


This is Exhibit "AA" referred to in the Affidavit of ROHIT
BANSAL sworn March 29, 2017



Commissioner for Taking Affidavits (or as may be)

NADEJDA KOLOUPAEVA
A Commissioner, etc.,
Regional Municipality of Peel,
for Four Seasons Site Development Ltd.
Expires June 6, 2019

From: Shahid Virk [Shahid.Virk@toronto.ca]
Sent: Thursday, November 17, 2016 6:54 PM
To: Marc Marrone
Cc: Rohit Bansal; Mohammad Kashani
Subject: RE: College St - CPE 16ECS-TI-11SP response
Attachments: Revised Interim CPE, 16ECS-TI-11SP.pdf

Hello Marco,

Attached please see the revised evaluation report and the attached documents regarding unsatisfactory performance

Regards

Shahid

Shahid Virk, M.Sc., P.Eng.
Senior Project Manager, Streetcar Way & Special Projects Design & Construction Transportation Infrastructure Engineering & Construction Services City of Toronto Metro Hall, 16th Floor
55 John Street
Toronto, Ontario M5V 3C6
P: 416.338.5542
F: 416.392.6279
E: svirk@toronto.ca

-----Original Message-----

From: Marc Marrone [<mailto:mmarrone@sitedevelopment.ca>]
Sent: September-23-16 3:20 PM
To: Mohammad Kashani
Cc: Rohit Bansal
Subject: College St - CPE 16ECS-TI-11SP response
Importance: High

Hi Mohammad,

In response to the interim evaluation for the College st. project, I have attached our response, as we disagree with the evaluation and comments provided by the project manager. We ask that you review the attached and reconsider the rankings provided.

Regards,

Marco Marrone
Four Seasons Site Development
42 Wentworth Ct Unit #1
Brampton, ON
L6T 5K6
Direct: 416 525-7099
Office: 905 789-0111
Email: mmarrone@sitedevelopment.ca



