manner, interest shall be negotiable.

**GC 8.02.03.11 Owner's Set-Off**

- .01 Pursuant to Sections 12 and 17(3) of the *Construction Act*, the Owner may retain from monies owing to the Contractor under this Contract an amount sufficient to cover any outstanding or disputed liabilities, including the cost to remedy deficiencies, the reduction in value of substandard portions of the Work, claims for damages by third parties that have not been determined in writing by the Contractor's insurer, undetermined claims by the Owner under clause GC 8.01.02.01 a), any assessment due the Workplace Safety and Insurance Board, and any monies to be paid to the workers in accordance with clause GC 8.02.06 (Payment of Workers).
- .02 Under these circumstances the Owner will give the Contractor appropriate notice of such action.

**GC 8.02.03.12 Delay in Payment**

- .01 The Owner shall not be deemed to be in default of the Contract if any delay in payment does not exceed 60 days from the due dates defined in GC 8.02.03.09.01. Even if the delay exceeds 60 days, the Owner shall not be deemed to be in default if it makes interest payments as they become due in respect of any delayed payment.

**GC 8.02.04 Payment on a Time and Material Basis**

**GC 8.02.04.01 Definitions**

- .01 For the purpose of clause GC 8.02.04 the following definitions apply:

**Cost of Labour** means the amount of wages, salary, travel, travel time, food, lodging, or similar items and Payroll Burden paid or incurred directly by the Contractor to or in respect of labour and supervision actively and necessarily

engaged on the Work based on the recorded time and hourly rates of pay for such labour and supervision but shall not include any payment or costs incurred for general supervision, administration, and management time spent on the entire Work or any wages, salary, or Payroll Burden for which the Contractor is compensated by any payment made by the Owner for Equipment.

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

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

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

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

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

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

**Standby Time** means any period of time that is not considered Working Time and which together with the Working Time does not exceed 10 hours in any one Working Day and during which time a unit of equipment cannot practically be used on other work but must remain on the site in order to continue with its assigned task and during which time the unit is in fully operable condition.

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

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

**Work on a Time and Material Basis** means Changes in the Work, Extra Work, and Additional Work approved by the Contract Administrator for payment on a Time and Material basis. The Work on a Time and Material Basis shall be subject to all the terms, conditions, Standard Specifications and provisions of the Contract.

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

**GC 8.02.04.02 Daily Work Records**

- .01 Daily Work Records, prepared as the case may be by either the Contractor's representative or the Contract Administrator reporting the labour and Equipment employed and the Material used on each Time and Material project, should be reconciled and signed each Day by both the Contractor's representative and the Contract Administrator. If it is not possible to reconcile the Daily Work Records, then the Contractor shall submit the un-reconciled Daily Work Records with its claim, whereby the resolution of the dispute about the Daily Work Records shall not be resolved until there is a resolution of the claim.

**GC 8.02.04.03 Payment for Work**

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

**GC 8.02.04.04 Payment for Labour**

- .01 The Owner shall pay the Contractor for labour employed on each Time and Material project at 135% of the Cost of Labour up to \$3,000, then at 120% of any portion of the Cost of Labour in excess of \$3,000.
- .02 The Owner shall make payment in respect of Payroll Burden for Work on a Time

and Material Basis at the Contractor's actual cost of Payroll Burden.

- .03 At the Owner's discretion, an audit may be conducted in which case the actual Payroll Burden so determined shall be applied to all Time and Material work on the Contract.

**GC 8.02.04.05 Payment for Material**

- .01 The Owner shall pay the Contractor for Material used on each Time and Material project at 120% of the Cost of the Material up to \$3,000, then at 115% of any portion of the Cost of Material in excess of \$3,000.

