

ONTARIO PROVINCIAL STANDARDS
GENERAL CONDITIONS OF CONTRACT
SUPPLEMENTARY GENERAL CONDITIONS

1. GENERAL CONDITIONS OF THE CONTRACT

- (a) For the purpose of this Contract, the Ontario Provincial Standards, General Conditions of Contract (November 2019 issue) shall be amended as set out herein.
- (b) Where any article, paragraph or subparagraph in the Ontario Provincial Standards, General Conditions of Contract (November 2019 issue) is supplemented by one of the following paragraphs, the provisions of such article, paragraph, or subparagraph shall remain in effect and the supplemental provisions shall be considered as added thereto.
- (c) Where any article, paragraph or subparagraph in the Ontario Provincial Standards, General Conditions of Contract (November 2019 issue) is amended, voided or superseded by any of the following paragraphs, the provisions of such article, paragraph or subparagraph not so amended, voided or superseded shall remain in effect.

SECTION GC 1.0 - INTERPRETATION

1. GC 1.04 DEFINITIONS

The following definitions are amended:

- (a) **Contract Documents** is amended to read: **Contract Documents** means the executed Agreement between the Owner and the Contractor, Tender, General Conditions of Contract, Supplemental General Conditions of Contract, Standard Specifications, Special Provisions, Contract Drawings, Plans, Addenda incorporated in a Contract Document before the execution of the Agreement, such other documents as may be listed in the Agreement, and subsequent amendments to the Contract Documents made pursuant to the provisions of the Agreement.
- (b) **Contractor** is amended to read: **Contractor** means the Person undertaking the Work as identified in the Agreement. The term **Contractor** means the Contractor or the Contractor's authorized representative, as designated to the Owner, in writing.

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- (c) **Controlling Operation** is amended to read: **Controlling Operation** means any component of the Work, as determined by the Contract Administrator, that, if delayed, will delay the completion of the Work.
- (d) **Material** is amended to read: **Material** means material, machinery, equipment and fixtures forming part of the Work.
- (e) **Owner** is amended to read: **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, Corporation** or the Owner's authorized agent or representative, as designated to the Contractor, in writing, but does not include the Contract Administrator.
- (f) **Proper Invoice** is amended to read: **Proper Invoice** means an application for payment containing the information that is required for the application for payment to constitute a "proper invoice" under the Construction Act and this Contract, including the following:
- (i) all of the information specified to be included in a proper invoice as set out in the Construction Act, namely:
 - (ii) the Contractor's name and address;
 - (iii) the date of the application for payment and the period during which the Work was performed;
 - (iv) the authority under which the Work was performed, including the applicable purchase order number;
 - (v) a description, including quantity where appropriate, of the Work performed and Materials supplied;
 - (vi) the amount payable for the Work performed, and the payment terms;
 - (vii) the name, title, telephone number and mailing address of the person to whom payment is to be sent;
 - (viii) for each Proper Invoice after the first one, 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;

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- (ix) the total amount of expenditures to date and the total estimated expenditures to be made for the remaining balance of the Work, each broken out in itemized lists per category of expenditure;
 - (x) satisfactory evidence of good standing under the WSIA, as evidenced by a Certificate of Clearance issued by the Workplace Safety and Insurance Board prior to the release of any monthly progress payment;
 - (xi) any certificates, inspection reports, or data resulting from commissioning and testing required under the Contract Documents confirming the satisfactory completion of such commissioning and testing for completed portions of the Work; and
 - (xii) any additional information that the Owner or the Consultant may reasonably require.”
- (g) **Subcontractor** is amended to read: **Subcontractor** means a Person undertaking the execution of a part of the Work, or supplying Material for the Work, by virtue of an agreement with the Contractor, and which has been approved by the Owner.
- (h) **Substantial Performance** is amended to read: **Substantial Performance** means:
- (i) the Work or a substantial part thereof has passed inspection and testing and is ready for use or is being used for the intended purposes; and
 - (ii) the Work is capable of completion or, where there is a known defect, correction, at a cost of not more than,
 - (1) 3 per cent of the first \$1,000,000 of the Contract price,
 - (2) 2 per cent of the next \$1,000,000 of the Contract price, and
 - (3) 1 per cent of the balance of the Contract price.

Add the following definitions:

- (i) **Applicable Laws** means any federal, provincial, territorial, regional, municipal or local statutes, laws, by-laws, rules, regulations, codes

(including design and building codes), ordinances, permits, decrees, writs, injunctions, orders or the like, of any Governmental Authority, applicable to the Contractor, or to the performance of the Work.

- (j) **AODA** means the Accessibility for Ontarians with Disabilities Act (Ontario).
- (k) **Commission** means the procedure which includes checking, testing, adjusting and measuring performed by the Contractor to demonstrate and verify the installation, operation and performance of all components and the entire system.
- (l) **Confidential Information** means all information which the Contractor receives, either directly or indirectly, from the Owner or from any other Project participant with respect to the Project and any reports, recommendations and/or conclusions which the Contractor may make for the Owner and shall include, without limitation, all information pertaining to the Owner's business, operations, equipment, products or technology. **Confidential Information** shall not include:
 - (i) information which at the time of disclosure is already known to the Contractor other than as a result of a disclosure by any person in breach of any obligation or covenant to maintain such information confidential;
 - (ii) information which at the time of disclosure is or thereafter becomes generally available to the public through no act or failure to act on the part of the Contractor; and
 - (iii) information which is disclosed to the Contractor by a third party without a covenant of confidentiality to the Owner.
- (m) **Contractor Performance Report** has the meaning given in GC 3.17.03.
- (n) **Dispute 2** has the meaning given in GC 3.17.06.
- (o) **Disqualification List** has the meaning given in GC 3.17.09.
- (p) **Environment** means the ambient air, all layers of the atmosphere, all water including surface water and underground water, all land, all living organisms and the interacting natural systems that include components of air, water, land, living organisms and organic and inorganic matter, and includes indoor spaces.

- (q) **Environmental Laws** means all Applicable Laws relating to the Environment and the protection of the Environment, the regulation of chemical substances or products, health and safety including occupational health and safety, and the transportation of dangerous goods.
- (r) **Force Majeure Event** means an event beyond the control of a Party, including without limitation, (i) an earthquake, tornado, or other act of God; (ii) an explosion, fire, insurrection, war, sabotage, terrorist act or vandalism or a local, regional or national state of emergency; (iii) Abnormal Weather; and, (iv) a strike, lockout or other labour dispute beyond the Contractor's control.
- (s) **Furnish** means the procurement or fabrication of materials, equipment, or components, or the performance of services to the extent indicated, including all costs in connection therewith to complete the Work. Where used with respect to materials, equipment or components, the term shall include delivery to the Working Area but is not intended to include the installation of the item, either temporary or final.
- (t) **Governmental Authority** means any federal, provincial, local, municipal, regional, territorial, aboriginal, or other government, governmental or public department, branch, ministry, or court, domestic or foreign, including any district, agency, commission, board, arbitration panel or authority and any subdivision of any of them exercising or entitled to exercise any administrative, executive, judicial, ministerial, prerogative, legislative, regulatory, or taxing authority or power of any nature.
- (u) **Hazardous Substance** means any substance, waste, liquid, gaseous or solid matter, fuel, micro-organism, sound, vibration, ray, heat, odour, radiation, energy vector, plasma, organic or inorganic matter which is or is deemed to be, alone or in any combination, hazardous, hazardous waste, solid or liquid waste, toxic, a pollutant, a deleterious substance, a contaminant or a source of pollution or contamination, regulated by any Environmental Laws.
- (v) **Install** means the placement of materials, equipment or components, including the receiving, unloading, transporting, storage, uncrating and installing, and the performance of such testing and finishing work as is compatible with the degree of installation specified, including all costs in connection therewith to complete the Work.
- (w) **Maintenance Security Holdback** has the meaning given in GC 8.02.10.01.

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- (x) **Manager Supply Management** means the person designated by the Owner to oversee the Contractor Performance Evaluation procedure set out in GC 3.17.
- (y) **Ministry** means the Ministry of Transportation of Ontario.
- (z) **Notice to Proceed** has the meaning given in GC 7.01.02.
- (aa) **OHSA** means the Occupational Health and Safety Act (Ontario).
- (bb) **Panel** has the meaning given in GC 3.17.06.
- (cc) **Person** will be broadly interpreted and includes:
- (i) a natural person, whether acting in his or her own capacity, or in his or her capacity as executor, administrator, estate trustee, trustee or personal or legal representative, and the heirs, executors, administrators, estate trustees, trustees or other personal or legal representatives of a natural person;
 - (ii) a corporation or a company of any kind, a partnership of any kind, a sole proprietorship, a trust, a joint venture, an association, an unincorporated association, an unincorporated syndicate, an unincorporated organization or any other association, organization or entity of any kind; and
 - (iii) a Governmental Authority.
- (dd) **Project Specifications** means Ontario Provincial Standard Specifications and Special Provisions. The OPS Specifications in effect when the call for tenders for this Contract was advertised shall apply for the duration of the Contract.
- (ee) **Provide** means to Furnish, Install, Commission, complete and put in place, including all accessories, finishes, tests, and services as required to render the item so specified complete and ready for use, including all costs in connection therewith to complete the Work and supply all labour, materials, equipment, handling and cartage required to render the item so specified complete and the word "**Provided**" has a corresponding meaning.
- (ff) **Release** means to release, spill, leak, pump, pour, emit, empty, discharge, deposit, inject, leach, dispose, dump or permit to escape.