Contractor Performance Evaluation

version 1.2 - Feb 25-15

☐ Final
☒ Interim # 1
 DATE: Sep 14/16

CONTRACTOR: Four Seasons Site Site Development			
PROJECT NAME: College Street Streetscaping Improvements			
DESCRIPTION: Sidewalk Construction, Streetscape Improvements, on College Street and side Streets		Ranking	
CONTRACT No.: 16ECS-TI-11SP	START DATE: Jul 04/16	For definitions refer to Backup sheets	
CONTRACT VALUE: \$3.45 Million	COMPLETION DATE: Nov 04/16	U	I ME EE EX N/A
A. SAFETY & COMPLIANCE - Laws & Standards		sub-score	2.00 Weight 25%
1. Did the contractor comply with OHSA requirements?		<input checked="" type="checkbox"/>	
2. Did the contractor adhere to environmental, (non-OHSA) safety requirements, and other laws & policies?		<input checked="" type="checkbox"/>	
3. Did the contractor take adequate precautions with any hazardous materials and designated substances?			<input checked="" type="checkbox"/>
B. QUALITY - Compliance with Contract Standards & Specifications		sub-score	2.00 Weight 25%
1. Did the contractor comply with standards and specifications in the contract?		<input checked="" type="checkbox"/>	
2. Was the quality and workmanship in compliance with the contract documents?		<input checked="" type="checkbox"/>	
3. Did the contractor promptly & effectively correct defective work as the project progressed?		<input checked="" type="checkbox"/>	
C. ORGANIZATION - Work Plan and Management		sub-score	2.38 Weight 12.5%
1. Did the contractor submit a satisfactory baseline schedule in compliance with the contract?		<input checked="" type="checkbox"/>	
2. Did the contractor commence the work on time?			<input checked="" type="checkbox"/>
3. Did the contractor submit schedule updates in accordance with the contract?		<input checked="" type="checkbox"/>	
4. Did the contractor adequately staff and resource the project in compliance with the contract?		<input checked="" type="checkbox"/>	
5. Did the contractor provide adequate & competent site supervision?		<input checked="" type="checkbox"/>	
6. Did the contractor effectively coordinate and manage the work of its subcontractors?			<input checked="" type="checkbox"/>
7. Did a person with decision-making authority represent the contractor at pay/progress meetings?			<input checked="" type="checkbox"/>
8. Did the contractor submit timely, relevant requests for information (RFIs) as needed?			<input checked="" type="checkbox"/>
9. Were shop drawings submitted according to shop drawing schedule and in compliance with the contract?			<input checked="" type="checkbox"/>
D. EXECUTION - Work Performance		sub-score	1.90 Weight 25%
1. Did the contractor complete the project on time?		<input checked="" type="checkbox"/>	
2. Did the contractor follow the approved schedule and meet milestones?		<input checked="" type="checkbox"/>	
3. Did the contractor provide effective quality control?		<input checked="" type="checkbox"/>	
4. Did the contractor keep the site clean and free of trash and debris in compliance with the contract?		<input checked="" type="checkbox"/>	
5. Did the contractor promptly comply with change orders, change directives, site instructions, and RFQs?			<input checked="" type="checkbox"/>
6. Did the contractor seek authorization to perform extra or additional work?			<input checked="" type="checkbox"/>
7. Did the contractor adequately address disputes, damages and claims with third parties to City PM's knowledge?		<input checked="" type="checkbox"/>	
8. Was the quality and submission timelines of the following items acceptable?			
8.1 Look ahead schedules or work plans		<input checked="" type="checkbox"/>	
8.2 Accurate and complete record documents (as-builts)			<input checked="" type="checkbox"/>
8.3 Complete operations and maintenance manuals and closeout documents			<input checked="" type="checkbox"/>
8.4 Secure and/or closed applicable municipal permits			<input checked="" type="checkbox"/>
8.5 Startup testing and commissioning reports			<input checked="" type="checkbox"/>
8.6 Training plan and manuals			<input checked="" type="checkbox"/>
E. ADMINISTRATION - Contractor Performance and Diligence		sub-score	1.88 Weight 12.5%
1. Did the contractor communicate, cooperate, collaborate with the contract administrator, project team & stakeholders?		<input checked="" type="checkbox"/>	
2. Did the contractor participate in resolving project problems and display initiative to implement solutions?		<input checked="" type="checkbox"/>	
3. Did the contractor demonstrate accountability for problems for which they were responsible?		<input checked="" type="checkbox"/>	
4. Did the contractor submit accurate, complete invoices in a timely manner?			<input checked="" type="checkbox"/>
5. Did the contractor provide competitive change order pricing?		<input checked="" type="checkbox"/>	
6. Did the contractor accept responsibility for the full scope and extent of the contract?		<input checked="" type="checkbox"/>	
7. Did the contractor coordinate to minimize disruption to the public and City operations?		<input checked="" type="checkbox"/>	
		2.01	Total Score (weighted)
	Name (Print or Type)	Signature	Date
Project Manager:	Shahid Virk		Nov 17/16
Manager:	Mohammad Kashani		Nov 17/16
Director: (required for Final only)	Frank Clarizio		

NOTE: If the contractor disagrees with this evaluation, it is to submit its objections in writing with supporting evidence within five (5) business days to the Division Manager (for Interim Reports) or to the Division Director (for Final Reports)

EX - EXCEPTIONAL - Far exceeded expectations due to exceptionally high quality of performance and work in all areas of responsibility adding value to the project.
EE - EXCEEDS EXPECTATIONS - Consistently exceeded expectations in all essential areas of responsibility and quality of performance and work overall excellent
ME - MEETS EXPECTATIONS - Consistently met expectations in all essential areas of responsibility with few if any issues.
I - IMPROVEMENT NEEDED - Performance failed to meet expectations in one or more essential areas of responsibility. Usually requires some additional staff time and resources.
U - UNSATISFACTORY - Consistently below expectations in most essential areas of responsibility. Usually requires much additional staff time and resources.

For ranks of U and EX, Evaluator's must provide comments with details and links to specific minutes, consultant reports, memos, log notes etc. Provide eDoc #s wherever possible. Comments for I, ME, EE ranks are optional.