**GC 8.02.04.06 Payment for Equipment**

**GC 8.02.04.06.01 Working Time**

- .01 The Owner shall pay the Contractor for the Working Time of all Equipment, other than Rented Equipment and Operated Rented Equipment, used on the Work on a Time and Material basis at The 127 Rates with a cost adjustment as follows:
- a) Cost \$10,000 or less - no adjustment;
  - b) Cost greater than \$10,000 but not exceeding \$20,000 - payment \$10,000 plus 90% of the portion in excess of \$10,000; and
  - c) Cost greater than \$ 20,000 - \$19,000 plus 80% of the portion in excess of \$20,000.
- .02 The Owner shall pay the Contractor for the Working Time of Rented Equipment used on the Work on a Time and Material Basis at 110% of the invoice price approved by the Contract Administrator up to a maximum of 110% of The 127 Rate. This constraint shall be waived when the Contract Administrator approves the invoice price prior to the use of the Rented Equipment.
- .03 The Owner shall pay the Contractor for the Working Time of Operated Rented Equipment used on the Work on a Time and Material Basis at 110% of the Operated Rented Equipment invoice price approved by the Contract Administrator prior to the use of the Equipment on the Work on a Time and Material Basis.

**GC 8.02.04.06.02 Standby Time**

- .01 The Owner shall pay the Contractor for Standby Time of Equipment at 35% of The 127 Rate or 35% of the invoice price whichever is appropriate. The Owner shall pay reasonable costs for Rented Equipment where this is necessarily retained in the Working Area for extended periods agreed to by the Contract Administrator. This shall include Rented Equipment intended for use on other work, but has been idled due to the circumstances giving rise to the Work on a Time and Material Basis.
- .02 In addition, the Owner shall include the Cost of Labour of operators or associated labourers who cannot be otherwise employed during the standby period or during the period of idleness caused by the circumstances giving rise to the Work on a Time and Material Basis.

- .03 The Contract Administrator may require Rented Equipment idled by the circumstances giving rise to the Work on Time and Material Basis to be returned to the lessor until the work requiring the equipment can be resumed. The Owner shall pay such costs as a result from such return.
- .04 When Equipment is transported, solely for the purpose of the Work on a Time and Material Basis, to or from the Working Area on a Time and Material basis, payment shall be made by the Owner only in respect of the transporting units. When Equipment is moved under its own power it shall be deemed to be working. The method of moving Equipment and the rates shall be subject to the approval of the Contract Administrator.

**GC 8.02.04.07 Payment for Hand Tools**

- .01 Notwithstanding any other provision of this Section, no payment shall be made to the Contractor for or in respect of Hand Tools or equipment that are tools of the trade.

**GC 8.02.04.08 Payment for Work By Subcontractors**

- .01 Where the Contractor arranges for Work on a Time and Material Basis, or a part of it, to be performed by Subcontractors on a Time and Material basis and has received approval prior to the commencement of such work, in accordance with the requirements of clause GC 3.09 (Subcontracting by the Contractor), the Owner shall pay the cost of Work on a Time and Material Basis by the Subcontractor calculated as if the Contractor had done the Work on a Time and Material Basis, plus a markup calculated on the following basis:
  - a) 20% of the first \$3,000; plus
  - b) 15% of the amount from \$3,000 to \$10,000; plus
  - c) 5% of the amount in excess of \$10,000.
- .02 No further markup shall be applied regardless of the extent to which the work is assigned or sublet to others. If work is assigned or sublet to an associate, as defined by the *Securities Act*, no markup whatsoever shall be applied.

**GC 8.02.04.09 Submission of Invoices**

- .01 At the start of the Work on a Time and Material Basis, the Contractor shall provide the applicable labour and Equipment rates not already submitted to the Contract Administrator during the course of such Work.
- .02 Separate summaries shall be completed by the Contractor according to the standard form "Summary for Payment of Accounts on a Time and Material Basis." Each summary shall include the Change Directive or Change Order number and covering dates of the Work and shall itemize separately the labour, Materials, and Equipment. Invoices for Materials, Rented Equipment, and other charges incurred by the Contractor on the Work on a Time and Material Basis shall be included with each summary.
- .03 Each month the Contract Administrator shall include with the monthly progress

payment certificate, the costs of the Work on a Time and Material Basis incurred during the preceding month all in accordance with the contract administrative procedures and the Contractor's invoice of the Work on a Time and Material Basis.

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

**GC 8.02.04.10 Payment Other Than on a Time and Material Basis**

- .01 Clause GC 8.02.04 does not preclude the option of the Contract Administrator and the Contractor negotiating a Lump Sum Item or unit price payment for Change in the Work, Extra Work, and Additional Work.