(gg) **Schedule of Prices** means the schedule of items and unit prices submitted by the Contractor in the Tender Form - "Schedule of Items and Unit Prices".

(hh) **WSIA** means Workplace Safety and Insurance Act (Ontario).

Add new GC 1.04.02 as follows:

"GC 1.04.02 Any reference in this Contract to any statute includes all regulations and subordinate legislation made under or in connection with that statute at any time, and is to be construed as a reference to that statute as amended, modified, restated, supplemented, extended, re-enacted, replaced or superseded at any time."

SECTION GC 2.0 – CONTRACT DOCUMENTS

2. GC 2.01 RELIANCE ON CONTRACT DOCUMENTS

(a) Paragraph .01(a) is replaced by the following:

"(a) The Contractor shall assume full responsibility for obtaining the exact locations of all Utilities. The Contract Administrator does not warrant the correctness or completeness of the Plans with respect to the Utilities and services whether underground or on the surface. 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 the Utilities does not correspond with the locations shown on the Plans."

3. GC 2.02 ORDER OF PRECEDENCE

(a) Paragraph GC 2.02.02 (b) is amended by adding the words "of the same date" to the end of this paragraph.

SECTION GC 3.0 – ADMINISTRATION OF THE CONTRACT

4. GC 3.01 CONTRACT ADMINISTRATOR'S AUTHORITY

(a) Paragraph GC 3.01.03 is amended by the addition of the following paragraphs:

"(a) The Contract Administrator will not be responsible for and will not have control, charge, or supervision of construction means, methods, techniques, sequences, or procedures, or for safety

precautions and programs required in connection with the Work in accordance with the Applicable Laws or general construction practice. The Contract Administrator will not be responsible for the Contractor's failure to carry out the Work in accordance with the Contract Documents. The Contract Administrator will not have control over, charge of, or be responsible for the acts or omissions of the Contractor, Subcontractors, suppliers or their agents, employees and any other Person performing portions of the Work.

- (b) Whenever the Contract Administrator considers it necessary or advisable, the Contract Administrator will have authority to require inspections or testing of the Work, whether or not such Work is Provided. However, neither the authority of the Contract Administrator to act, nor any decision either to exercise or not to exercise such authority, shall give rise to any duty or responsibility of the Contract Administrator to the Contractor, Subcontractors, suppliers or their agents, employees or other Person performing any of the Work."

- (b) Paragraph GC 3.01.05 is replaced by the following:

".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."

- (c) Paragraph GC 3.01.03.16 is amended by replacing the words "applicable laws or bylaws" with the words "Applicable Laws".
- (d) Paragraph GC 3.01 is amended by the addition of the following paragraph:

".18 All certificates issued by the Contract Administrator shall be to the best of the Contract Administrator's knowledge, information and belief. By issuing any certificate, the Contract Administrator does not guarantee the Work is correct or completed."

5. GC 3.02 WORKING DRAWINGS

- (a) Paragraph GC 3.02.06 is revised by deleting the words "Permission to construct granted".
- (b) Paragraph GC 3.02.07 is revised by adding the following words to the end of the paragraph: "and make such set available to the Owner and the Contract Administrator at all times".

6. GC 3.06 EXTENSION OF CONTRACT TIME

- (a) Paragraph GC 3.06.01 is amended by replacing the words “as soon as” with the words “within 15 Days of the date”.

7. GC 3.07 DELAYS

- (a) Paragraph GC 3.07.01 is replaced as follows:

“.01 If the Contractor is delayed in the performance of the Work by:

- (a) war, blockades, and civil commotions, strikes, lockouts, labour disputes, errors in the Contract Documents;
- (b) an act or omission of the Owner, Contract Administrator, the Owner’s other contractors, or anyone employed or engaged by them directly or indirectly, contrary to the provisions of the Contract Documents; or
- (c) a stop work order issued by a Governmental 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; or
- (d) the Contract Administrator giving notice under GC 7.09, Suspension of Work; or
- (e) Abnormal Weather; or
- (f) archaeological finds in accordance with GC 3.15, Archaeological Finds,

then the Contractor shall not be reimbursed by the Owner for any costs incurred by the Contractor as the result of such delay. Any delay in the performance of the work shall be considered for extension of Contract Time only.

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 to such application. Extension of Contract Time may be granted in accordance with Subsection GC 3.06, Extension of Contract Time.

(b) Paragraph GC 3.07.02 is amended by adding, after the words "which are beyond the Contractor's control", the words "but expressly excluding labour disputes, strikes or lock-outs of the employees of the Owner".

(c) Paragraph GC 3.07.03 and 3.07.04 are replaced as follows:

“.03 The Contractor shall not have any claims for compensation or damages against the Corporation for any stoppage or delay from any cause whatever, including for delays incurred as a result of a dispute between the Contractor and Owner.”

8. GC 3.08 ASSIGNMENT OF CONTRACT

(a) Paragraph GC 3.08.01 is amended by adding the following words to the end of this paragraph: “which consent may be arbitrarily withheld by the Owner”.

(b) Paragraph GC 3.08 is amended by the addition of the following paragraph:

“.02 No assignment of this Contract in whole or in part shall be valid unless it contains a provision that the funds to be paid to the assignee under the assignment are subject to the prior lien for services rendered or material supplied for the performance of the Work called for in the Contract in favour of a Person rendering such services or supplying such materials.”

9. GC 3.09 SUBCONTRACTING BY THE CONTRACTOR

(a) Paragraph GC 3.09 is amended by the addition of the following paragraphs:

“.07 The Contractor shall, in the case of its Subcontractors and suppliers, be held responsible for and shall ensure that they obtain all necessary permits, fees, licenses, certifications, inspections and all insurance in connection with the Work as may be required by Applicable Laws relating to the Work and by the Contract Documents.

.08 The Contractor shall submit to the Corporation, for its approval, a list of proposed Subcontractors, showing the value of the Work to be subcontracted to each, prior to such Subcontractor participating in the Work. The total value of the Work subcontracted shall not exceed 50% of the total tender.”

10. GC 3.10 CHANGES

- (a) Paragraph GC 3.10 of the General Conditions is modified for purposes of this Contract in cases where the Owner requests the Contractor to submit cost quotations in advance for any changes in the Work, Extra Work or Additional Work.
- (b) For changes in the Work, Extra Work or Additional Work approved in advance by the Contract Administrator in accordance with cost quotations submitted by the Contractor, payment shall be based on the approved quoted cost and the requirements of paragraph GC 3.13 and paragraph GC 8.02.05 shall not apply.
- (c) The Contractor shall not perform any Extra Work, Additional Work, or Change in the Work without a Change Order or a Change Directive directing the Contractor to proceed with a change in the Work. No claim for any change in the Contract price or for any extension or alteration of the Contract Time shall be valid except as shown in a Change Order or Change Directive. For clarity, any work which the Contractor performs which is not shown in a Change Order or Change Directive shall be deemed to be performed as part of the Work and included in the Contract price.

11. GC 3.10.01 CHANGES IN THE WORK

- (a) Paragraph GC 3.10.01.01 is amended by replacing the second sentence with the following sentence: "The Contractor shall not be required to proceed, and shall not proceed, with a Change in the Work until in receipt of a Change Order or Change Directive."
- (b) Paragraph 3.10.01.03 is replaced by the following:
 - "03 The valuation of additions to, and deductions from, the Contract shall be made as follows:
 - (a) The prices in the Schedule of Prices or provisional items shall apply where appropriate as determined by the Contract Administrator. If the Contractor and the Owner cannot agree to a valuation, then they shall agree to use the Owner's tender price averages over the preceding 12 months.
 - (b) If the prices in paragraph (a) above are not appropriate, valuation will be made by one of the following methods:

- (i) Contract Administrator may ask the Contractor for a quotation for the proposed work.
- (ii) If the quotation referred to in (i) above is not accepted by the Contract Administrator, the actual cost of the work will be determined on a Time and Material Basis in accordance with the applicable Contract Documents.
- (c) Whenever Extra Work is being performed under GC 3.10.01.03(b)(ii), the Contractor shall submit Daily Work Records in writing, to the Contract Administrator, indicating the total chargeable costs incurred, for the Day. Valuation of the Extra Work being so performed will be made by the Contract Administrator on the basis of approved Daily Work Records.

12. GC 3.10.02 EXTRA WORK

- (a) Paragraph GC 3.10.02.03 and paragraph GC 3.10.03.03 are amended by inserting the following sentence at the end of these paragraphs: "In presenting its claim to the Owner for a cost of a change in the Work, the Contractor shall include, itemize and separate all direct and indirect costs associated with that change, provided that the Contractor shall not be entitled to payment for insurance costs unless the Owner is requiring insurance in addition to the insurance coverage required by the Owner for the Work or the Extra Work will extend the Contract Time."

13. GC 3.11.05 NOTICES

- (a) Paragraph GC3.11 is amended by adding the following as a new paragraph GC3.11.05:
 - “.05 In addition to the addresses, requirements and timelines set out in this paragraph GC3.11, the following applies:
 - .1 for the purposes of Part I.1 the Construction Act (Prompt Payment) and paragraph GC8.0,
 - (i) applications for payment and Proper Invoices will be considered given or delivered by the Contractor to the Owner when hard copies are received by the Owner at City Engineering, 2nd Floor Victoriaville Civic Center, 111 Syndicate Ave South, and their receipt can be verified; and

- (ii) notices of non-payment will be considered to have been given or delivered by the Owner to the Contractor when they have been sent by the Owner and such sending can be verified; and

.2 for the purposes of Part II.1 of the Construction Act (Adjudication), any notices, communications or delivery of documents to be given under the Construction Act will:

- (i) in the case of the Owner, be given by the Contractor to the Owner in hard copy at Legal Services, 3rd Floor, City Hall, 500 Donald Street East, and considered received once their receipt can be verified; and
- (ii) in the case of the Contractor, be given by the Owner to the Contractor in accordance with the balance of paragraph GC3.11.