A. SAFETY & COMPLIANCE - Laws & Standards		COMMENTS/BACKUP
A1	Did the contractor comply with OHSA requirements?	ranking = I
	<p>EX - Performance in this area can not be Exceptional</p> <p>EE - Strict compliance with OHSA requirements with no exceptions</p> <p>ME - Complies with OHSA requirements with very minor issues that are immediately remedied</p> <p>I - Inconsistent compliance with OHSA requirements; minor contraventions that are corrected; few if any lost time injuries and no critical injuries</p> <p>U - Does not comply with an appropriate safety program; lost time injuries, including but not limited to critical injuries; serious OHSA contraventions and/or convictions</p> <p>N/A - The question is not applicable to this evaluation.</p>	<p>The contractor was issued a compliance order by MOL and there has been report of harassment/yelling at site THE RANKING IS REVIEWED AND THE EVALUATION IS CONSIDERED FAIR</p>
A2	Did the contractor adhere to environmental, (non-OHSA) safety requirements, and other laws & policies?	ranking = I
	<p>EX - Performance in this area can not be Exceptional</p> <p>EE - Fully complies with environmental and (non-OHSA) safety requirements, fair wage, human rights and other laws and policies required by the contract. No problems.</p> <p>ME - Complies with above. Minimal problems, if any.</p> <p>I - Inconsistent compliance with (non-OHSA) safety requirements, fair wage, human rights or other laws and policies required by the contract; minor contraventions that are corrected</p> <p>U - Failure to adhere to environmental and (non-OHSA) safety requirements, fair wage, human rights or other laws and policies required by the contract; not responsive to directives; requires much additional staff time/resources</p> <p>N/A - The question is not applicable to this evaluation.</p>	<p>Violent behavior has been reported at site including yelling by the site supervisor and poor house keeping no sweeping machine brought to site of work THE RANKING IS REVIEWED AND THE EVALUATION IS CONSIDERED FAIR</p>
A3	Did the contractor take adequate precautions with any hazardous materials and designated substances?	ranking = N/A
	<p>EX - Performance in this area can not be Exceptional</p> <p>EE - Strict compliance with City's designated substances policy, contract requirements for hazardous materials, policies and bylaws</p> <p>ME - Complies with City's designated substances policy, contract requirements for hazardous materials, policies and bylaws; minor contraventions with swift correction</p> <p>I - Inconsistent compliance with the City's designated substances policy, contract requirements for hazardous materials, policies or bylaws; requires some additional staff time/resources</p> <p>U - Failure to comply with the City's designated substances policy, contract requirements for hazardous materials, policies or bylaws; requires much additional staff time/resources.</p> <p>N/A - The question is not applicable to this evaluation.</p>	

B. QUALITY - Compliance with Contract Standards & Specifications		COMMENTS/BACKUP
B1	Did the contractor comply with standards and specifications in the contract?	ranking = I
	<p>EX - Strict adherence to contract documents. Approved variations added value.</p> <p>EE - Strict adherence to contracts documents especially standards and specifications</p> <p>ME - Some approved deviations but essentially in compliance with standards and specifications</p> <p>I - Problems with compliance with standards and specifications in the contract, but conflicts are resolved. Requires some additional staff time/resources.</p> <p>U - Work frequently does not adhere to the contract standards and specifications resulting in delays and/or claims. Requires much additional staff time/resources.</p> <p>N/A - The question is not applicable to this evaluation.</p>	<p>The contractor disputes the requirement of TS 3.80, the window wells repairs is not as per the specifications and the contractor is not in compliance with the work hours as per the contract COMPLIANCE WITH CONTRACT STANDARDS & SPECIFICATIONS IS REEVALUATED AND THE RANKING IS REVISED FROM "U" TO "I"</p>

EX - EXCEPTIONAL - Far exceeded expectations due to exceptionally high quality of performance and work in all areas of responsibility adding value to the project.
EE - EXCEEDS EXPECTATIONS - Consistently exceeded expectations in all essential areas of responsibility and quality of performance and work overall excellent
ME - MEETS EXPECTATIONS - Consistently met expectations in all essential areas of responsibility with few if any issues.
I - IMPROVEMENT NEEDED - Performance failed to meet expectations in one or more essential areas of responsibility. Usually requires some additional staff time and resources.
U - UNSATISFACTORY - Consistently below expectations in most essential areas of responsibility. Usually requires much additional staff time and resources.

For ranks of U and EX, Evaluator's must provide comments with details and links to specific minutes, consultant reports, memos, log notes etc. Provide eDoc #s wherever possible. Comments for I, ME, EE ranks are optional.

