CITY OF TORONTO

SUPPLEMENTARY CONDITIONS TO CCDC 2-2008

STIPULATED PRICE CONTRACT
AMENDMENTS TO THE STIPULATED PRICE CONTRACT, CCDC2-2008

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

1. AGREEMENT BETWEEN OWNER AND CONTRACTOR

1.1 ARTICLE A-3-CONTRACT DOCUMENTS

1.1.1 Amend paragraph 3.1 by adding the following after the words, "The General Conditions of the Stipulated Price Contract":

- "These Supplementary Conditions
- The Specific Conditions, if any
- Drawings
- Specifications"

1.2 ARTICLE A-5 – PAYMENT

1.2.1 Delete paragraph 5.3 – Interest, in its entirety.

1.3 ARTICLE A-6 – RECEIPT AND ADDRESSES FOR NOTICES IN WRITING

1.3.1 Amend paragraph 6.1, by deleting the words, "or by facsimile" in the second sentence, the words, "facsimile or other form of" in the fourth sentence, and the words, "facsimile number" wherever they appear.

2. DEFINITIONS

2.1.1 Delete Definition 4, "Consultant", and replace it with the following:

"The 'Consultant', shall be the person or entity designated as the Consultant by the Owner, from time to time.

2.1.2 Add a new Definition, "Act", as follows:

"'Act' means the Construction Lien Act (Ontario), as amended."

2.1.3 Add a new Definition, "OHSA", as follows:

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

2.1.4 Add a new Definition, "Submittals", as follows:

"Submittals
Submittals are documents or items required by the Contract Documents to be provided by the Contractor in accordance with the Contract Documents such as:
Appendix C

- Shop Drawings, samples, models, mock-ups to indicate details or characteristics, before the portion of the Work that they represent can be incorporated into the Work; and

- As-built drawings and manuals to provide instructions to the operation and maintenance of the Work.

2.1.5 Add a new Definition, "WSIB", as follows:

"WSIB" means the Workplace Safety & Insurance Board.

2.1.6 Add a new Definition "Daily Work Records", as follows:

"Daily Work Records' mean daily records detailing the number and categories of workers and hours worked or on standby, types and quantities of Construction Equipment, and descriptions and quantities of Product utilized.

3. GENERAL CONDITIONS OF THE STIPULATED PRICE CONTRACT

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

3.1 GC 1.1 - CONTRACT DOCUMENTS

3.1.1 Delete paragraph 1.1.7.1 in its entirety and replace it with new paragraph 1.1.7.1:

"1.1.7.1 If there is a conflict within the Contract Documents, the order of priority of documents, from highest to lowest, shall be:

any amendment to the Agreement between the Owner and the Contractor,

the Agreement between the Owner and the Contractor,

the Definitions,

Supplementary Conditions,

the General Conditions,

the Drawings,

Division 1 of the Specifications,

Technical Specifications,

material and finishing schedules."

3.1.2 Delete paragraph 1.1.8 in its entirety and replace it with new paragraph 1.1.8:

"1.1.8 The Owner shall provide the Contractor, without charge, up to ten copies of the Contract Documents. If requested by the Contractor, the City shall provide additional copies at the cost of printing handling and shipping."
3.1.3 Amend paragraph 1.1.9 by deleting the period at the end and replacing it with ", which shall not unreasonably be withheld."

3.2 GC 1.3 – RIGHTS AND REMEDIES

3.2.1 Amend paragraph 1.3.2 by deleting the word, "Consultant" and replacing it with "his representative".

3.3 GC 1.4 - ASSIGNMENT

3.3.1 Delete paragraph 1.4.1 in its entirety and replace it with the following:

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

3.4 GC 2.1 – AUTHORITY OF THE CONSULTANT

3.4.1 Delete paragraph 2.1 in its entirety and replace it with new paragraph 2.1:

"2.1.1 The Consultant will be the Owner's representative during construction and until the issuance by the Consultant of a certificate at completion of the Work ("Completion Certificate") or the issuance by the Consultant of a certificate of final acceptance ("Final Acceptance Certificate") whichever is later. All instructions to the Contractor including instructions from the Owner will be issued by the Consultant. The Consultant will have the authority to act on behalf of the Owner only to the extent provided in the Contract Documents.

2.1.2 The Consultant will inspect the Work for its conformity with the plans and Specifications, and record the necessary data to establish payment quantities under the schedule of tender quantities and unit prices or to make an assessment of the value of the Work completed in the case of a lump sum price contract.

2.1.3 The Consultant will investigate all claims of a change in the Work made by the Contractor and issue appropriate instructions.

2.1.4 In the case of non-compliance with the provisions of the Contract by the Contractor, the Consultant, after consultation with the Owner, will have the authority to suspend the Work for such reasonable time as may be necessary to remedy such non-compliance. The Contractor shall not be entitled to any compensation for suspension of the Work in these circumstances.

3.5 GC 2.2 - ROLE OF THE CONSULTANT

3.5.1 Amend paragraph 2.2.3 by deleting the second sentence thereof.

3.5.2 Amend paragraph 2.2.7 by deleting the words "except with respect to GC 5.1 – FINANCING INFORMATION REQUIRED OF THE OWNER."

3.5.3 Delete paragraph 2.2.16 and replace it with the following:

2.2.16 The Consultant and the Contractor will jointly conduct reviews of the Work to determine the date of Substantial Performance of the Work and completion of the Work as provided in GC
Appendix C

5.4 SUBSTNATIAL PERFORMANCE OF THE WORK and GC5.7 – FINAL PAYMENT, respectively.

3.6 GC 2.4 - DEFECTIVE WORK

3.6.1 Amend paragraph 2.4.1 by adding the following at the end, "at no additional cost to the Owner"

3.6.2 Add new subparagraphs 2.4.1.1 and 2.4.1.2:

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

2.4.1.2 The Contractor shall prioritize the correction of any defective Work which, in the sole discretion of the Owner, adversely affects the day to day operation of the Owner."

3.7 GC 3.2 - CONSTRUCTION BY OWNER OR OTHER CONTRACTORS

3.7.1 Delete subparagraphs 3.2.2.4 and 3.2.2.5 in their entirety.

3.8 GC 3.4 - DOCUMENT REVIEW

3.8.1 Delete paragraph 3.4.1 in its entirety and replace it with new paragraph 3.4.1:

"3.4.1 The Contractor shall review the Contract Documents and shall report promptly to the Consultant any error, inconsistency or omission the Contractor may discover. Such review by the Contractor shall comply with the standard of care described in GC3.14 STANDARD OF CARE. Except for its obligation to make such review and report the result, the Contractor does not assume any responsibility to the Owner or to the Consultant for the accuracy of the Contract Documents. The Contractor shall not be liable for damage or costs resulting from such errors, inconsistencies, or omissions in the Contract Documents, which the Contractor could not reasonably have discovered. If the Contractor does discover any error, inconsistency or omission in the Contract Documents, the Contractor shall not proceed with the Work affected until the Contractor has received corrected or missing information from the Consultant."

3.8.2 Add new paragraph 3.4.2:

"3.4.2 If the Contractor finds discrepancies in and/or omissions from the Contract Documents or has any doubt as to the meaning or intent of any part thereof, the Contractor shall immediately notify the Consultant, who will provide written instructions or explanations. Neither the Owner nor the Consultant will be responsible for oral instructions."

3.9 GC 3.5 - CONSTRUCTION SCHEDULE

3.9.1 Add the following sections 3.5.1.1.1 to 3.5.1.1.5

"3.5.1.1.1 The schedule shall take into account the sequence of construction and the completion dates contained in the information for bidders and the tender submission package;
3.5.1.1.2 Only computerised type schedules will be accepted;
3.5.1.1.3 The schedule must show the Project critical path and the critical path must be identified in a contrasting colour (red) from the other activities;
3.5.1.1.4 The schedule must clearly show, in weekly intervals, the logic and timing of major activities, proposed start dates and estimated duration for activities;
Appendix C

3.5.1.5 The schedule must have a level of detail sufficient to identify the Contractor and each specific Subcontractor and their respective parts of the Work and the specific location thereof."