**GC 8.02.04.11 Payment Inclusions**

- .01 Except where there is agreement in writing to the contrary, the compensation, as herein provided, shall be accepted by the Contractor as compensation in full for profit and all costs and expenses arising out of the Work, including all cost of general supervision, administration, and management time spent on the Work, and no other payment or allowance shall be made in respect of such Work.

**GC 8.02.05 Final Acceptance Certificate**

- .01 After Final Acceptance or, where applicable, after the Warranty Period has expired, the Contract Administrator shall issue the Final Acceptance Certificate. The Final Acceptance Certificate shall not be issued until all known deficiencies have been adjusted or corrected, as the case may be, and the Contractor has discharged all obligations under the Contract.

**GC 8.02.06 Payment of Workers**

- .01 The Contractor shall, in addition to any fringe benefits, pay the workers employed on the Work in accordance with the labour conditions set out in the Contract and at intervals of not less than twice a month.
- .02 The Contractor shall require each Subcontractor doing any part of the Work to pay the workers employed by the Subcontractor on the Work in accordance with clause GC 8.02.06.01.
- .03 Where any person employed by the Contractor or any Subcontractor or other person on the Work is paid less than the amount required to be paid under the Contract, the Owner may set off monies in accordance with clause GC 8.02.03.11 (Owner's Set-Off).

**GC 8.02.07 Records**

- .01 The Contractor shall maintain and keep accurate Records relating to the Work, Changes in the Work, Extra Work, and Additional Work, and claims arising therefrom. Such Records shall be of sufficient detail to support the total cost of

the Work, Changes in the Work, Extra Work and Additional Work, and claims arising therefrom. The Contractor shall preserve all such original Records until 12 months after the Final Acceptance Certificate is issued or until all claims have been settled, whichever is longer. The Contractor shall require that Subcontractors employed by the Contractor preserve all original Records pertaining to the Work, Changes in the Work, Extra Work, Additional Work, and claims arising therefrom for a similar period of time.

- .02 The Owner may inspect and audit the Contractor's Records relating to the Work, Changes in the Work, Extra Work and Additional Work at any time during the period of the Contract. The Contractor shall supply certified copies of any part of its Records required, whenever requested by the Owner.

**GC 8.02.08 Taxes**

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

**GC 8.02.09 Liquidated Damages**

- .01 If the Contractor fails to substantially complete the Work within the Contract Time, then the Owner will sustain damages, particularly in respect of lost revenue, lost profits on operations, ongoing administrative costs, goodwill, inconvenience to the public on whose behalf the Owner ultimately acts, and other intangibles.



- .02 Subject to GC 8.02.09.04, the Contractor will pay to the Owner as liquidated damages the sum of **One Thousand Dollars (\$1,000.00)** for each and every calendar day or part thereof by which substantial completion of the Work is delayed, up to a maximum of sixty (60) days, provided that the total amount of liquidated damages shall not exceed thirty (30) percent of the Contract price. The Contractor acknowledges and agrees that this amount is a fair, reasonable, and genuine pre-estimate of actual damage to the Owner which will accrue during the period in excess of the Contract Time, and is not a penalty.
- .03 The Owner shall have the right to holdback, drawback, deduct and set off from and against the amounts of any monies owing at any time by the Owner to the Contractor, any liquidated damages owing and unpaid under this GC 8.02.09. The liquidated damages payable under this GC 8.02.09 are in addition to and without prejudice to any other remedy, action or other alternatives that may be available to the Owner, and the Owner shall be deemed not to have waived its right to seek compensation for other damages suffered or any other remedy in respect of Contractor's default, including payment in respect of damages suffered, to the extent calculable.
- .04 Notwithstanding GC 8.02.09.02, the Contractor shall not be liable for liquidated damages to the extent a delay is caused by acts of God, or of the public enemy, the Owner, the Contract Administrator, or of any foreign state, or delays of sub-contractors due to these causes. If the Contractor is delayed by reason of alterations or changes made under Section GC 3.10 of the General Conditions, the Contract Time shall be extended as determined by, and in the sole discretion of, the Contract Administrator.

#### **GC 8.02.10 Contract Time**

- .01 Time shall be of the essence of this Contract.

**Schedule 8 - Copies of Performance Securities**

**[To be inserted]**