B2	Was the quality and workmanship in compliance with the contract documents? ranking = I
	<div style="display: flex; justify-content: space-between;"> <div style="width: 45%;"> <p>EX - Superior workmanship and quality. Creative, approved substitutions add value.</p> <p>EE - Workmanship is excellent and meets peak requirements of the contract documents. No rework.</p> <p>ME - Minimal problems and defects. The majority of workmanship is good and meets minimum requirements of the contract documents. Some minor rework required.</p> <p>I - The majority of work is satisfactory in compliance with the contract documents with moderate rework. Requires some additional staff time/resources.</p> <p>U - Contractor is made to do several tasks repeatedly due to substandard workmanship and deliverables. Often not in compliance with the contract documents. Extensive rework required. Requires much additional staff time/resources.</p> <p>N/A - The question is not applicable to this evaluation.</p> </div> <div style="width: 50%;"> <p>There are issues with the tree pit covers (size etc.) and pavers installation, the quality is not consistent and there are several deficiencies. The installation of the pavers is not satisfactory THE RANKING IS REVIEWED AND THE EVALUATION IS CONSIDERED FAIR</p> </div> </div>
B3	Did the contractor promptly & effectively correct defective work as the project progressed? ranking = I
	<div style="display: flex; justify-content: space-between;"> <div style="width: 45%;"> <p>EX - Performance in this area can not be Exceptional</p> <p>EE - Contractor promptly responds and addresses all defective work. All work is of the highest quality</p> <p>ME - Timely responses to correct defective work. Quality of work is average.</p> <p>I - Unacceptable work is eventually corrected to the satisfaction of the City. Requires some additional staff time/resources.</p> <p>U - Does not acknowledge or correct problems. Little or no response to repeated defective work and repeated field directives. Requires much additional staff time/resources.</p> <p>N/A - The question is not applicable to this evaluation.</p> </div> <div style="width: 50%;"> <p>The contractor did not fix the defective works as the project progressed THE RANKING IS REVIEWED AND THE EVALUATION IS CONSIDERED FAIR</p> </div> </div>

C. ORGANIZATION - Work Plan and Management	COMMENTS/BACKUP
---	------------------------

C1	Did the contractor submit a satisfactory baseline schedule in compliance with the contract? ranking = I
	<div style="display: flex; justify-content: space-between;"> <div style="width: 45%;"> <p>EX - Contractor submitted baseline schedule and all submissions on time and complete, accelerating the project.</p> <p>EE - Contractor submitted baseline schedule and all submissions on time and complete</p> <p>ME - Contractor submitted majority of submissions and baseline schedule on time and complete</p> <p>I - Adequate number of submissions on time, resulting in few problems/ delays. Requires some additional staff time/resources</p> <p>U - No satisfactory baseline schedule submitted and very few submissions submitted on time, causing problems. Requires much additional staff time/resources</p> <p>N/A - The question is not applicable to this evaluation.</p> </div> <div style="width: 50%;"> <p>The schedule update submissions were delayed THE RANKING IS REVIEWED AND THE EVALUATION IS CONSIDERED FAIR</p> </div> </div>
C2	Did the contractor commence the work on time? ranking = ME
	<div style="display: flex; justify-content: space-between;"> <div style="width: 45%;"> <p>EX - Performance in this area can not be Exceptional</p> <p>EE - Contractor accelerates schedule and mobilizes and commences work ahead of contract requirement</p> <p>ME - Contractor mobilizes and commences work according to the contract requirement.</p> <p>I - Contractor mobilizes and commences work according to the contract requirement with minor delay.</p> <p>U - Contractor slow to mobilize and does not commences work according to the contract requirements, resulting in major delay.</p> <p>N/A - The question is not applicable to this evaluation.</p> </div> <div style="width: 50%;"> <p>THE RANKING IS REVIEWED AND THE EVALUATION IS CONSIDERED FAIR</p> </div> </div>
C3	Did the contractor submit schedule updates in accordance with the contract? ranking = I

EX - EXCEPTIONAL - Far exceeded expectations due to exceptionally high quality of performance and work in all areas of responsibility adding value to the project.
EE - EXCEEDS EXPECTATIONS - Consistently exceeded expectations in all essential areas of responsibility and quality of performance and work overall excellent
ME - MEETS EXPECTATIONS - Consistently met expectations in all essential areas of responsibility with few if any issues.
I - IMPROVEMENT NEEDED - Performance failed to meet expectations in one or more essential areas of responsibility. Usually requires some additional staff time and resources.
U - UNSATISFACTORY - Consistently below expectations in most essential areas of responsibility. Usually requires much additional staff time and resources.