3.10 GC 3.6 – SUPERVISION

3.10.1 Amend paragraph 3.6.1 by adding the following after the words, "competent representative", "who shall be a Competent Person, as that term is defined in the Occupational Health and Safety Act, ", and by deleting the last sentence, and replacing it with the following, "The Contractor shall not be entitled to change the Competent Person without the prior written authorization of the Owner, which shall not be unreasonably withheld."

3.10.2 Add paragraphs 3.6.3 to 3.6.7 as follows:

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

3.6.4 Prior to commencement of the Work, the Contractor shall select a competent and experienced full time Project manager (the “Project Manager”) who shall be in attendance at the Place of the Work or on the road and engaged in the Work at all times, and a competent and experienced full time site supervisor (the “Site Supervisor”) who shall be in attendance at the Place of the Work at all times. The Project Manager shall have full responsibility for the prosecution of the Work, with full authority to act in all matters as may be necessary for the proper co-ordination, supervision, direction and technical administration of the Work, who shall attend site meetings in order to render reports on the progress of the Work and who shall have authority to bind the Contractor in all matters related to this Contract. The Project Manager and the Site Supervisor shall be satisfactory to the Owner and shall not be changed except for good reason and with the prior written approval of the Owner, which shall not unreasonably be withheld. The Project Manager may be the same person as the competent representative set out in section 3.6.1.

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

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

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

3.11 GC 3.7 - SUBCONTRACTORS AND SUPPLIERS

3.11.1 Add a new paragraph 3.7.1.4, as follows:

"3.7.1.4 at all times ensure full compliance with all of the Owner's policies including the Owner's Fair Wage Policy, and its collective agreements."

3.11.2 Delete paragraphs 3.7.3, 3.7.4, and 3.7.5 in their entirety, and replace them with sections 3.7.3, 3.7.4, 3.7.5, 3.7.6, 3.7.7, and 3.7.8 as follows:
Appendix C

"3.7.3  The Contractor may subcontract any part of the Work, subject to these General Conditions and any limitations specified in the Contract Documents.

3.7.4  The Contractor shall notify the Consultant, in writing, of its intention to subcontract. Such notification shall identify the part of the Work and the Subcontractor with whom it is intended to subcontract.

3.7.5  The Contractor shall not, without the written consent of the Owner, change a Subcontractor who has been engaged in accordance with this General Condition.

3.7.6  The Contractor shall preserve and protect the rights of the Owner with respect to that part of the Work to be performed under subcontract and shall enter into agreements with the intended Subcontractors to require them to perform their Work in accordance with the Contract Documents and shall be as fully responsible to the Owner for acts and omissions of the Contractor's Subcontractors and of persons directly and indirectly employed by them as for acts and omissions of persons employed directly by the Contractor.

3.7.7  The Owner's consent to subcontracting by the Contractor shall not be construed as relieving the Contractor from any obligation under the Contract and shall not impose any liability on the Owner. Nothing contained in the Contract Documents shall create a contractual relationship between a Subcontractor and the Owner.

3.7.8  The Contractor and all associated Subcontractors shall be subject to the Owner's policies, including any Fair Wage Policy, if any, as may be adopted by the Owner from time to time, and any of the Owner's or legislated labour trades requirements. Failure to comply with these policies or requirements may lead to termination of the Contract, or rejection of a Subcontractor, as the case may be."

3.12  GC 3.8 - LABOUR AND PRODUCTS

3.12.1  Paragraph 3.8.2 is amended by adding the following sentence to the end:

"The Contractor shall not change the source of supply of any Product without the written authorization of the Consultant."

3.12.2  Amend paragraph 3.8.3 by adding the following at the end thereof:

"and shall not employ any persons on the Work whose labour affiliation (or lack thereof) is incompatible with other labour employed in connection with the Work or at the Place of the Work."

3.13  GC 3.11- USE OF THE WORK

3.17.1  Amend section 3.11.2 by adding the words, ", individuals and the area adjacent to the work.", at the end thereof.

3.14  GC 3.12- CUTTING AND REMEDIAL WORK

3.18.1  Amend paragraph 3.12.1 by adding the word, "coring," before the word, "cutting."

3.15  GC 3.13- CLEANUP

3.15.1  Amend paragraph 3.13.2 by adding the following at the end thereof, "all to the satisfaction of the Consultant and the Owner, acting reasonably."

3.15.2  Add a new paragraph 3.13.4 as follows:
Appendix C

"3.13.4 The Owner shall have the right to back charge cleaning to the Contractor if the cleaning is not completed within 24 hours of written notice to clean and the Owner shall have the right to back charge the cost of damage to the Place of the Work caused by the Contractor’s, Subcontractor’s or Supplier’s transportation in and out of the Place of the Work if not repaired within 5 Working Days of written notice to repair or before final payment, whichever is earlier."

3.16 GC 3.14 – STANDARD OF CARE

3.16.1 Add new General Condition 3.14 as follows:

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

3.14.2 The Contractor further represents covenants and warrants to the Owner that there are no pending, threatened or anticipated claims that would have a material effect on the financial ability of the Contractor to perform its Work under the Contract."

3.17 GC 5.1 - FINANCING INFORMATION REQUIRED OF THE OWNER

3.17.1 Delete GC 5.1.1 and 5.1.2 in their entirety and replace them with "Intentionally left blank."

3.18 GC 5.2 - APPLICATIONS FOR PROGRESS PAYMENT

3.18.1 Amend paragraph 5.2.4 by deleting the words "calendar days" and replacing them with "Working Days".

3.18.2 Amend paragraph 5.2.7 by adding the following at the end thereof:

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

3.18.3 Add new paragraphs 5.2.8, 5.2.9, 5.2.10, 5.2.11, 5.2.12, and 5.2.13 as follows:

"5.2.8 The Contractor shall submit a WSIB clearance certificate and a Statutory Declaration of Progress Payment Distribution by Contractor in a form acceptable to the Owner with each application for progress payment.

5.2.9 The Contractor shall, within 21 days of the signing of the Contract, and prior to the first claim for monthly payment, submit to the Owner a detailed breakdown of the lump sum tender price for the purpose of establishing monthly payments. The Owner, acting reasonably, reserves the right to modify costs allocated to the various breakdown items to prevent unbalancing.

5.2.10 Payment for mobilizing and setting up plant, temporary buildings and services, premiums and other disbursements, shall be prorated based on the value of the Work performed during a billable period.

5.2.11 Payment for bonds and insurance will be paid 100 per cent on the first progress payment, provided that respective invoices are submitted as proof of payment.

5.2.12 An “as-built” item shall be identified on the cost breakdown with a corresponding fair and reasonable value for the purpose of ensuring that the as-built information drawings are given
Appendix C

due diligence. A detailed description of as-built information/drawings performed for that month shall accompany the invoice.
5.2.13 Prior to applying for any payment from the City, the Contractor shall submit a monthly projected/estimated payment schedule based on the detailed construction schedule and the Contract Price for the duration of the Contract.”

3.19 GC 5.3 - PROGRESS PAYMENT

3.19.1 Amend subparagraph 5.3.1.2 by adding the following sentence at the end thereof:

“For clarity, the ten calendar day period referenced in this paragraph shall not commence until such time as the Consultant has determined that he has received from the Contractor all required documents supporting the invoice and evidencing the Work being invoiced, all to the Consultant's reasonable satisfaction.”

3.19.2 Amend paragraph 5.3.1.3 by deleting the number "20" and replacing it with the number, "30", and by deleting everything after the word "after" and replacing it with the following:

"the Consultant and the Contractor have reached mutual agreement on the amount of the invoice evidencing the Work being invoiced with required supporting documents.”

3.20 GC 5.4 – SUBSTANTIAL PERFORMANCE OF THE WORK

3.20.1 Delete paragraph 5.4.3 in its entirety and replace it with the following:

"Immediately prior to the issuance of the certificate of Substantial Performance of the Work, the Contractor, in consultation with the Consultant, shall establish a schedule for completion of the Work and correcting deficient Work, and the construction schedule shall be deemed to be amended to include this completion schedule.”