14. GC 3.13.01 CONTINUANCE OF THE WORK

- (a) Paragraph GC 3.13.01 is amended by the addition of the following paragraphs:

“.02 The Contractor shall give written notification of its intent to submit a claim for Extra Work prior to the commencement of that Work; otherwise claims for Extra Work will not be considered.”

“.03 The Contractor shall submit claims not later than 30 Days after the date the Work is substantially performed identifying the item or items in respect of which the claim arises, stating the grounds upon which the claim is made and submitting the records maintained by the Contractor supporting each claim.”

15. GC 3.13.05 MEDIATION

- (a) Paragraph GC 3.13.05.02 is amended by adding the following at the end of the sentence: “, and the parties agree that the mediation shall be conducted in accordance with the mediation procedure set out in CCDC 40.”
- (b) Paragraph GC 3.13.05.03 is amended by deleting the words “prior to proceeding to arbitration”.

- (c) Paragraph GC 3.13.07.01 is amended by deleting the words “provided that the requirements set out in this paragraph are fulfilled”.

16. GC 3.13.07 RIGHTS OF BOTH PARTIES

- (a) Delete paragraph GC 3.13.07.02 in its entirety.

17. GC 3.14 ARBITRATION

- (a) Paragraph GC 3.14.01.01 is amended by replacing the word “invoke” with the words “propose to the other party to resolve the claim in accordance with” and by adding at the end of the paragraph, the following sentence:

“Neither party is obligated to proceed to resolve the claim by engaging in arbitration; however, upon mutual agreement, the parties may proceed to arbitrate the claim in accordance with the process outlined in this GC 3.14.”

18. GC 3.16 ADJUDICATION

- (a) Add a new paragraph GC 3.16 as follows:

“GC 3.16 Adjudication

01. Notwithstanding anything else in this Contract, in the event of a dispute relating to payment arising prior to the completion of the Work, the parties may adjudicate such dispute in accordance with the Construction Act. If the Contractor issues a notice of adjudication to the Owner, it will include with such notice a description of the reasons for its dispute that includes a reference to the applicable application for payment and Proper Invoice, all notices in writing demanding payment, authority for the claim under the Contract (including copies of any applicable Change Order, Change Directive or written approval of any Change in the Work).
- .02 The parties acknowledge and agree that the adjudication of a payment dispute in accordance with the Construction Act will not pause, withdraw, discontinue, or prejudice any arbitration, mediation, or court proceeding that relates to the same matter and that was commenced prior to the delivery of a notice of adjudication under the Construction Act unless the parties otherwise agree in writing.”

19. GC 3.17 CITY OF THUNDER BAY POLICY ON CONTRACTOR SAFETY

- (a) Add a new paragraph GC 3.17 as follows:

“GC 3.17 CITY OF THUNDER BAY POLICY ON CONTRACTOR SAFETY

0.1 *Policy Statement.*

All contractors or land developers working on municipal projects are required to work in compliance with OHSA. All contractors working on city streets and roads will comply with the Ontario Traffic Manual – Book 7.

Failure to comply will be considered a breach of Contract and may result in work stoppage, Ministry of Labour involvement, or in termination of the Contract.

- .02 Contractor safety deficiencies will be addressed by the Owner in the following progressive steps:

- (a) The problem will be identified to the Contractor (site supervisor).
- (b) The Contractor’s head office will be contacted about the problem, orally and later in writing.
- (c) If the problem remains unresolved, then the Ministry of Labour will be notified of the violation, and, if necessary, the work will be stopped until the problem is corrected.
- (d) The Contract may be terminated by the City.”

20. GC 3.18 CITY OF THUNDER BAY POLICY ON CONTRACTOR PERFORMANCE EVALUATIONS

- (a) Add a new paragraph GC 3.18 as follows:

“GC 3.18 CITY OF THUNDER BAY POLICY ON CONTRACTOR PERFORMANCE EVALUATIONS

- .01 All Contractors working on a municipal contract are subject to a performance evaluation. Performance evaluations for a multi-year contract, shall be completed on the annual anniversary of such contract, or for a contract for a term of less than one year, upon Substantial Performance or early termination of such contract.

- .02 The Contract Administrator shall monitor and evaluate the performance of the Contractor pursuant to the terms of this section, including for clarity, documenting evidence of the Contractor's performance. The Contractor's performance shall be rated on a scale of 0 – 3 (0 – poor, 1 – below standard, 2 – standard, 3 – above standard) under the following categories, as applicable, and/or under any specific categories specified in the Contract:
- (a) demonstrated skill and knowledge during the performance of the work and/or services under the Contract;
 - (b) adherence to Drawings, Plans, Project Specifications and Special Provisions;
 - (c) public relations;
 - (d) condition and sufficiency of resources, including, without limitation, labour, skilled labour and equipment;
 - (e) health and safety procedures and compliance with such procedures;
 - (f) administration, organization, co-ordination and efficiency of the work and/or services;
 - (g) environmental compliance;
 - (h) compliance with corporate by-laws and, as applicable, corporate policies and requirements as set forth in the Contract;
 - (i) compliance with the requirements of the Contract;
 - (j) responsiveness to third party claims;
 - (k) site supervision at the place of the work; and
 - (l) compliance with Applicable Law.
- .03 The overall performance rating shall be determined based upon the performance of the Work under the Contract, quality assurance test(s), letters, and written instructions to the Contractor and any other material reasons deemed relevant by the Contract Administrator. The Contract Administrator will inform the Manager Supply Management, in writing, as to the performance of the

Contractor pursuant to the terms of this section and shall submit to the Manager Supply Management a performance report for each Contractor ("**Contractor Performance Report**"). A copy of the completed Contractor Performance Report shall be sent by the Manager Supply Management (or designate) to the Contractor.

- .04 If the Contractor disagrees with any portion of the Contractor's Performance Report, the Contractor shall advise the Manager Supply Management of the Contractor's specific objections, in writing, within thirty (30) days from the date the Manager Supply Management (or designate) delivered the Contractor Performance Report to the Contractor.
- .05 Once an objection is received from the Contractor, the Manager Supply Management shall, within thirty (30) days from the date of receipt by the Manager Supply Management of the objection, advise the Contractor that the Contractor's Performance Report has been affirmed, and the reasons therefor, or deliver to the Contractor an amended Contractor Performance Report together with the reasons therefor.
- .06 If the Contractor disputes the response from the Manager Supply Management, the Contractor may, within thirty (30) days from the date the Manager Supply Management (or designate) delivered the response to the Contractor, deliver a dispute in writing ("**Dispute 2**") to the Manager Supply Management who shall convene a three person panel consisting of two City of Thunder Bay General Managers (or their acting General Manager(s)) (including the General Manager (or the acting General Manager) from the Department for which the Work was performed by the Contractor) and a Director from a Department other than the Department for which the work or services was performed (the "**Panel**").
- .07 The Panel shall advise the Contractor, in writing, within thirty (30) days of the delivery of the Contractor's Dispute 2 to the Manager of Supply Management, that the Contractor's Performance Report has been affirmed, and the reasons therefor, or deliver to the Contractor an amended Contractor's Performance Report together with the reasons therefor.
- .08 The decision of the Panel in determining the dispute is final and there shall be no further appeal rights.

Disqualified Bidders Lists

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- .09 The Manager Supply Management will maintain a list of Contractors from whom bids will not be accepted by the Owner for a period of two years or such lesser period as is determined by a Contract Administrator (subject to the satisfaction of any conditions imposed on a Contractor as described below) from the date the Contractor was originally delivered a copy of the Contractor's Performance Report by the Manager Supply Management (the "**Disqualification List**").
- .10 The Disqualification List will include the names of Contractors who have, in the context of the Contractor Performance Report, received:
- (a) at least four below standard and/or four poor evaluations over a two calendar year period; or
 - (b) at least one poor evaluation in any calendar year arising as a result of a Contractor's poor performance in respect of one of health and safety, environmental matters, demonstrated skill and/or knowledge in the performance of the Work under the Contract or any non-compliance with any Applicable Law.
- .11 At the time a Contractor is notified that it will be disqualified and included on the Disqualification List, a Contract Administrator shall advise the Contractor as to the conditions the Contractor must meet in order to be removed from the Disqualification List. The Contractor shall be entitled after the expiration of two years (or such lesser period as identified above) following the date the Contractor was first added to the Disqualification List, to apply to the same Contract Administrator who advised the Contractor as to the conditions (or if such person is not available, another Contract Administrator) for a determination as to whether the Contractor has satisfied the conditions imposed on the Contractor. If the Contractor disputes the decision of the Contract Administrator, the Contractor may follow the same appeal process, within the same timelines, as detailed in this section such that the Contractor may first appeal to the Manager Supply Management and subsequently to the Panel, whose decision shall be final and binding.
- .12 The Disqualification List will also include the names of contractors who are involved in litigation with the Owner relating to past contracts. Contractors whose names are on the Disqualification Lists will not be permitted to submit bids to the Owner. In addition,

the Manager Supply Management may refuse to accept Bids from contractors who are affiliated with a contractor on the Disqualification List through direct involvement or effective control by one or more of the directing minds of the other contractor on the Disqualification List.”