3.20.2 Add new paragraphs 5.4.4 and 5.4.5:

"5.4.4 Prior to submitting its written application for Substantial Performance of the Work, the Contractor shall submit to the Consultant all:
.1 guarantees;
.2 warranties, completed as per paragraph 12.3.6;
.3 certificates;
.4 testing and balancing reports;
.5 distribution system diagrams;
.6 spare parts;
.7 maintenance/operation manuals;
.8 training manuals;
.9 samples;
.10 reports and correspondence from authorities having jurisdiction in the Place of the Work;
.11 Shop Drawings, and marked up Drawings;
.12 completed as-built drawings in the latest edition of a Computer Assisted Design Drawing software program;
.13 inspection certificates;
and other materials or documentation required to be submitted under the Contract, together with written proof acceptable to the Owner and the Consultant that the Work has been substantially performed in conformance with the requirements of municipal, governmental and utility authorities having jurisdiction in the Place of the Work.
5.4.5 Where the Contractor is unable to deliver the documents and materials described in paragraph 5.4.4, then, provided that none of the missing documents and materials interferes
Appendix C

with the use and occupancy of the Project in a material way, and except as described herein, the failure to deliver shall not be grounds for the Consultant to refuse to certify Substantial Performance of the Work. However, certification of Substantial Performance of the Work may be withheld if the Contractor fails to deliver maintenance manuals, as required in paragraph 5.4.4.7, or completed as-built drawings, as required in subparagraph 5.4.5.12. Any documents or materials not delivered in accordance with paragraph 5.4.5 shall be delivered as provided in paragraph 5.7.1.2 of GC 5.7."

3.21 GC 5.5 - PAYMENT OF HOLDBACK UPON SUBSTANTIAL PERFORMANCE OF THE WORK

3.21.1 Amend paragraph 5.5.1.2 by adding the following at the end thereof:

"The Substantial Performance Statutory Holdback Release Payment Certificate will be a payment certificate releasing to the Contractor the statutory holdback due in respect of Work performed up to the date of Substantial Performance of the Work. Payment of such statutory holdback shall be due 46 Days after the date of publication of the Certificate of Substantial Performance but subject to the provisions of the Construction Lien Act and the submission by the Contractor of the following documents: a satisfactory certificate of clearance from the WSIB; a Release and Waiver in a form acceptable to the City; and proof of publication of the Certificate of Substantial Performance."

3.21.2 Amend paragraph 5.5.2 by deleting from line 1, the words, "the statement" and replacing them with the words, "the documents".

3.21.3 Delete paragraph 5.5.3 in its entirety.

3.21.4 Amend paragraph 5.5.4 by deleting the last sentence and replacing it with the following: "In accordance with the Construction Lien Act, the Owner may retain out of the holdback amount any sums required by law to satisfy any liens against the Work and, the Owner acting reasonably, may retain any amounts in respect of claims of third parties made to the Owner in respect of the Contract or the Work, and in respect of any claims the Owner may have against the Contractor."

3.22 GC 5.6 - PROGRESSIVE RELEASE OF HOLDBACK

3.22.1 Amend paragraph 5.6.1 by deleting the period at the end of the first sentence and substituting "subject to, and in accordance with, the terms of this GC 5.6." and by deleting the last sentence thereof and by adding the following as paragraphs 5.6.1.1, and 5.6.1.2:

"5.6.1.1 The holdback in respect of a subcontract shall be released 46 Days after the date the subcontract is certified complete, provided the Contractor submits the following to the Consultant:

(a) a document satisfactory to the Consultant that will release the Owner from all further claims relating to the subcontract, qualified by stated exceptions such as holdback monies;
(b) evidence satisfactory to the Consultant that the Subcontractor has discharged all liabilities incurred in carrying out the subcontract;
(c) a satisfactory clearance certificate or letter from the Workplace Safety and Insurance Board relating to the subcontract; and
(d) a copy of the contract between the Contractor and the Subcontractor and a satisfactory statement showing the total amount due to the Subcontractor from the Contractor."

5.6.1.2 The Owner may retain out of the holdback amount any sums required by law to satisfy any liens against the Work and any amounts in respect of claims of third parties made to the City in respect of the Contract or the Work. "

Staff report for action on GCs for Capital Projects, Appendix C 10


Appendix C

3.23 GC 5.7 - FINAL PAYMENT

3.23.1 Amend paragraph 5.7.1 by renumbering it as 5.7.1.1 and adding the following subparagraph as 5.7.1.2.

"5.7.1.2 The Contractor’s application for final payment shall be accompanied by any documents or materials not yet delivered pursuant to paragraph 5.4.4. The Work shall be deemed not to be performed until all of the aforementioned documents have been delivered, and the Owner may withhold payment in respect of the delivery of any documents in an amount determined by the Consultant in accordance with the provisions of GC 5.8 WITHHOLDING OF PAYMENT."

3.23.2 Amend paragraph 5.7.4 by deleting the number, "5" and replacing it with "45".

3.24 GC 6.2 - CHANGE ORDER

3.24.1 Add new paragraphs 6.2.3 and 6.2.4 as follows:

"6.2.3.1 Any agreement reached by the Owner and Contractor on an adjustment of the Contract Price on either a lump-sum or unit price basis shall be subject to the conditions contained in this paragraph 6.2.3.

6.2.3.2 Where a change in the Work, is performed by the Contractor’s own forces, the negotiated lump sum price for change in the Work, or negotiated unit price(s) for each unit priced item shall be all-inclusive, except HST and mark-up as provided hereafter, and shall include, without limitation, all costs, charges, expenses and fees whatsoever required or related to perform such change, or such unit priced item. The Contractor shall be allowed a mark-up to a maximum amount of 15% of the lump sum price, or aggregate of unit items and applicable unit price(s), for such change, net of taxes on the first $100,000 and 10% thereafter. The Contractor shall provide a written quotation identifying each amount to be charged for transportation, labour, Product, Construction Equipment and services and all other costs for the performance of the Work. The HST, as applicable, shall be identified separately in a manner satisfactory to the Owner.

6.2.3.3 Where a change in the Work is performed by a Subcontractor’s forces, the Subcontractor’s lump sum price for change in the Work, or unit price (s) for each unit priced item shall be all-inclusive, except HST and mark-up as provided hereafter, and shall include all of its costs, charges, expenses and fees whatsoever required or related to perform such change, or such unit priced item. The Subcontractor shall provide a written quotation with back-up documentation from the Subcontractor identifying each amount to be charged for transportation, labour, Product, Construction Equipment and services and all other costs for the performance of the Work and the total price charged by the Subcontractor. The Subcontractor shall be allowed a mark-up to a maximum amount of 15% of the lump sum price, or aggregate of unit items and applicable unit price(s), for such change, net of taxes on the first $100,000 and 10% thereafter. The Subcontractor is allowed a maximum mark-up of 10% on the total price charged by the Subcontractor to the Contractor for such change, net of taxes and Subcontractor mark-up. The HST, as applicable, shall be identified separately in a manner satisfactory to the Owner.

6.2.3.4 In the event any of the change in the Work, contains items or parts that, in the opinion of the Consultant, are the same or equivalent to items for which the Contractor submitted unit prices in the tender submitted by the Contractor, then the prices in the tender shall be the prices paid by the Owner for that work or parts of the work in respect of any such change in the Work.

6.2.3.5 Where a change in the Work is performed either by the Contractor or a Subcontractor, and requires Construction Equipment, reasonable rental charges for Construction Equipment, such as tractors, bulldozers, ditching machines, air compressors, compactors, concrete mixers and graders, for the actual time required in operation for the performance of the Work must be agreed upon before commencing the Work.

6.2.3.6 The mark-ups provided for in paragraph 6.2.3.2 and 6.2.3.3 shall constitute the only compensation the Contractor shall be entitled to for any and all overhead, profit,
incidental and administrative costs whatsoever related to the change, including but not limited to, costs relating to superintendence and supervision, shop drawing production, estimating, site office and home office expenses, workers tools, temporary facilities and controls, and coordination of any and all Work-related activities.

6.2.3.7 No claim whatsoever for a change in the Contract Time, delay, prolongation charges, remobilization or otherwise shall be permitted with respect to a change, unless first authorized by the Consultant and approved by the Consultant and set out in the Change Order or Change Directive, as the case may be, by the Owner.

6.2.3.8 No compensation for any change in the Work shall be allowed unless such change is first ordered in writing by the Consultant and authorized by the Owner.