SECTION GC 4.0 – OWNER'S RESPONSIBILITIES AND RIGHTS

21. GC 4.02 APPROVALS & PERMITS

- (a) Paragraph GC 4.02.02 is replaced with the following:

“.02 The Contractor shall obtain and pay for all permits, licences and certificates solely required for Project approval.”

22. GC 4.04 CONSTRUCTION AFFECTING RAILWAY PROPERTY

- (a) Paragraph GC 4.04.01 is amended by the addition of the words “When construction affects railway property,” at the beginning of the paragraph.

- (b) Add a new paragraph GC 4.04.04 as follows:

.04 For greater certainty, the Work will not include any activity associated with removal, reinstatement or adjustment to railway infrastructure (including rail, ties and ballasts) unless specifically indicated in the Contract. These works will remain at the discretion of the railway company to retain the services of the Contractor if required as a service to the railway company.”

23. GC 4.05 DEFAULT BY THE CONTRACTOR

- (a) Paragraph GC 4.05.01 is deleted and replaced by the following:

- (b) “.01 If the Contractor fails to commence the Work within 14 Days of a formal order to commence Work signed by the Contract Administrator or, upon commencement of the Work, should neglect to prosecute the Work properly or otherwise fails to comply with the requirements of the Contract the Owner may, without prejudice to any other right or remedy the Owner may have, notify the Contractor in writing that the Contractor is in default of the Contractor’s contractual obligations and instruct the Contractor to correct the default in the 5 Working Days immediately following the receipt of such notice.”

24. GC 4.06 CONTRACTORS RIGHT TO CORRECT A DEFAULT

- (a) Paragraph GC 4.06 is amended as follows:
- .01 change reference from five “5” to three “3” Working Days.
 - .02 change reference from five “5” to three “3” Working Days.
 - .02(a) change reference from five “5” to three “3” Working Days.
- (b) Paragraph GC 4.06.01 is amended by inserting the words “in a manner acceptable to the Contract Administrator” after the words “correct the default” in the second line.
- (c) Paragraph GC 4.06.02(c) is amended by inserting the words “to the satisfaction of the Contract Administrator” at the end of this paragraph.

25. GC 4.08 TERMINATION OF CONTRACTOR’S RIGHT TO CONTINUE THE WORK

- (a) Paragraph GC 4.08 is amended by the addition of the following paragraphs:
- “.03 The Owner has the right to terminate the Contract for wilful or persistent violation by the Contractor, Subcontractors or their respective workers of OHSA, WSIA or Environmental laws.
 - .04 Upon a termination of the Contract, the Owner may publish a notice of termination in the form and manner prescribed in the Construction Act. For greater certainty, a termination in accordance with this Contract will be effective whether or not a notice of termination is published.”

26. GC 4.14 PERSONNEL EMPLOYED BY CONTRACTOR

- (a) Add a new paragraph GC 4.14 as follows:
- “GC 4.14 PERSONNEL EMPLOYED BY CONTRACTOR**
- .01 The Contractor shall not employ or hire any employees of the Owner.”

SECTION GC 5.0 - MATERIAL

27. GC 5.02 QUALITY OF MATERIAL

- (a) Paragraph GC 5.02.02 is deleted and replaced by the following:

“.02 Materials supplied by the Contractor shall conform to the Ministry’s list of designated sources for materials (latest edition) and shall conform to the requirements of the Contract, unless noted otherwise.”

(b) Paragraph GC 5.02.04 is replaced with the following:

“.01 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. No Material that has not been approved by the Owner shall be incorporated in the Work.

.02 Testing and inspection of Materials delivered to the Working Area for incorporation in the Work and workmanship on the Project will be conducted by the Owner under the direction of the Contract Administrator.

.03 Testing of previously tested material and/or workmanship shall be carried out at the Contract Administrator’s discretion at the Contractor’s expense.”

(c) Paragraph GC 5.02 is amended by the addition of the following paragraph:

“.10 If agreed upon by both parties, any surplus Material may be accepted by the Owner at the invoice cost of the Material only with no other mark-ups, F.O.B. in the Owner’s yard.”

28. GC 5.04 SUBSTITUTIONS

(a) Paragraph GC 5.04.03 is replaced by the following: “If the proposed substitution is approved by the Contract Administrator, the Contract Administrator and the Contractor shall negotiate an appropriate price reduction; if the proposed substitution results in the use of a Material of higher quality, there shall be a price adjustment in accordance with the provisions of GC 3.10 CHANGES.”

SECTION GC 6.0 – INSURANCE, PROTECTION AND DAMAGE

29. GC 6.01 PROTECTION OF WORK, PERSONS AND PROPERTY

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- (a) Paragraph GC 6.01.02 is modified by inserting the words “if the Contract Administrator so directs” following the words “restore such damage” in the fourth line.
- (b) Paragraph GC 6.01 is amended by the addition of the following paragraph:
- “.06 When carrying out excavation work, the Contractor may encounter Utilities. The Contractor shall be fully responsible for any breakage or damage to any Utilities, and the Contractor shall pay the full cost of repairing such damage and making good any losses or damages caused as a result of its operation in carrying out this Contract.”

30. GC 6.02 INDEMNIFICATION

- (a) Paragraph GC 6.02.01 is amended by replacing the balance of the paragraph, commencing at “provided such claims are” with the words “by the Contractor or anyone for whom the Contractor is at law responsible”.
- (b) Paragraph GC 6.02.03 is deleted in its entirety.
- (c) Paragraph GC 6.02 is amended by the addition of the following paragraph:
- “.06 If a claim, for which the Contractor indemnifies the Owner hereunder, arises prior to Substantial Performance of the Work and such claim is for an amount below the deductibles for the Contractor's insurance, the Contractor shall pay such claim to the Owner within fifteen (15) Days of resolution, provided that, if the claim is not resolved by Substantial Performance of the Work, the Owner may retain from any future payments to the Contractor, a reasonable estimate of such claim or the Contractor may deposit with the Owner the sum of \$45,000 as security for the payment of such claim. If the claim is not resolved by Final Acceptance, the Owner may apply the current retained amount or the deposit against such claim.”

31. GC 6.03.01 GENERAL

Paragraph GC 6.03.01 is amended by the addition of the following paragraph:

- “.03 For greater certainty, the Contractor shall be responsible for prompt payment of all deductible amounts in connection with the insurance coverages contemplated under this Contract.”

32. GC 6.03.02 COMMERCIAL GENERAL LIABILITY INSURANCE

- (a) Paragraphs GC 6.03.02.01 and GC 6.03.02.02 are replaced with the following:

“.01 The Contractor shall obtain and maintain Comprehensive General Liability Insurance against Bodily Injury and Property Damage claims with respect to all Work. Such insurance shall:

- (a) name the Owner and all Subcontractors, either employed directly or indirectly in the Work, as additional insureds; **[Contract Administrator to add additional agencies if appropriate.]**
- (b) contain a Cross Liability clause;
- (c) include coverage for:
 - (i) Completed Operations, which coverage shall be maintained continuously in force for a period of not less than 24 months from the date of Final Acceptance
 - (ii) Blanket Contractual Liability
 - (iii) Contingent Employers Liability
 - (iv) Non-owned Automobile Liability
 - (v) Broad Form Property Liability
 - (vi) Excavation
- (d) where applicable, include coverage for:
 - (i) Underpinning, shoring
 - (ii) Demolition
 - (iii) Building raising or moving
 - (iv) Blasting or the Use of Explosives
 - (v) Tunnelling
 - (vi) Pile driving, caisson work

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- (vii) Use of aircraft or watercraft, owned or non-owned
- e) contain a paragraph stating that such insurance shall remain in force and not be amended, cancelled or allowed to lapse without 30 Days prior written notice being given to each of the named insureds;
- f) be subject to a limit of not less than \$5,000,000.00 inclusive per occurrence for Bodily Injury, Death and Damage to Property, including loss of use thereof;
02. Prior to the commencement of any Work under this Contract, the Contractor shall file with the Owner, to the attention of the City Clerk, the certificates contemplated in GC 6.03.01.02.”
- (b) Paragraph GC 6.03.02.03 is revised to add the following sentence at the beginning of the paragraph: “The insurance required under the Contract Documents shall be maintained continuously from the commencement of the Work until the end of the Warranty Period.”
- 33. GC 6.03.05.01 PROPERTY INSURANCE**
- (a) Paragraph GC 6.03.05.01.01 is replaced with the following:
- “.01 All risks property insurance shall be in the name of the Contractor, with the Owner and the Contract Administrator named as additional insureds, insuring not less than the sum of the amount of the Contract price and the full value, as may be stated in the Contract Documents, of Material that is specified to be provided by the Owner for incorporation into the Work, with a deductible not exceeding 1% of the amount insured at the site of the Work.”
- 34. GC 6.03.05.04 PAYMENT FOR LOSS OR DAMAGE**
- (a) Paragraph GC 6.03.05.04.03 is amended by inserting the words “for whom the Owner is at law responsible” following the word “others” at the beginning of the second line of paragraph GC 6.03.05.04.03.
- 35. GC 6.03.06 CONTRACTOR’S EQUIPMENT INSURANCE**
- (a) Paragraph GC 6.03.06 is amended by the addition of the following paragraph:

“.02 If this Contract includes the construction of or alterations to a bridge, dam, culvert or building, the Contractor shall provide Property Insurance, to insure the Work against all risks including flood and earthquake.”

36. GC 6.03.08 INSURANCE CLAIMS

(a) Add a new GC 6.03.08 INSURANCE CLAIMS as follows:

“GC 6.03.08 INSURANCE CLAIMS:

- .01 It shall be the duty of the Contractor to fully comply with the terms and conditions of the Liability Insurance coverage, including, without limiting the generality of the foregoing, the requirement to promptly report claims to the insurer.
- .02 The Contractor shall also promptly notify the Contract Administrator of all such claims in writing.
- .03 If a claim is settled, the Contractor shall thereupon provide the Contract Administrator with a copy of the claimant's release.
- .04 If a claim is rejected, the Contract Administrator shall be notified at the time of rejection.
- .05 If a claim is not responded to by the Contractor within 15 Days after the claim has been received by the Contractor, the Owner may, at its sole option, elect to respond to and settle the claim on terms acceptable to the Owner, in its sole discretion, and charge all costs and expenses incurred by the Owner in responding to and settling the claim, including, without limitation, legal costs (on a substantial indemnity basis) to the Contractor.
- .06 The Contract Administrator shall be provided full information as to such claim at all times as the Contract Administrator may require until the claim is settled and in any event should 30 Days elapse after the claim has been received by the Contractor and the Contractor is not able to report settlement or rejection of the claim, the Contractor will provide a full report to the Contract Administrator as to the status of and steps being taken with respect to the claim.
- .07 The Owner reserves the right to report any claim directly to the insurer.

- .08 Final Acceptance shall not occur until all claims are settled, paid, withdrawn or discontinued or the Owner is satisfied that all claims are being adequately addressed by the Contractor and/or its insurer.”

37. GC 6.04 BONDING

[NTD: The Construction Act prescribes minimum bonding requirements, including a performance bond and a labour and material payment bond in the amount of at least 50 per cent of the contract price, for public contracts if the contract price is \$500,000 or more. The Construction Act does not prescribe bonding requirements for public contracts if the contract price is less than \$500,000.]

- (a) Paragraphs GC 6.04.01 and GC 6.04.02 are replaced by the following:

- “.01 The Contractor shall prior to commencement of the Work, provide to the Owner a performance bond, in the form required by the Construction Act, in an amount equal to 100% of the Contract price, covering the performance of the Contract, including the Contractor's requirements with respect to the correction of deficiencies and the fulfillment of all warranties.
- .02 The Contractor shall prior to commencement of the Work, provide to the Owner a labour and material payment bond, in the form required by the Construction Act, in an amount equal to 50% of the Contract price covering payment for labour, Product, or both.
- .03 The bonds referred to in paragraph GC 6.04 shall be issued by a duly licensed surety company authorized to transact the business of suretyship in the province of Ontario and shall be maintained in good standing until the fulfillment of the Contract, including all warranty and maintenance periods set out in the Contract Documents. Unless otherwise stated in the Contract Documents, the form of such bonds shall be in accordance with the form of bonds set out in the Construction Act.
- .04 It is the intention of the parties that the performance bond shall be applicable to all of the Contractor's obligations in the Contract Document and, wherever a performance bond is provided with language which conflicts with this intention, it shall be deemed to be amended to comply. The Contractor represents and warrants to the Owner that it has provided its surety with a copy of the Contract Documents prior to the issuance of such bonds.”

SECTION GC 7.0 – CONTRACTOR'S RESPONSIBILITIES AND CONTROL OF THE WORK**38. GC 7.01.02 COMMENCEMENT OF THE WORK**

- (a) Paragraph GC 7.01.02 is replaced with the following:

“.02 The Contractor shall commence the Work within 7 Days after receiving a notice from the Contract Administrator to commence the Work (“**Notice to Proceed**”). The Contractor will not commence the Work until the Contract has been officially accepted by the Owner, the insurance certificates and the bonds are satisfactory to the Owner, and the Contractor has received a Notice to Proceed.”

39. GC 7.01.03 CONTROL AND RESPONSIBILITY

- (a) Paragraph GC 7.01.03.01 is amended by inserting the words “and conduct and complete the Work in a first class and workmanlike manner” at the end of the first sentence.
- (b) Paragraph GC 7.01.03.01 is further amended by inserting the following at the end of this paragraph: “The Contractor shall comply with all Applicable Laws which are or become enforced during the performance of the Work and which relate to the Work. If the standards of the Applicable Laws relating to the Work differ, the most stringent standards shall govern.”
- (c) Paragraph GC 7.01.03.02 is replaced with the following:
- “.02 The Contractor shall provide adequate labour, Equipment, and Material to ensure the completion of the Contract in accordance with the Contract Documents.”
- (d) Paragraph GC 7.01.03.04 is amended by adding the following at the end of this paragraph: “The Contractor shall engage and pay for Engineers skilled in the appropriate disciplines to perform those functions referred to in the preceding sentence where required by Applicable Law or by the Contract Documents and in all cases where such temporary supports, structures and facilities and their method of construction are of such a nature that professional engineering skill is required to produce safe and satisfactory results.”
- (e) Paragraph GC 7.01.03.05 is replaced with the following:

“05 The Contractor shall comply with and conform to all Applicable Laws applicable to the Work to be provided by, and the undertakings and obligations of, the Contractor under this Contract.”

40. GC 7.01.04 COMPLIANCE WITH OCCUPATIONAL HEALTH AND SAFETY ACT

- (a) Paragraph GC 7.01.04.01 is amended by inserting the following words at the beginning of this paragraph: “The Contractor shall be solely responsible for construction safety at the Working Area and”.
- (b) Paragraph GC 7.01.04.01 is amended by the addition of the following paragraph:
- “(h) The Contractor shall conduct all Work in accordance with the Owner’s “Contractor Safety Policy” referred to in GC 3.16.”

41. GC 7.01.05 CONTRACTOR’S REPRESENTATIVES

- (a) Paragraph GC 7.01.05.01 is amended by inserting the words: “who shall be a competent qualified superintendent” following the words “authorized representative on the site” in the first line and by inserting the following at the end of this paragraph: “The authorized representative shall not be changed without the approval of the Contract Administrator and only if replaced by a superintendent of similar qualifications. Notices and instructions given to the authorized representative by the Contract Administrator shall be held to have been received by the Contractor.”

42. GC 7.01.06 ASSISTANCE TO THE CONTRACT ADMINISTRATOR

- (a) Add the following to the end of GC 7.01.06.01: “The Contractor shall furnish the Contract Administrator or any of his assistants with all reasonable help which may be required at any time in driving stakes or laying out the Work. The Contractor will require no additional compensation for this.”

43. GC 7.01.07 SCHEDULE

- (a) Paragraph GC 7.01.07.01 is amended by inserting the words: “and provide sufficient detail of the critical activity as required by the Contract Administrator” at the end of the first sentence.

- (b) Paragraph GC 7.01.07.01 is further amended by replacing the words “materially affected by changes in the work” with the words “materially affected by changes in the Work”.
- (c) Paragraph GC 7.01.07.01 is further amended by inserting the following at the end of this paragraph: “The Contractor shall otherwise update the schedule every two weeks or as stipulated by the Contract Documents and advise the Contract Administrator of any revisions required to the schedule as a result of extensions of the Contract Time.”

44. GC 7.01.08 ERRORS AND INCONSISTENCIES RELATING TO THE CONTRACT

- (a) Paragraph GC 7.01.08.01 is amended by inserting at the beginning of this paragraph: “The Contractor shall review the Contract Documents and” and replacing “Where” with “where”.

45. GC 7.01.09 UTILITIES

- (a) Replace paragraph GC 7.01.09.01 with the following:

“.01 The Contractor shall arrange with the appropriate Utility authorities for the stake out of all underground Utilities and service connections, which may be affected by the Work. The Contractor shall be responsible, at its expense, for any damage or interference to the Utilities, pole lines, pipe lines, conduits, farm tiles or other public or privately owned works or property by the Contractor or by those for whom the Contractor is responsible at law, during construction. The Contractor shall attend such meetings with the Contract Administrator and the Utility authorities for each Utility affected by the Contract. The Contractor shall notify the local gas authority at least 48 hours in advance of the commencement of any Work, which may affect pipes belonging to the gas Utility company. The locate boundaries shall include areas required for Owner layout and work activities required by the Owner. The Contractor shall provide to the Owner a copy of the locate paperwork.”

- (b) Paragraph GC 7.01.09 is amended by the addition of the following paragraph:

“.03 The Contractor shall notify the local gas authorities at least 48 hours in advance of the commencement of any Work which may affect pipes belonging to the gas utility company. Any specific requirements of the gas utility company in connection with

daylighting its high pressure mains, having its inspection personnel on site when the Work is being carried out and any other requirements, shall be strictly complied with by the Contractor, and no additional payment in connection therewith shall be made by the Owner to the Contractor.”

46. GC 7.01.10 COORDINATION AND SUPPORTING WORKS

- (a) Insert a new subsection “Coordination and Supporting Works” at the end of GC 7.01 as follows:

“GC 7.01.10 Coordination and Supporting Works

- .01 To co-ordinate the Work, the Contractor or a person authorized to act for the Contractor will attend regular meetings with the Contract Administrator or his or her representative during the Contract Time, at a time and place to be decided by the Contract Administrator.
- .02 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 is responsible for obtaining the certificates from an Engineer that all shoring will meet Ministry of Labour safety requirements. Evidence of such certification shall be provided to the Contract Administrator.
- .03 The Contractor shall provide for efficient drainage of all sections of the Work during all stages of construction at its own expense. 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 Work.”