6.2.4 Work on a Time and Material Basis

6.2.4.1 Where agreement is not reached on a lump-sum or unit price basis for a change in the Contract Price arising out of a change in the Work, the Owner may choose to issue a Change Order for Work on a Time and Material Basis, in which case the following provisions in this section 6.2.4 shall apply:

6.2.4.2 For the purposes of this paragraph 6.2.4, the following definitions apply:

**Cost of Labour:** means the amount of wages, salary, travel, travel time, food, lodging or similar items and Payroll Burden paid or incurred directly by the Contractor to or in respect of labour and supervision actively and necessarily engaged on the Work based on the recorded time and hourly rates of pay for such labour and supervision, but shall not include any payment or costs incurred for general supervision, administration or management time spent on the entire Work or any wages, salary or Payroll Burden for which the Contractor is compensated by any payment made by the Owner for Construction Equipment.

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

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

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

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

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

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

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

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

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

Work on a Time and Material Basis: means changes in the Work approved by the Consultant for payment on a time and material basis. The Work on a Time and Material Basis shall be subject to all the terms, conditions, Specifications and provisions of the Contract.

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

6.2.4.3 Daily Work Records prepared as the case may be by either the Contractor's representative or the Consultant and reporting the labour and Construction Equipment employed and the Product used for Work on a Time and Material Basis, shall be reconciled and signed each day by both the Contractor's representative and the Consultant.

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

6.2.4.5 The Owner will pay the Contractor for labour employed on each time and material project at 135% of the Cost of Labour up to $3000, then at 120% of any portion of the Cost of Labour in excess of $3000.

6.2.4.6 The Owner will make payment in respect of Payroll Burden for Work on a Time and Material Basis at the Contractor's actual cost of Payroll Burden.

6.2.4.7 At the Owner’s discretion, an audit may be conducted in which case the actual Payroll Burden so determined shall be applied to all Work on a Time and Material Basis.

6.2.4.8 The Owner will pay the Contractor for Product used on each time and material project at 120% of the Cost of Product up to $3,000, then at 115% of any portion of the Cost of Product in excess of $3,000.

6.2.4.9 The Owner will pay the Contractor for the Working Time of all Construction Equipment other than rented Construction Equipment and Operated Rented Construction Equipment used on the Work on a Time and Material Basis at the 127 Rates with a cost adjustment as follows:

(a) Cost $10,000 or less - no adjustment;
Appendix C

(b) Cost greater than $10,000 but not exceeding $20,000 - payment $10,000 plus 90% of the portion in excess of $10,000; and
(c) Cost greater than $20,000 - $19,000 plus 80% of the portion in excess of $20,000.

6.2.4.10 The Owner will pay the Contractor for the Working Time of Rented Equipment used on the Work on a Time and Material Basis at 110% of the invoice price approved by the Consultant up to a maximum of 110% of the 127 Rate. This constraint will be waived when the Consultant approves the invoice price prior to the use of the Rented Equipment.

6.2.4.11 The Owner will pay the Contractor for the Working Time of Operated Rented Construction Equipment used on the Work on a Time and Material Basis at 110% of the Operated Rented Construction Equipment invoice price approved by the Consultant prior to the use of the Construction Equipment on the Work on a Time and Material Basis.

6.2.4.12 The Owner will pay the Contractor for Standby Time of Construction Equipment at 35% of the 127 Rate or 35% of the invoice price whichever is appropriate. The Owner will pay reasonable costs for Rented Equipment where this is necessarily retained in the Place of the Work for extended periods agreed to by the Consultant. This will include Rented Equipment intended for use on other work, but has been idled due to the circumstances giving rise to the Work on a Time and Material Basis.

6.2.4.13 In addition, the Owner will include the Cost of Labour of operators or associated labourers who cannot be otherwise employed during the standby period or during the period of idleness caused by the circumstances giving rise to the Work on a Time and Material Basis.

6.2.4.14 Rented Equipment idled by the circumstances giving rise to the Work on Time and Material Basis to be returned to the lessor until the work requiring the Rented Equipment can be resumed. The Owner will pay such costs as result directly from such return.

6.2.4.15 When Construction Equipment is transported, solely for the purpose of the Work on a Time and Material Basis, to or from the Place of the Work, payment will be made by the Owner only in respect of the transporting units. When Construction Equipment is moved under its own power it shall be deemed to be working. Construction Equipment rates shall be subject to the approval of the Consultant.

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

6.2.4.17 For changes in the Work, where the Work is performed by a Subcontractor the Owner shall pay the Contractor a mark up in the amount of 10 % of the first $10,000 plus 5 % of the amount in excess of $10,000.

6.2.4.18 No further markup will be applied regardless of the extent to which the Work is assigned or sublet to others. If Work is assigned or sublet to an associate, as defined by the Securities Act no markup whatsoever will be applied.

6.2.4.19 At the start of the Work on a Time and Material Basis, the Contractor shall provide the applicable labour and Construction Equipment rates not already submitted to the Consultant during the course of such work.

6.2.4.20 Separate summaries shall be completed by the Contractor according to the standard form “Summary for Payment of Accounts on a Time and Material Basis”. Each summary shall include the order number and covering dates of the Work and shall itemize separately labour, Product and Construction Equipment. Invoices for Product, Rented Construction Equipment and other charges incurred by the Contractor on the Work on a Time and Material Basis shall be included with each summary.
6.2.4.21 Each month the Consultant will include with the monthly progress payment certificate, the costs of the Work on a Time and Material Basis incurred during the preceding month all in accordance with the Contract administrative procedures and the Contractor's invoice of the Work on a Time and Material Basis.

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

3.25 GC 6.3 - CHANGE DIRECTIVE

3.25.1 Delete paragraph 6.3.7.1 in its entirety and replace it with the following:

".1 salaries, wages and benefits paid to personnel in the direct employ of the Contractor, applying the labour rates set out in the wage schedule in the Contract Documents or as otherwise agreed between the Owner and Contractor for personnel,

(1) carrying out the Work, including necessary supervisory services;

(2) engaged in expediting the production or transportation of material or equipment, at shops or on the road;

(3) engaged in the preparation of Shop Drawings, fabrication drawings, coordination drawings and Contract as-built drawings, or,

(4) including clerical staff engaged in processing changes in the Work."

3.25.2 Amend paragraph 6.3.8 by adding the words "except for paragraph 6.3.14" after the word "Contract" in the first line.

3.25.3 Add new paragraph 6.3.14 as follows:

"6.3.14 For greater certainty, and without limitation, the cost of performing the Work attributable to the Change Directive does not include, and no payment shall be made for:

.1 head office salaries and benefits and all other overhead or general expenses, except only for the salaries, wages and benefits of personnel described in paragraph 6.3.7.1 and the contributions, assessments or taxes referred to in paragraphs 6.3.7.2;

.2 capital expenses and interest on capital;

.3 general clean-up, except where the performance of the Work in the Change Directive causes specific additional clean-up requirements;

.4 wages paid for project managers, superintendents, assistants, watch persons and administrative personnel, provided the Change Directive does not result in an extension of Contract Time;

.5 wages, salaries, rentals, or other expenses that exceed the rates that are standard in the locality of the Place of the Work that are otherwise deemed unreasonable by the Consultant;

.6 any costs or expenses attributable to the negligence, improper Work, deficiencies, or breaches of Contract by the Contractor or Subcontractor;


.7 any cost of quality assurance, such as inspection and testing services, charges levied by authorities, and any legal fees unless any such costs or fees are pre-approved in writing by the Owner."

3.26 GC 6.5 - DELAYS

3.26.1 Amend paragraphs 6.5.1, and 6.5.2 by deleting the period at the end of each paragraph, and substituting the following words, "", but excluding any consequential, indirect or special damages, loss of profit, loss of opportunity or loss of productivity resulting from such delay."

3.26.2 Add new subparagraphs 6.5.6, 6.5.7, 6.5.8 and 6.5.9 as follows:

"6.5.6 If the Contractor is delayed in the performance of the Work by an act or omission of the Contractor or anyone employed or engaged by the Contractor directly or indirectly, or by any cause within the Contractor's control, then the Contract Time shall be extended for such reasonable time as the Consultant may decide in consultation with the Contractor. The Owner shall be reimbursed by the Contractor for all reasonable costs incurred by the Owner as the result of such delay, including all services required by the Owner from the Consultant as a result of such delay by the Contractor and, in particular, the cost of the Consultant's services during the period between the date of Substantial Performance of the Work stated in Article A-1 herein as the same may be extended through the provisions of these General Conditions and any later, actual date of Substantial Performance of the Work achieved by the Contractor.