47. GC 7.02 MONUMENTS AND LAYOUT

- (a) Replace paragraphs GC 7.02.06, GC 7.02.07, GC 7.02.08 and GC 7.02.09 by the following paragraphs:

- “.03 The Contractor will give the Contract Administrator at least 48 hours notice in writing before requiring 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. The Contractor must satisfy itself before commencing the 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 will be held responsible for the preservation of all stakes, marks, reference points, benchmarks and Monuments in their proper positions, and where any of them are disturbed, lost or destroyed, it shall at once notify the Contract Administrator in writing, and all expenses incurred in replacing them will be billed against the Contractor and, if not paid by the Contractor, will be deducted from any monies due the Contractor under the Contract.
- .05 All stakes and marks set will not in every case represent all the grades, levels, lines, angles or surfaces in the finished work, and in this regard the Contractor shall ensure that such stakes and marks are read correctly and used in a manner consistent with the Plans, details, Specifications and directions of the Contract Administrator. Should the Contractor discover or suspect any errors in stakes, lines, and grades which have been established for its use, the Contractor shall at once discontinue the work until such suspicions are investigated and any errors or misunderstanding rectified, but no claims shall be made or allowed on this account, or because of any resulting delay.
- .06 The Contractor shall provide the layout for all Work unless otherwise noted." **[NOTE TO CONTRACT ADMINISTRATOR: Edit this paragraph as may be appropriate.]**

48. GC 7.03 WORKING AREA

- (a) Paragraph GC 7.03.01 is amended by inserting the words "waste products and" prior to the word "debris" in the second line.
- (b) Paragraph GC 7.03 is amended by the addition of the following paragraphs:
- “.06 The location of all temporary buildings used for construction purposes must be submitted to the Contract Administrator for approval before erection work commences. Temporary buildings must be kept clean and sanitary and must not become a hazard to health or a nuisance to the adjoining properties.
- .07 The Contractor shall ensure that during night Work the Working Area is adequately floodlit to the Contract Administrator's

satisfaction for Work operations, inspections and advance warning to traffic.

- .08 Streets beyond the limits of the Working Area 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.
- .09 The Contractor shall take such steps as may be required to prevent dust nuisance resulting from its operations either within the limits of the Working Area or elsewhere or by public traffic where it is the Contractor's responsibility to maintain a Roadway through the Work.
- .10 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 in the vicinity of the Working Area.
- .11 Permitted dust control measures may include the application of calcium chloride, tall oil emulsion or water. In general, the use of calcium chloride and tall oil emulsion shall be kept to a minimum and is restricted to vehicle rights-of-way; there shall be more frequent applications of water in close proximity to watercourses. The Contract Administrator's acceptance shall be obtained before chemicals or tall oil emulsion for dust control are used."

49. GC 7.06 MAINTAINING ROADWAYS AND DETOURS

- (a) Replace paragraph GC 7.06.07 as follows:

“.07 The Contractor will bear the cost of maintaining, in a satisfactory condition for traffic, a Roadway through the Working Area, all in accordance with the Ontario Traffic Manual's Book 7 (Temporary Conditions). The Roadway through the Working Area will include any detour constructed in accordance with the Contract Documents or required by the Contract Administrator. Compensation for all labour, equipment and materials to do this work and to maintain the Roadway, including the cost of grading required to maintain the surface of such Roadway and detours, shall be deemed to be included in the prices bid for the various tender items and no additional payment will be made by the Owner.”

- (b) A new paragraph GC 7.06.12 is added as follows:

“.12 In order to satisfy the Owner that the Contractor has addressed concerns regarding traffic control and safety in accordance with Ontario Traffic Manual’s Book 7 (Temporary Conditions), the Contractor shall submit to the Contract Administrator a sketch indicating its proposed method of barricades and/or signage for each of the Working Areas contemplated in the Contract Documents. This information shall be available for review and approval by the Contract Administrator at the Contract pre-construction meeting.”

50. GC 7.08 APPROVALS AND PERMITS

- (a) Paragraph GC 7.08.01 is amended by adding the words “and shall ensure its Subcontractors” after the words “the Contractor shall” in the first line.
- (b) Paragraph GC 7.08 is amended by the addition of the following paragraphs:

“.03 All such inspections shall be at the expense of the Contractor.

.04 The Contractor will notify, obtain inspections and approvals from, and co-operate with all other Persons involved or affected by the Work, such Utility and railway companies.”

51. GC 7.09 SUSPENSION OF WORK

- (a) Paragraph GC 7.09 is amended by the addition of the following paragraphs:

“.02 The Contract Administrator may stop any portion of the Work, if in his or her judgment, the weather is such as to prevent the Work from being properly done. No compensation of any kind will be made for such stoppage except an extension of time for the Completion of the Work as provided in GC 3.07.

.03 The Contractor shall, upon written notice from the Contract Administrator, discontinue or delay any or all Work of base, foundation, or paving construction on any section of any Roadway or Highway, if, in the opinion of the Contract Administrator, the foundation is not sufficiently compacted or settled for surfacing work in question, and the Work shall not be resumed until the Contract Administrator shall in writing so direct, and the Contractor

shall not be entitled to any compensation for such stoppage or delay to the Work, other than an extension of time for the Completion of the Work as provided in GC 3.07.”

52. GC 7.10 CONTRACTOR’S RIGHT TO STOP THE WORK OR TERMINATE THE CONTRACT

- (a) Paragraph GC 7.10.02 is deleted in its entirety.
- (b) Paragraph GC 7.10.03(b) is amended by replacing the words “an arbitrator or court” with “a court within a reasonable time”.
- (c) Paragraph GC 7.10.03(c) is amended by inserting the words “to a substantial degree and the Contract Administrator confirms by written statement to the Contractor that such cause exists” at the end of the paragraph.
- (d) Paragraph GC 7.10.04 is amended by replacing “7 days” with “15 Working Days”.
- (e) Paragraph GC 7.10.05 is amended by inserting the words “reasonably foreseeable” prior to the words “losses or damages” in the third line.
- (f) Paragraph GC 7.10 is amended by the addition of the following paragraph:

“.06 If the Contractor stops the Work or terminates the Contract in accordance with the paragraphs above, the Contractor shall leave the Working Area and the Work in a secure position.”

53. GC 7.12 ENVIRONMENTAL INCIDENT MANAGEMENT UNDER LEGISLATION PROTECTING THE ENVIRONMENT AND NATURAL RESOURCES

- (a) Paragraph GC 7.12.01 is amended by inserting, following the words “with the requirements of” the words “all Applicable Laws, including, without limitation,”.
- (b) Paragraph GC 7.12 is amended by the addition of the following paragraphs:

“.06 Any Release of a Hazardous Substance under the control of the Contractor, or those for whom the Contractor is responsible at law, and any Release of a Hazardous Substance that is a result of the Contractor’s operations, or operations of those from whom the

Contractor is responsible at law, shall forthwith be reported to the Contract Administrator.

- .07 All Releases of liquid, other than accumulated rainwater from luminaires, internally illuminated signs, lamps and liquid type transformers under the control of the Contractor, and all Releases from Equipment that are a result of the Contractor's operations, or operations of those for whom the Contractor is responsible at law, shall, unless otherwise indicated in the Contract, be assumed to contain Polychlorinated biphenyls or PCBs and shall forthwith be reported to the Contract Administrator. This reporting will not relieve the Contractor of its legal responsibilities under the Contract or under Environmental Laws regarding such Releases."

54. GC 7.14 LIMITATIONS OF OPERATIONS

- (a) Amend paragraph GC 7.14.01 by deleting the word "Saturdays,".
- (b) Paragraph GC 7.14 is amended by the addition of the following paragraph:
- "03. The Contractor will co-operate with the employees of the Owner or other contractors working on the same or related projects. The Contractor will notify, obtain approvals from, and co-operate with all other Persons involved or affected by the Work, such as Utility and railway companies."

55. GC 7.15 CLEANING UP BEFORE ACCEPTANCE

- (a) Amend paragraph GC 7.15.01 by inserting the words ", waste products" following the words "temporary works" in the third line of this paragraph.
- (b) Amend paragraphs GC 7.15.01 and GC 7.15.02 by replacing the words "or others" by "or others who are not the responsibility of the Contractor".

56. GC 7.16 WARRANTY

- (a) Amend paragraph GC 7.16.02 to read:
- "02 Subject to GC 7.16.01, the Contractor shall correct promptly, at no additional cost to the Owner, defects and/or deficiencies in the Work which appear prior to and during the longest of (a) 12 months from the date of Substantial Performance of the Work, as set out in the Certificate of Substantial Performance of the Work; (b) where there is no Certificate of Substantial Performance, 12 months from

the date of Completion of the Work as set out in the Completion Certificate; and (c) such longer period as may be specified for certain Materials or Work. The Contract Administrator will promptly give the Contractor written notice of observed defects or deficiencies.”

- (b) Paragraph GC 7.16 is amended by the addition of the following paragraphs:

- “.04 The Contractor shall be responsible for the maintenance of all trenches for a period of 2 years from the date of the Final Acceptance Certificate. Any shrinkage or settlement during this period will be made good by the Contractor at his own expense. This shall also include making good any other works affected.
- .05 Deficiencies and defects shall be completed within 30 Days of being reported except where carry over of the construction season affects schedule. In this case, all deficiencies shall be completed no later than the next June 30.
- .06 The Contractor shall be responsible for a two (2) year warranty on all new trees planted under the Contract. This shall include 2 full growing seasons from the date of the Final Acceptance Certificate. Any trees found to be unhealthy over this period will be replaced by the Contractor.
- .07 The Contractor shall commence to correct any deficiency within 5 Days after receiving a notice from the Owner or Contract Administrator, and complete the Work as expeditiously as possible, except that in case the deficiency would prevent the use of the Roadway, in which case all necessary corrections and/or installation of temporary replacements shall be carried out immediately as an emergency service. Emergency service shall include without limitation watermain service breaks, sewer back-up, traffic signal outage and any significant holes or depressions in the travelled portion of Roadways. Should the Contractor fail to initiate a response to emergency service within 2 hours of a request made during normal business hours of the Contractor, the Owner is authorized, regardless of GC 7.01.03.01, to carry out all necessary repairs or replacements at the Contractor's expense. The carrying out of replacement work and the making good of defects shall be at the sole cost of the Contractor and shall be executed at times convenient to the Owner. In addition to any other rights of the Owner under the Contract, the Owner reserves the right to deduct

costs and expenses related to emergency service from the Maintenance Security Holdback.”

- (c) Add a new paragraph GC 7.19 as follows:

“GC 7.19 AODA

- .01 Prior to the commencement of the Work, the Contractor shall also furnish evidence of compliance with requirements of the AODA, including training for staff, and/or the Owner may, at its discretion, provide such training if the Contractor.”

SECTION GC 8.0 - MEASUREMENT AND PAYMENT

57. GC 8.01.02 VARIATIONS AND TENDER QUANTITIES

- (a) Amend paragraph 8.01.02.01(a) to read:

“(a) In the case of a Major Item where the quantity of Work performed and/or Materials supplied by the Contractor exceeds the tender quantity by more than 15%, the Owner may make a written request to the Contractor to reduce the unit price for that portion of the Work performed or Materials supplied or both which exceeds 115% of the tender quantity based on the portion of the actual overheads and fixed costs applicable to the amount of the overrun in excess of 115% of the tender quantity. For purposes of the negotiations, the overheads and fixed costs applicable to the Major Item are deemed to have been prorated uniformly over 100% of the tender quantity for the item. Overhead costs shall be confirmed by a statement certified by the Contractor's senior financial officer or auditor and may be audited by the Owner. Alternatively, where both parties agree, a reduction equal to 10% of the unit price of the amount of the overrun in excess of 115% of the tender quantity, will be made.”

58. GC 8.02.03 ADVANCE PAYMENTS FOR MATERIAL

- (a) Amend paragraph GC 8.02.03.01 to read:

“.01 Provided that the Contractor provide the Owner with all of the documents required under this paragraph GC 8.0 and for a Proper Invoice for the applicable compensation sought, the Owner may make advance payments for Material intended for incorporation in the Work upon the written request of the Contractor and according to the following terms and conditions:

- (a) the Contractor shall deliver the Materials to a Working Area approved by the Contract Administrator, and the Contractor shall, in advance of receipt of shipment of the Material, arrange for adequate and proper storage facilities and notify the Contract Administrator of their location(s);”
- (b) The remainder of paragraph GC 8.02.03.01 is unchanged.
- (c) Paragraph GC 8.02.03 is amended by the addition of the following paragraph:

“.03 The Owner will not make advance payments for Material under this Contract except for the following:

[Contract Administrator to enter as appropriate. It is always appropriate to pay for Materials on Working Area if it is likely they will not be incorporated into the completed works within a month or two.]

59. GC 8.02.04.01 PROGRESS PAYMENT

- (a) Replace paragraph GC 8.02.04.01.01 with the following:
- “.01 After starting the Work on this Contract, the Contractor shall, monthly or at intervals specified in the Contract Documents, submit to the Contract Administrator and to the Owner, an application for payment for up to the amount estimated by the Contract Administrator for the applicable interval. Such application for payment shall contain all of the information and documents required of a Proper Invoice and this Contract for progress payments.”
- (b) Replace paragraph GC 8.02.04.01.02 with the following:
- “.02 Payment shall be made within 28 Days of the Contract Administrator’s receipt of an application for payment that meets the requirements of paragraph GC 8.02.04.01.01, subject to holdbacks required under the Construction Act and the delivery of a notice of non-payment issued by the Owner in the form prescribed under the Construction Act.”
- (c) Delete paragraphs GC 8.02.04.01.03 and GC 8.02.04.01.04.

60. GC 8.02.04.03 SUBCONTRACT STATUTORY HOLDBACK RELEASE CERTIFICATE AND PAYMENT

- (a) Paragraph GC 8.02.04.03.01 is amended by inserting the words “Subject to GC 8.02.04.03.02 and the receipt by the Owner of all of the documents and information required for a Proper Invoice,” at the beginning of the paragraph.
- (b) Paragraph GC 8.02.04.03 is amended by the addition of the following paragraph as GC 8.02.04.03.02 and the balance of 8.02.04.03 is renumbered accordingly:

“.02 If any lien is registered, or the Owner receives notice of any claim for lien, or the Owner reasonably believes that any party may retain or has retained any right, title or interest to Materials in respect of which an application for payment has been made including, without limitation, a claim under the *Personal Property Security Act* (Ontario), a lien, attachment or secured claim, then the Owner may, subject to the delivery by the Owner of a notice of non-payment under the Construction Act, hold back from the money due to the Contractor hereunder, in addition to any statutory lien holdbacks, sufficient monies to cause a discharge or vacation of the registration of any such lien or any certificate of action relating thereto, and the Contractor hereby indemnifies the Owner completely against such lien or claim for lien or proceedings arising therefrom and from all expenses and costs related thereto, including, but not limited to, legal fees and disbursements on a full indemnity basis. In addition, the Contractor agrees as follows:

- (a) to discharge the lien rights of any consultants, Subcontractors, supplier, worker or workers’ trust fund involved in the Work and avoid their preserving or giving written notice of any lien, or both, the Contractor shall not include “pay when paid” or “pay if paid” clauses in any agreements with any such persons, and the Contractor shall pay all such persons, with whom it has privity of contract, as their materials or services are supplied to keep its accounts with them current and in any event before such person’s lien rights expire.
- (b) the Contractor shall, when requested to do so by the Owner, cause any and all construction liens registered by any Subcontractor or supplier, to be discharged or vacated by the Contractor posting appropriate security and the

Contractor shall do so within 10 Days of that request at its sole expense.

- (c) the Contractor shall, when requested to do so by the Owner, cause any and all written notices of lien given to any Person by any Subcontractor or supplier, to be withdrawn and the Contractor shall do so within 10 Days of that request at its sole expense.
- (d) should the Contractor fail to discharge or vacate any such lien, or to have any such written notice of lien withdrawn, then the Owner, may at its option, do so and set off and deduct from any amount owing to the Contractor, all costs and expenses of so doing including the costs of borrowing the appropriate cash, letter of credit or bond as security and legal fees and disbursements. If there is no amount owing by the Owner to the Contractor, then the Contractor shall reimburse the Owner for all of the said costs and expenses of so doing.
- (e) the Order discharging or vacating any such lien shall include the following clause: "THIS COURT ORDERS THAT any written notice of the said lien shall no longer bind any person to whom it was given."
- (g) the Contractor and its surety, its respective administrators, successors and assigns and any and all other parties in any way concerned, shall indemnify the Owner and all its officers, servants, agents and employees including all successors or its assigns from any and all liability or expenses of any nature whatsoever and in particular its incurred legal costs in respect of any claim or any liability under the Construction Act or to any attachment for debt, garnishment process or otherwise. The Owner shall not in any cases and/or action or application be liable to any greater extent than the amount owing by it to the Contractor, or the Contractor's respective administrators, successors and assigns."

61. GC 8.02.04.04 SUBSTANTIAL PERFORMANCE OF WORK

- (a) Paragraph GC8.02.04.04.01 is replaced with the following:

- “01 When the Contractor considers that the Contract has been substantially performed, it shall submit to the Contract Administrator an application for payment of the holdback amount containing:
- (a) an itemized list of the outstanding Work;
 - (b) all of the information and documents required of a Proper Invoice;
 - (c) 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 subsection GC 3.13, Claims, Negotiations, Mediation;
 - (d) proof of publication of the Certificate of Substantial Performance; and
 - (e) all final reports and certificates confirming satisfactory completion of all commissioning and testing required by the Contract Documents, to the extent applicable, and all manuals, as-built drawings and other turnover documents required under the Contract Documents.
- .02 Notwithstanding the foregoing, if the Contractor has not provided the documents required by paragraph GC8.02.04.04.01 by the 30th Day after the publication of the certificate of Substantial Performance of the Work (or the Completion of the Work, whichever is earlier), the Owner, at its discretion, shall be entitled to withhold an amount equal to up to the full amount of the amount of statutory holdback as security for the Contractor’s delivery of the outstanding document(s) and information. In the event of a withholding under this paragraph GC8.02.04.04.02, the Owner shall pay the withheld amount to the Contractor upon the Contractor’s delivery of such documents and information.”
- (b) Paragraphs GC8.02.04.04.02, GC8.02.04.04.03, GC8.02.04.04.04, and GC8.02.04.04.05 are renumbered as paragraphs GC8.02.04.04.03, GC8.02.04.04.04, GC8.02.04.04.05, and GC8.02.04.04.06, respectively.

**62. GC 8.02.04.05 SUBSTANTIAL PERFORMANCE PAYMENT AND
SUBSTANTIAL PERFORMANCE STATUTORY
HOLDBACK RELEASE PAYMENT CERTIFICATES**

- (a) Replace GC 8.02.04.05 in its entirety with the following:

“.01 The Substantial Performance Statutory Holdback Release Payment Certificate shall be a payment certificate releasing to the Contractor the Statutory Holdback and any other holdback amount authorized by the Substantial Performance Statutory Holdback Release Payment Certificate. Subject to the delivery by the Owner of a notice of non-payment under the Construction Act and the provisions of the Construction Act, payment of the Statutory Holdback and any other holdback amount authorized by the Substantial Performance Statutory Holdback Release Payment Certificate shall be due 61 Days after the date of publication of the Certificate of Substantial Performance.