6.5.7 The Contractor shall be responsible for the care, maintenance and protection of the Work in the event of any suspension of construction as a result of the delay described in paragraphs 6.5.1, 6.5.2 or 6.5.3. In the event of such suspension, the Contractor shall be reimbursed by the Owner for the reasonable costs incurred by the Contractor for such care, maintenance and protection, but excluding the costs of the Contractor's head office personnel. The Contractor's entitlement to costs pursuant to this paragraph 6.5.7, if any, shall be in addition to amounts, if any, to which the Contractor is entitled pursuant to paragraphs 6.5.1, 6.5.2 or 6.5.3.

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

6.5.9 The Contractor recognizes and agrees that the Owner will suffer financial loss if the Work is not completed within the time specified in the Contract. The Contractor also recognizes the delays, expenses and difficulties involved in proving the actual loss suffered by the Owner if the Work is not completed on time. Accordingly, instead of requiring any such proof, the Contractor agrees that as liquidated damages for delay (but not as penalty) the Contractor shall pay to the Owner, as liquidated damages, an amount per day, as designated in the Specific Conditions of Contract for each and every day's delay from the specified time for completion of the Work until actual completion of the Work, and it is further expressly acknowledged and agreed by the Contractor that:

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

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

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

3.27 GC-6.6 CLAIMS FOR CHANGE IN CONTRACT PRICE

3.27.1 Amend paragraph 6.6.1 by deleting the period at the end of the paragraph and adding the following:

"within 30 Working Days of the completion of the Work giving rise to the claim."

3.28 GC 7.1 - OWNER'S RIGHT TO PERFORM THE WORK, STOP THE WORK, OR TERMINATE THE CONTRACT

3.28.1 Amend paragraph 7.1.2 by adding the following sentence to the end:

"Failure by the Owner to provide such notice shortly after the default has occurred shall not constitute condonation of the default."

3.28.2 Add a new paragraph 7.1.5.5 as follows:

".5 charge the Contractor for any damages the Owner may have sustained as a result of the default."

3.29 GC 7.2 - CONTRACTOR'S RIGHT TO SUSPEND THE WORK OR TERMINATE THE CONTRACT

3.29.1 Delete paragraphs 7.2.1, and 7.2.3.1 in their entirety.

3.29.2 In paragraph 7.2.2, insert the words "other than the City of Toronto" after the words "public authority" in the second line.

3.29.3 Delete subparagraph 7.2.3.4 and replace it with the following:

".4 the Owner violates the requirements of the Contract to a substantial degree"

3.29.4 Delete paragraph 7.2.5 and replace it with the following:

"7.2.5 If the default cannot be corrected within the 5 Working Days specified in paragraph 7.2.4, the Owner shall be deemed to have cured the default if it

.1 commences the correction of the default within the specified time; and

.2 provides the Contractor with an acceptable schedule for such correction; and

.3 completes the correction in accordance with such schedule."

3.29.5 Add new paragraph 7.2.6:

"7.2.6 If the Contractor terminates the Contract under the conditions described in this GC 7.2, the Contractor shall be entitled to be paid for all Work performed to the date of termination. The Contractor shall also be entitled to recover the direct costs associated with termination, including the costs of demobilization, losses sustained on Products and Construction Equipment. The Contractor shall not be entitled to any recovery for special, indirect or consequential losses, or loss of use."
Appendix C

3.30 GC 8.0 – DISPUTE RESOLUTION

3.30.1 Delete Part 8 in its entirety and replace it with the following:

"8.0 DISPUTE RESOLUTION
8.1.1 Continuance of the Work

Unless the Contract has been terminated or completed, the Contractor shall in every case, after serving or receiving any notification of a claim or dispute, verbal or written, continue to proceed with the Work with due diligence and expedition. It is understood by the parties that such action shall not jeopardize any claim it may have.

8.1.2 Record Keeping
Immediately upon commencing Work that may result in a claim, the Contractor shall keep Daily Work Records during the course of the Work, sufficient to substantiate the Contractor's claim, and the Consultant shall keep Daily Work Records to be used in assessing the Contractor's claim, all records to be in accordance with the requirements of the Contract.

8.1.3 The Contractor and the Consultant shall attempt to reconcile their respective Daily Work Records on a daily basis, to simplify review of the claim, when submitted. If the Contractor and the Consultant fail to reconcile their respective Daily Work Records, then the Contractor shall submit its Daily Work Records as part of its claim, whereby the resolution of the dispute about the Daily Work Records shall not be resolved until there is a resolution of the claim.

8.1.4 The keeping of Daily Work Records by the Consultant or the reconciling of such Daily Work Records with those of the Contractor shall not be construed to be acceptance of the claim.

8.2 Claims Procedure
8.2.1 The Contractor shall give verbal notice to the Consultant of any situation which may lead to a claim for additional payment immediately upon becoming aware of the situation and shall provide written notice to the Consultant of such situation or of any express intent to claim such payment, within seven days of the commencement of any part of the Work which may be affected by the situation or shall form part of the claim.

8.2.2 The Contractor shall submit detailed claims as soon as reasonably possible and in any event no later than 30 days after completion of the Work affected by the situation. The detailed claim shall:
   a) identify the item or items in respect of which the claim arises;
   b) state the grounds, contractual or otherwise, upon which the claim is made; and
   c) include the records maintained by the Contractor supporting such claim.

In exceptional cases the 30 days may be increased to a maximum of 90 days with approval in writing from the Consultant.

8.2.3 Within 30 days of the receipt of the Contractor’s detailed claim, the Consultant may request the Contractor to submit any further and other particulars as the Consultant considers necessary to assess the claim. The Contractor shall submit the requested information within 30 days of receipt of such request.

8.2.4 Within 90 days of receipt of the detailed claim, the Owner, or if authorized by the Owner, the Consultant, shall advise the Contractor, in writing, of the Owner’s opinion with regard to the validity of the claim.

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

8.3.2 Should the Contractor disagree with the opinion given in paragraph 8.2.4, with respect to any part of the claim, the Consultant shall enter into negotiations with the Contractor to resolve the matters in dispute. Negotiation shall occur on three levels; first, with the Consultant, second, with the Owner’s Manager level, and third, with the Owner’s Director, General Manager or Executive Director level. Corresponding level shall be involved in the discussions on behalf of the Contractor. Any agreement reached with the Consultant shall be subject to the Owner’s approval. Prior to commencement of construction the Owner and the Contractor shall meet to determine the names of the representatives at the three levels of discussion. These names shall be
Appendix C

8.3.3 Discussions with the Consultant shall be completed as soon as possible and shall be limited to a period of no more than 30 days following receipt of the opinion given in paragraph 8.2.4. Manager level discussion shall be completed as soon as possible following failed discussions with the Consultant, and shall be limited to a period of no more than a further 30 days. The Director, General Manager or Executive Director level discussion shall be completed as soon as possible following failed manager level discussions, and shall be limited to a period of no more than a further 30 days.

8.3.4 Each party shall be responsible for elevating an issue to the next level of negotiation, if the issue has not been resolved at the current level. The Contractor or Consultant shall notify the other properly in writing if he or she wishes to pursue an issue to the next level of negotiation.

8.3.5 Where a negotiated settlement cannot be reached, or it is agreed that payment cannot be made in accordance with paragraph 6.2.3 or paragraph 6.2.4, the parties may, upon mutual agreement, proceed in accordance with clause paragraph 8.4, Mediation.

8.4 Mediation

8.4.1 If a claim is not resolved satisfactorily through the negotiation process in paragraph 8.3, and the Contractor wishes to pursue the issue further, the parties may, upon mutual agreement, utilize the services of an independent third party mediator.

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

8.4.3 The mediator shall be knowledgeable regarding the area of the disputed issue. The mediator shall meet with the parties together or separately, as necessary, to review all aspects of the issue. The mediator may provide the parties with his or her non-binding without prejudice settlement recommendation, on the day of the mediation.