.02 Any amount of security retained by the Owner shall be identified in the Substantial Performance Payment Certificate.”

63. GC 8.02.04.06 CERTIFICATION OF COMPLETION

- (a) Paragraph GC 8.02.04.06.01 is replaced with the following:

“.01 When the Contractor considers that the Work is Complete, the Contractor shall submit an application for final payment containing:

- (a) all of the documents and information required under the Contract or for a Proper Invoice;
- (b) a written request for release of the Statutory Holdback for finishing work, including 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 where appropriate; and
- (c) all final reports and certificates confirming satisfactory completion of all required commissioning and testing, to the extent applicable.”

64. GC 8.02.04.07 COMPLETION PAYMENT AND COMPLETION STATUTORY HOLDBACK RELEASE PAYMENT CERTIFICATES

- (a) Replace paragraph GC 8.02.04.07.01 with “[Not Used.]”.
- (b) Replace paragraph GC 8.02.04.07.02 with the following:

“.02 The Completion Statutory Holdback Release Payment Certificate shall be a payment certificate releasing to the Contractor the Statutory Holdback for finishing work. Subject to the delivery by the Owner of a notice of non-payment under the Construction Act and the provisions of the Construction Act, payment of the Statutory Holdback and any other holdback amount authorized by the Completion Statutory Holdback Release Payment Certificate shall be due 61 Days after the date of publication of the Completion Statutory Holdback Release Payment Certificate.”

- (c) Paragraph GC 8.02.04.07.04 is amended by the addition of the following paragraph:

“.04 As of the date of the Completion Payment, the Contractor expressly waives and releases the Owner from all claims against the Owner including, without limitation, those that may arise from negligence or breach of Contract by the Owner except those made in writing prior to the Completion Payment and still unsettled.”

65. GC 8.02.04.08 INTEREST

- (a) Replace paragraph GC 8.02.04.08 as follows:

“.01 The Contractor shall not be entitled to claim, and the Owner shall not be required to pay, interest except in accordance with the Construction Act.”

66. GC 8.02.04.09 INTEREST FOR LATE PAYMENT

- (a) Delete paragraph GC 8.02.04.09 in its entirety.

67. GC 8.02.04.10 INTEREST FOR NEGOTIATIONS AND CLAIMS

- (a) Delete paragraph GC 8.02.04.10 in its entirety.

68. GC 8.02.04.11 OWNER'S SET-OFF

- (a) GC 8.02.04.11.01 is revised to read:

“.01 Subject to the Construction Act, the Owner may retain from monies owing to the Contractor under this or any other contract with the Contractor an amount sufficient to cover any outstanding or disputed liabilities including, without limitation, the cost to remedy deficiencies, the reduction in value of substandard portions of the Work, claims for damages by third parties which have not been

determined in writing by the Contractor's insurer, undetermined claims by the Owner under paragraph (a) of paragraph GC 8.01.02.01, Variations in Tender Quantities, any assessment due the Workplace Safety and Insurance Board, and any monies to be paid to the workers in accordance with paragraph GC 8.02.10, Payment of Workers as well any liquidated damages assessed by the Owner pursuant to paragraph GC8.02.09."

69. GC 8.02.04.12 DELAY IN PAYMENT

- (a) GC 8.02.04.12 is deleted in its entirety.

70. GC 8.02.05.05 PAYMENT FOR MATERIAL

- (a) Add the following at the end of the sentence: "Surplus Material not used on the Project may be purchased by the Owner at a cost not to exceed the cost of such Material, that is, invoice cost and no mark-up."

71. GC 8.02.05.06.02 STAND-BY TIME

- (a) Replace paragraph GC 8.02.05.06.01 and GC 8.02.05.06.02 with the following:

"01 The Owner is not liable to pay Stand-by Time for any labour or equipment rental under this Contract."

72. GC 8.02.05.07 PAYMENT FOR HAND TOOLS

- (a) Add the following at the end of the paragraph: ", including chain saws, cut off saws, portable generators, chipping/jack hammers, blades and drills, and electric hand tools. No payment shall also be made with respect to the Contractor's staff vehicles and equipment including any tool truck."

73. GC 8.02.05.08 PAYMENT FOR WORK BY SUBCONTRACTORS

- (a) Revise paragraph GC 8.02.05.08.01(a), (b) and (c) to be replaced with the following: "5% of the amount".

74. GC 8.02.05.09.04 SUBMISSION OF INVOICES

- (a) Revise paragraph GC 8.02.04.09.04 to read: "The final summary as per paragraph 8.02.05.09.02 shall be submitted by the Contractor within 30 Days after the completion of the Work on a Time and Material Basis."

75. GC 8.02.06 FINAL ACCEPTANCE CERTIFICATE

- (a) Replace paragraph GC 8.02.06.02 with “[Not Used.]”.

76. GC 8.02.09 LIQUIDATED DAMAGES

- (a) Replace paragraph GC 8.02.09 with the following:

“GC 8.02.09 Time for Completion and Liquidated Damages**.01 Time**

Time shall be strictly of the essence of this Contract.

.02 Progress of the Work and Time for Completion

- (a) The Contractor shall complete this Contract in its entirety by the Completion date specified in the Tender form.
- (b) If the time limit 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 life of the Contract 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 therefor.
- (c) An extension of Contract Time may be granted in writing by the Contract Administrator in his or her sole discretion in the event of the Work being delayed beyond the prescribed time for Completion. Such extension shall be for such time as the Contract Administrator may prescribe and the Contract Administrator shall fix the terms on which such an extension may be granted. An application for an extension of Contract Time shall be made in writing by the Contractor to the Owner at least 15 Working Days prior to the date of Completion fixed by the Contract. The date of expiry of all bonds and other surety furnished to the Owner by the Contractor shall be extended at the expense of the Contractor.

- (d) Any extension of Contract Time that may be granted to the Contractor shall be so granted and accepted without prejudice to any rights of the Owner whatsoever under this Contract and all of such rights shall continue in full force and effect after the time limited in this Contract for Completion of the Work and whenever in this Contract power or authority is given to the Owner or the Contract Administrator or any Person to take any action consequent upon the act, default, neglect, delay, breach, non-observance or non-performance by the Contractor in respect of the Work or Contract or any portion thereof, such powers or authorities may be exercised from time to time, and not only in the event of the happening of such contingencies before the time limited in this Contract for the Completion of the Work but also in the event of the same happening after the time so limited in the case of the Contractor being permitted to proceed with the execution of the Work under an extension of Contract Time granted by the Owner. In the event of the Owner granting an extension of Contract Time, time shall continue to be deemed strictly of the essence of this Contract.

.03 Liquidated Damages

- (a) It is agreed by the Parties to the Contract that in case all the Work called for under the Contract is not finished by the Completion date specified in the Tender form or as amended by the Contract Administrator, damage will be sustained by the Owner, and that it is and will be impracticable and extremely difficult to ascertain and determine the actual damage which the Owner will sustain in the event of and by reason of such delay and the Parties therefore agree that the Contractor will pay to the Owner the sum of \$_____ * for Liquidated Damages for each and every Day's delay in completing the Work beyond the date of Completion prescribed and it is agreed that amount is an estimate of actual damage to the Owner which will accrue during the period in excess of the prescribed date of Completion.
- (b) The Owner may deduct any amount under this paragraph from any monies that may be due or payable to the Contractor on any account whatsoever. The Liquidated Damages payable under this paragraph are in addition to

and without prejudice to any other remedy, action or other alternatives that may be available to the Owner.

- (c) The Contractor shall not be assessed with Liquidated Damages for any delay caused by a Force Majeure Event. If the Contractor is delayed by reason of alterations or changes made under Section GC 3.10 of the General Conditions, the time of Completion shall be extended as determined by the Contract Administrator in his or her sole discretion.”

[*Note: This figure should be calculated by the Contract Administrator. [\$1,000.00] is appropriate for the cost of inspection for routine City projects.]

- (b) Add a new GC 8.02.10 as follows:

“GC 8.02.10 Maintenance Security Holdback

- .01 In addition to any other holdback required by Applicable Law or otherwise agreed by the Parties, the Owner will retain, until expiry of the Warranty Period, money in the amount calculated pursuant to paragraphs .02 and .03 hereof which money may be applied by the Owner in whole or in part in order to reimburse the Owner for losses, costs incurred or funds expended by the Owner as a result of default by the Contractor respecting the warranty obligations of the Contractor set out in the Contract (**“Maintenance Security Holdback”**).
- .02 The Maintenance Security Holdback shall be first retained by the Owner when the Contract Administrator certifies that Work to the value of 70% of the Contract Price has been performed and shall be calculated and shown as an amount to be retained in the monthly applications for payment by the Contractor in succeeding applications, commencing when the Contractor makes his first application for payment on the basis that Work to the value of 70% of the Contract Price has been performed.
- .03 A Maintenance Security Holdback will be calculated in accordance with the following Table:

Contract Value	Amount of Maintenance
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	Security Holdback
less than \$300,000	4% of Contract value
\$300,000 - 800,000	\$20,000
\$800,000 - 1,500,000	\$30,000
greater than \$1,500,000	2% of Contract value

- .04 The Maintenance Security Holdback is in addition to any other rights or remedies of the Owner in respect to the correction of the Contractor's default of the Contractor's warranty obligations.
- .05 Some portions of the Work have an extended warranty. A proportionate amount of the Maintenance Security Holdback will be retained until expiry of the extended portions."