8.4.4 Each party is responsible for its own costs related to the use of the third party mediator process. The costs of the third party mediator shall be equally shared by the Owner and Contractor.

8.5 Payment

8.5.1 Payment of the claim shall be made no later than 30 days after the date of resolution of the claim or dispute. Such payment shall be made according to the terms of Part 5, Payment.

8.6 Rights of Both Parties

8.6.1 Unless the parties agree otherwise, no action taken under paragraphs 8.1 to 8.6, by either party shall be construed as a renunciation or waiver of any of the rights or recourse available to the parties.

8.7 Arbitration

8.7.1 If a claim is not resolved satisfactorily through the negotiation process, or mediation if utilized, either party may request an arbitration of the dispute and the parties, by mutual agreement, may submit such dispute to arbitration and the provisions of the Ontario Arbitration Act, 1991, as amended, shall apply to such arbitration, including the provisions for appeal therein except as otherwise provided in this section 8.7. Notwithstanding this, in the case of claims for amounts less than $150,000, exclusive of H.S.T., the provisions of subsection GC 8.7 to 8.11, Arbitration, shall be mandatory if requested by either party, and the matter shall proceed to arbitration if not resolved through the said negotiation or mediation processes.

8.7.2 If the Parties engage in arbitration to resolve the issue, notification to that effect shall be communicated in writing to the Consultant within 30 days of completing the negotiations referred in paragraph 8.3, or, if the parties proceed to mediation under paragraph 8.4, within 30 days of completing that mediation.

8.7.3 The parties shall be bound by the decision of the arbitrator.

8.7.4 The rules and procedures of the Arbitration Act, 1991, S.O. 1991, c.17, as amended, shall apply to any arbitration conducted hereunder except to the extent that they are modified by the express provisions of paragraphs 8.7 to 8.11.

8.8 Arbitration Procedure

8.8.1 The following provisions are to be included in the agreement to arbitrate:

1. All existing actions in respect of the matters under arbitration shall be stayed pending arbitration;

2. All then unresolved claims and matters to be settled are to be set out in a schedule to the agreement. Only such claims and matters as are in the schedule shall be arbitrated; and

3. Before proceeding with the arbitration, the Contractor shall confirm that all matters in
dispute are set out in the schedule.

8.9 Appointment of Arbitrator
8.9.1 The arbitrator shall be mutually agreed upon by the Owner and Contractor to adjudicate the dispute.
8.9.2 Where the Owner and Contractor cannot agree on a sole arbitrator within 30 days of the notification of arbitration noted in paragraph GC 8.7.2, the Owner and the Contractor shall each chose an appointee with 37 days of the notice of arbitration.
8.9.3 The appointees shall mutually agree upon an arbitrator to adjudicate the dispute within 15 days after the last appointee was chosen or they shall refer the matter to the Arbitration and Mediation Institute of Ontario Inc. which shall select an arbitrator to adjudicate the dispute within 7 days of being requested to do so.
8.9.4 The arbitrator shall not be interested financially in the Contract nor in either party’s business and shall not be employed by either party.
8.9.5 The arbitrator is not bound by the rules of evidence which govern the trial of cases in court but may hear and consider any evidence which the arbitrator considers relevant.
8.9.6 The hearing shall commence within 90 days of the appointment of the arbitrator.
8.10 Costs
8.10.1 The arbitrator’s fee shall be equally shared by the Owner and the Contractor.
8.10.2 The fees of any independent experts and any other persons appointed to assist the arbitrator shall be shared equally by the Owner and the Contractor.
8.10.3 The arbitration hearing shall be held in a place mutually agreed upon by both parties or in the event the parties do not agree, a site shall be chosen by the arbitrator. The cost of obtaining appropriate facilities shall be shared equally by the Owner and the Contractor.
8.10.4 The arbitrator may, in his or her discretion, award reasonable costs, related to the arbitration.
8.11 The Decision
8.11 The reasoned decision shall be made in writing within 90 days of the conclusion of the hearing. An extension of time to make a decision may be granted with consent of both parties. Payment shall be made in accordance with Part 5, Payment."

3.31 GC 9.1 - PROTECTION OF WORK AND PROPERTY

3.31.1 Delete subparagraph 9.1.1.1 in its entirety and replace it with new subparagraph 9.1.1.1:

"9.1.1.1 errors in the Contract Documents which the Contractor could not have discovered applying the standard of care described in GC3.14 STANDARD OF CARE."

3.31.2 Amend paragraph 9.1.1.2 by adding the word, "negligent" at the beginning thereof.

3.31.3 Add new paragraphs 9.1.5 and 9.1.6 as follows:

"9.1.5 Without in any way limiting the Contractor's obligations under this GC 9.1, should the Contractor or any Subcontractor or Supplier cause loss or damage to trees or other plantings, whether owned by the Owner or third parties, the Contractor shall be liable for the replacement cost of the trees or other plantings damaged, including the cost of any arborist or other Consultant, and such costs may be deducted by the Owner from amounts otherwise owing to the Contractor.

9.1.6 The Contractor shall neither undertake to repair and/or replace any damage whatsoever to the Work of other Contractors, or to adjoining property, nor acknowledge the same was caused or occasioned by the Contractor, without first consulting the Owner and receiving written instructions as to the course of action to be followed from either the Owner or the Consultant. However, where there is danger to life or public safety, the Contractor shall take such emergency action as it deems necessary to remove the danger."
Appendix C

3.32 GC 9.4 - CONSTRUCTION SAFETY

3.32.1 Delete paragraph 9.4.1 in its entirety and substitute new paragraph 9.4.1:

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

3.32.2 Add new paragraphs 9.4.2, 9.4.3 and 9.4.4:

"9.4.2 Prior to the commencement of the Work, the Contractor shall submit to the Owner:

.1 a current WSIB clearance certificate;
.2 documentation of the Contractor’s in-house safety-related programs;
.3 a copy of the Notice of Project filed with the Ministry of Labour naming itself as “constructor” under OHSA.

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

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

3.33 GC 10.1 - TAXES AND DUTIES

3.33.1 Add the following to the end of paragraph 10.1.1:

"Any Value Added Taxes (including Harmonized Sales Tax), where applicable, shall be listed as line items separate from the total Contract Price."

3.33.2 Delete paragraph 10.1.2 and replace it with the following:

"Any increase or decrease in costs to the Contractor due to changes in such included taxes and duties at the time of the bid closing shall increase or decrease the Contract Price accordingly. For greater certainty, the Contractor shall not be entitled to any mark-up for overhead or profit on any increase in such taxes and duties."

3.33.3 Add new paragraphs 10.1.3, 10.1.4, 10.1.5, and 10.1.6, as follows:

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

10.1.4 The Contractor shall maintain accurate records of Construction Equipment, Product and component costs reflecting the taxes, customs duties, excise taxes and Value Added Taxes paid."
Appendix C

10.1.5 Any refund of taxes, including, without limitation, any government sales tax, customs duty, excise tax or Value Added Tax, whether or not paid, which is found to be inapplicable or for which exemption may be obtained, is the sole and exclusive property of the Owner. The Contractor agrees to cooperate with the Owner and to obtain from all Subcontractors and Suppliers cooperation with the Owner in the application for any refund of any taxes, which cooperation shall include but not be limited to, making or concurring in the making of an application for any such refund or exemption, and providing to the Owner copies, or where required, originals of records, invoices, purchase orders and other documentation necessary to support such applications or exemptions or refunds. All such refunds shall either be paid to the Owner, or shall be a credit to the Owner against the Contract Price, in the Owner's discretion. The Contractor agrees to enable, assist with and submit to any reasonable audit requested by the Owner with respect the potential refunds under this paragraph.

10.1.6 Customs duties penalties, or any other penalty, fine or assessment levied against the Contractor, shall not be treated as a tax or customs duty for the purpose of this GC 10.1.

3.34 GC 10.2 LAWS, NOTICES, PERMITS, AND FEES

3.34.1 Add to the end of paragraph 10.2.4, the following:

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

3.34.2 Delete paragraph 10.2.6 and replace it with the following:

"10.2.6 If the Contractor fails to notify the Owner and the Consultant in writing, fails to obtain direction as required in paragraph 10.2.5, and/or performs work that it knows or ought to have known that contravenes any laws, ordinances, guidelines, standards, permits, statutes, by-laws, rules, regulations, or codes, the Contractor shall be responsible for and shall correct the violations thereof, and shall bear the costs, expenses, and damages attributable to the failure to comply with the provisions of such laws, ordinances, guidelines, standards, permits, statutes, by-laws, rules, regulations, or codes, and, notwithstanding any limitations described in paragraph 12.1.1, shall indemnify and hold harmless the Owner and the Consultant from and against any claims, demands, losses, costs, damages, actions, suits or proceedings resulting from such failure or breach of law."

3.34.3 Add a new paragraph 10.2.8 as follows:

"10.2.8 Without limiting the generality of any other provision in the Contract Documents, the Contractor shall cause all certificates to be furnished that are required or given by the appropriate governmental or quasi-governmental authorities as evidence that the Work as installed conforms with the laws and regulations of any authorities having jurisdiction over the Place of the Work, including, without limitation, certificates of compliance for the Owner’s occupancy or partial occupancy. The certificates are to be final certificates giving complete clearance of the Work, in the event that such governmental or quasi-governmental authorities furnish such certificates."

3.35 GC 10.3 PATENT FEES

3.35.1 Amend paragraph 10.3.1 by adding the words, "indemnify and" before the words, "hold the", in the second line.

3.35.2 In paragraph 10.3.2, add the words, "by the Owner", after the words, "supplied to the Contractor"
3.36 11.1 INSURANCE

3.36.1 Delete paragraph 11.1 in its entirely and replace it with the following:

"11.1 INSURANCE

11.1.1 Without restricting the generality of paragraph 12, Indemnification, the Contractor shall provide, maintain and pay for the insurance coverages listed in this General Condition under paragraphs 11.1.2, 11.1.3, 11.1.4, and 11.1.5. Insurance coverage in paragraphs 11.1.6, and 11.1.7 will only apply when so specified in the Contract Documents.

11.1.2 Commercial General Liability Insurance

.1 Commercial General Liability Insurance shall provide that the policy:

   a) is in the amount of Five Million Dollars ($5,000,000), per occurrence;

   b) includes the Owner (City of Toronto), its Boards, Agencies and Commissions and subsidiary operations, as applicable, and the Consultant as additional insureds with respect to liability arising out of the operation of the insured for which a contract is issued by the Owner; and,

   c) has provision for a cross liability and/or severability of interest, contractual liability, Owner's and Contractor's protective liability, broad form property damage, contingent/and or employer's liability, products and completed operations, non owned automobile liability and, if applicable to the insured operations as detailed in the Contract Documents, coverage for blasting, pile driving and collapse.

.2 The Contractor shall maintain in force such policies of insurance specified by the Contract Documents at all times from the commencement of the Work until the end of any Warranty Period set out in these General Conditions of Contract or as otherwise required by the Contract Documents.

.3 The Contractor shall maintain completed operations coverage for a period of six (6) years from Substantial Performance of the Work, unless otherwise indicated in the Contract Documents. On an annual basis the contractor shall submit to the City a renewal Certificate or a replacement policy prior to the expiration date of the existing policy without notice or demand by the City. If the Contractor fails to do so, any limitation period for claiming indemnity described in the Contract Documents will not be binding on the Owner.

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

11.1.3 All Risk Property Insurance

.1 The Contractor shall provide, maintain and pay for a policy of all risk property insurance. The policy shall be maintained from the commencement of Work until 10 days after Substantial Performance of the Work and shall be written on a replacement cost basis on all Products, supplies and equipment and/or systems, including boiler and machinery, if applicable, that forms part of the Work. The policy may be in the form of a Builder's Risk or Installation Floater, as appropriate to the Project. The Owner shall be included as an additional insured and a joint loss payee on the Builder's Risk Insurance Policy.

11.1.4 Automobile Liability Insurance

.1 The Contractor shall provide, maintain and pay for a policy of automobile liability insurance in respect of all licensed owned/leased vehicles that will be utilized in the performance of the Work,
Appendix C

unless otherwise required by the Contract Documents. This policy of automobile liability insurance shall have limits of not less than Five Million Dollars ($5,000,000).

11.1.5 Contractor's Equipment Insurance

.1 The Contractor shall provide, maintain and pay for a policy of all risks Contractor's equipment insurance covering construction machinery and equipment used and owned by the Contractor for the performance of the Work, including boiler insurance on temporary boilers and pressure vessels. This policy shall be in a form acceptable to the Owner and shall not allow subrogation claims by the insurer against the Owner. Upon agreement of the Owner, approval may be provided to the Contractor to waive the equipment insurance requirement for the purpose of this Contract.

11.1.6 Contractor's Pollution Liability Insurance

.1 Where specified in the Contract Documents, the Contractor shall provide, maintain and pay for a policy of pollution liability insurance. The policy shall have a limit of not less than Two Million Dollars ($2,000,000) per claim limit. The policy shall cover third-party injury and property damage claims, including clean-up costs, as a result of pollution conditions arising from the Contractor's operations and completed operations (i.e. Work performed). The policy shall be kept in force for 24 months from the date of Substantial Performance of the Work. The Owner shall be included as an additional insured on this policy.

11.1.7 Use and Occupancy of the Work Prior to Completion

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

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

11.1.8 Payment for Loss or Damage

.1 The Contractor shall be entitled to receive from the Owner, in addition to the amount due under the Contract, the amount at which the Owner's interest in restoration of the Work has been appraised, such amount to be paid as the restoration of the Work proceeds and in accordance with the requirements of Part 5.0. In addition the Contractor shall be entitled to receive from the payments made by the insurers the amount of the Contractor's interest in the restoration of the Work.

.2 The Contractor shall be responsible for deductible amounts under the policies.

11.1.9 Insurance Requirements and Duration

.1 Unless specified otherwise, the duration of each insurance policy shall be from the date of...
Appendix C

commencement of the Work until 10 days after the date of final acceptance of the Work, as set out in the Final Acceptance Certificate.

.2 Prior to commencement of the Work and upon placement and at renewal, amendment or extension of all or any part of the insurance, the Contractor shall promptly provide the Owner with confirmation of coverage on the Owner’s certificate of insurance form or on a form acceptable to the Owner, without notice or demand by the Owner. The insurance documents shall be signed by the insurer or an authorized representative of the insurer.

.3 If the Owner receives notice of cancellation for nonpayment of the insurance premium, the Owner may, but is not obliged to, pay the premium of any policy of insurance required to be maintained herein and make a formal demand for reimbursement of such costs from the Contractor. If the Contractor fails to pay the cost of the insurance placed by the Owner within 15 days of the date on which the Owner made a formal demand for reimbursement of such costs, the Owner may deduct the costs thereof from monies which are due or may become due to the Contractor.

.4 The Contractor shall, on request, promptly provide the Owner with a certified true copy of each insurance policy exclusive of information pertaining to premium or premium bases used by the insurer to determine the cost of the insurance. The certified true copy shall include a signature of the insurer or the underwriter or the broker.

.5 All insurance policies taken out by the Contractor shall be placed with insurers licensed to write business in the Province of Ontario.

.6 The insurance policies required pursuant to this clause shall be primary and shall not call into contribution any insurance available to the Owner.

.7 The amount of the deductible for the purpose of this Contract shall not be more than $25,000.00. Following the award of the proposal, the Owner reserves the right to negotiate a higher or lower deductible, as appropriate.

.8 The Contractor shall maintain such forms of insurance as the Owner, acting reasonably, may require from time to time, in amounts and for risks against which a prudent Contractor would insure."

3.37 GC11.2 – BONDS

3.37.1 Add new paragraph 11.2.3 as follows:

"11.2.3 The premiums for the bonds required by the Contract Documents are included in the Contract Price."

3.38 GC12.1 - INDEMNIFICATION

3.38.1 Delete paragraphs 12.1.1 through 12.1.6 and replace them with the following:

"12.1.1 The Contractor shall indemnify and hold harmless the Owner and each of the Owner's elected officials, officers, employees and agents (hereinafter referred to collectively as the “Indemnitees”) from and against all claims, demands, actions, suits or proceedings which may be brought against or made by third parties, hereinafter called "claims", directly or indirectly arising or alleged to arise out of the performance of or the failure to perform any of its obligations under the Contract Documents.

12.1.2 The Contractor shall indemnify and hold harmless the Owner and the Indemnitees from all and every claim for damages, royalties or fees for the infringement of any patented invention or
Appendix C

copyright occasioned by the Contractor in connection with the Work performed or Product furnished by the Contractor under the Contract.

12.1.3.1 The Owner shall indemnify and hold harmless the Contractor from and against all claims, demands, actions, suits or proceedings (“claims”) in respect to claims against the Contractor by third parties that arise out of the Contractor’s direct involvement in this Contract provided such claims are directly caused by the negligent act or omission of the Owner, and then only to the extent the loss or damage was caused by the Owner.

12.1.3.2 The Owner shall indemnify and hold harmless the Contractor, its agents, officers and employees from and against all claims, demands, losses, expenses, costs, damages, actions, suits, or proceedings arising out of the Contractor’s performance of its obligations under the Contract Documents which are attributable to a lack of or defect in title or an alleged lack of or defect in title to the Place of the Work. The Contractor expressly waives the right to indemnity for claims other than those stated above.

12.1.4 The Contractor shall pay to the Indemnitees, or any of them, on demand any loss, costs, damages and expenses which may be sustained, incurred or paid by the Indemnitees, or any of them, in consequence of any such action, suit, claim, lien, execution or demand and any moneys paid or payable by the Indemnitees in settlement or in discharge or on account thereof. If the Contractor fails to make such payment, all such mentioned loss, costs, damages and expenses and all such moneys so paid or payable may be deducted from any moneys of the Contractor then remaining in the possession of the Owner on account of the Work or from moneys payable by the Owner to the Contractor on any account whatever or may be recovered from the Contractor or its Surety, as the case may be, in any court of competent jurisdiction as moneys paid at their request. The Contractor hereby authorizes and empowers the Owner or the Consultant as the case may be, or their Solicitor, for the time being, to defend, settle or compromise any of such actions, suits, claims, liens, executions or demands as the Owner or the Consultant, as the case may be, or their said Solicitor may deem expedient. The Contractor shall ratify and confirm all the acts of the Owner or the Consultant or their Solicitor in that behalf, and shall pay to such Solicitor on demand his or her reasonable costs of any such defense, settlement and/or compromise, and that in default of such payment the same may be deducted from any moneys payable by the Owner to the Contractor on any account whatever."

3.39 GC 12.2 - WAIVER OF CLAIMS

3.39.1 Amend paragraphs 12.2.1 through 12.2.10 as follows:

"GC 12.2 WAIVER OF CLAIMS

12.2.1 In the fourth line, add the words “claims for delay pursuant to GC 6.5 DELAYS, claims for an increase in the Contract Price, pursuant to GC 6.6 CLAIMS FOR A CHANGE IN THE CONTRACT PRICE” after the word “limitation”. Add the words “(collectively “Claims”)” after “Substantial Performance of the Work” in the sixth line.

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

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

12.2.1.3 Delete paragraph 12.2.1.3 in its entirety.

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

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

12.2.2.1 Delete the number “395” and substitute the number “760”.

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

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

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

12.2.2.9 Delete paragraph 12.2.9 in its entirety.

12.2.10 Delete paragraph 12.2.10 in its entirety."
3.40 GC 12.3 – WARRANTY

3.40.1 Amend paragraph 12.3.1 by deleting the words, “one year”, and replacing them with the words, "two years", and by adding the following at the end of the paragraph, "With respect to equipment installed at the request of the Owner, and successfully operating at its intended design capacity before completion of the work, the warranty period shall be two years from the date the equipment commenced its successful operations.

3.40.2 Amend paragraphs 12.3.3, 12.3.4, and 12.3.6 by deleting the words, "one year", and replacing them with the words, "two years".

3.40.3 Add the following clauses as 12.3.7, 12.3.8, and 12.3.9".

“12.3.7 Any Product or equipment requiring excessive servicing during the warranty period (or free maintenance period, if applicable) shall be considered defective and the warranty (or free maintenance period) shall be deemed to take effect from the time that the defect has been corrected so as to cause excessive servicing to terminate.

12.3.8 Following Substantial Performance of the Work, and without limiting the Contractor’s warranty under this GC 12.3, the Contractor shall assign to the Owner, to the extent assignable, the benefit of all warranties and guarantees relating to the Work. The assignment shall expressly reserve the right of the Contractor to make any claims under such warranties and guarantees and such assignment shall in no way prejudice any rights of or benefits accruing to the Contractor pursuant to such warranties and guarantees.

12.3.9 The provisions of the GC 12.3 – WARRANTY shall not deprive the Owner of any action, right or remedy otherwise available to the Owner for the Contractor’s failure to fulfill its obligations or responsibilities under the Contract and shall not be construed as a waiver of claims in favour of the Contractor or as a limitation on the time in which the Owner may pursue such other action, right or remedy. The warranties set out in the Contract are not supplemental to and do not limit or preclude the application of any other conditions and warranties, express or implied, by law or trade usage.”

PART 13 - OTHER PROVISIONS
3.41 Add New PART 13 As Follows:

"GC 13.1 - OWNERSHIP OF MATERIALS

13.1.1 Unless otherwise specified, all materials existing at the Place of the Work at the time of execution of the Contract shall remain the property of the Owner. All Work and Products delivered to the Place of the Work by the Contractor shall be the property of the Owner. The Contractor shall remove all surplus or rejected materials as its property when notified in writing to do so by the Consultant.

GC 13.2 - CONSTRUCTION LIENS

13.2.1 In the event that a written notice of lien is delivered to the Owner in respect of the Project by or through a Subcontractor or Supplier, and provided the Owner has paid all amounts properly owing under the Contract, the Contractor, at its own expense and within ten (10) days, shall ensure that such written notice of lien is withdrawn in writing.

13.2.2 In the event that the Contractor fails to conform with the requirements of 13.2.1, the Owner may set off and deduct from any amount owing to the Contractor, all costs and associated
expenses, including legal fees and disbursements reasonably incurred to secure a written withdrawal of the notice of lien. If there is no amount owing by the Owner to the Contractor, then the Contractor shall reimburse the Owner for all of the said costs and associated expenses.

**GC 13.3 - CONTRACTOR DISCHARGE OF LIABILITIES**

13.3.1 In addition to the obligations assumed by the Contractor pursuant to GC 3.7, the Contractor agrees to discharge all liabilities incurred by it for labour, materials, services, Subcontractors and Products, used or reasonably required for use in the performance of the Work, except for amounts withheld by reason of legitimate dispute and which have been identified to the party or parties, from whom payment has been withheld.

**GC 13.4 – DAILY REPORTS/DAILY LOGS**

13.4.1 The Contractor shall cause its supervisor or such competent person as it may delegate, to prepare a daily log or diary reporting on weather conditions, work force of the Contractor, Subcontractors, Suppliers and any other forces on site and also record the general nature of Project activities. Such log or diary shall also include any extraordinary or emergency events which may occur and also the identities of any persons who visit the site who are not part of the day-to-day work force.

13.4.2 The Contractor shall also maintain records, either at its head office or at the job site, recording manpower and material resourcing on the Project, including records which document the activities of the Contractor in connection with GC 3.5, and comparing that resourcing to the resourcing anticipated when the most recent version of the schedule was prepared pursuant to GC 3.5. The Contractor shall make these records available to the Owner and/or the Consultant for inspection, upon reasonable notice.

**GC 13.5 - PUBLIC STATEMENTS**

13.5.1 The Contractor shall not publish, issue or make any statements or news release, electronic or otherwise, concerning the Contract, the Work, or the Project, without the express written consent of the Owner."

**GC 13.6 OWNER'S SET-OFF**

13.6.1 In addition to and without limiting any other rights the Owner may have under this Contract and at law, the Owner may retain from monies owing to the Contractor under this Contract an amount sufficient to cover any outstanding or disputed liabilities including the cost to remedy deficiencies, the reduction in value of substandard portions of the Work, claims for damages by third parties, undetermined claims by the Owner, and any assessment due the Workplace Safety and Insurance Board.

END OF SUPPLEMENTARY CONDITIONS