For ranks of U and EX, Evaluator's must provide comments with details and links to specific minutes, consultant reports, memos, log notes etc. Provide eDoc #s wherever possible. Comments for I, ME, EE ranks are optional.

EX - Contractor submits timely, accurate schedule updates in accordance with the contract, accelerating the project.
 EE - The contractor submits schedule updates timely, accurate and in accordance with the contract
 ME - The contractor submits schedule updates usually timely, accurate and in accordance with the contract
 I - The contractor submits schedule updates periodically with some inaccuracies but largely in accordance with contract. Requires some additional staff time/resources.
 U - The contractor frequently submits schedule updates late, inaccurate and not in accordance with the contract. Requires much additional staff time/resources.
 N/A - The question is not applicable to this evaluation.

The contractor did not submit the updates as required/requested several times THE RANKING IS REVIEWED AND THE EVALUATION IS CONSIDERED FAIR

EX - EXCEPTIONAL - Far exceeded expectations due to exceptionally high quality of performance and work in all areas of responsibility adding value to the project.
EE - EXCEEDS EXPECTATIONS - Consistently exceeded expectations in all essential areas of responsibility and quality of performance and work overall excellent
ME - MEETS EXPECTATIONS - Consistently met expectations in all essential areas of responsibility with few if any issues.
I - IMPROVEMENT NEEDED - Performance failed to meet expectations in one or more essential areas of responsibility. Usually requires some additional staff time and resources.
U - UNSATISFACTORY - Consistently below expectations in most essential areas of responsibility. Usually requires much additional staff time and resources.

For ranks of U and EX, Evaluator's must provide comments with details and links to specific minutes, consultant reports, memos, log notes etc. Provide eDoc #s wherever possible. Comments for I, ME, EE ranks are optional.

C4	<p>Did the contractor adequately staff and resource the project in compliance with the contract? ranking = I</p> <p> EX - The project is well staffed with highly qualified workforce, capable of successfully maintaining an accelerated project schedule, appropriate equipment always well maintained and available when needed, adding significant value to the project EE - The project is well staffed with highly qualified workforce, capable of successfully maintaining an accelerated project schedule, equipment always well maintained and available when needed. ME - The project has a qualified workforce and maintains an aggressive schedule. Equipment needed is usually available, no delays. I - Adequately staffed, periodically hinders project, equipment needed often available, minor delays. U - Poorly staffed, equipment is not available or reliable constantly resulting in delays N/A - The question is not applicable to this evaluation. </p>	<p>The contractor did not put any crews for late hours work as required by the contract THE RANKING IS REVIEWED AND THE EVALUATION IS CONSIDERED FAIR</p>
C5	<p>Did the contractor provide adequate & competent site supervision? ranking = U</p> <p> EX - Exceptional site supervision anticipating problems and adding significant value to the project. EE - Well staffed with highly qualified site supervision present to direct others as needed ME - Qualified site supervision with necessary skill present to direct others as needed I - Adequately staffed with sufficient site supervision periodically hindering project. Requires some additional staff time/resources. U - Poorly staffed, unqualified site supervision constantly hindering project. Requires much additional staff time/resources. N/A - The question is not applicable to this evaluation. </p>	<p>The site supervisor does not appear to have down town City work experience and he also appears to be reluctant to comply with the directions of the project staff. He has been observed to have a disrespectful attitude towards the City staff and has also been observed raising his voice from time to time. A few times the site supervisor has also failed to provide timely notice of concrete placements, hence created issues with quality assurance. It has been also reported by BIA that at several occasions the site supervisor has made negative remarks regarding the project. THE RANKING IS BASED ON OUR EXPERIENCE WITH FOUR SEASONS WORK ON COLLEGE STREET PROJECT AND THERE SHALL BE NO CHANGE TO THE RANKING OF "U" PLEASE SEE ATTACHED HIGHLIGHTED MINUTES AND EMAILS</p>
C6	<p>Did the contractor effectively coordinate and manage the work of its subcontractors? ranking = ME</p> <p> EX - Performance in this area can not be Exceptional EE - Superior workmanship. Contractor effectively coordinates and manages the work of its subcontractors ME - Minimal problems, the majority of coordination and management of subcontractors is good I - The majority of coordination and management meets project requirements but moderate rework required. Requires some additional staff time/resources. U - Contractor does not effectively coordinate and manage the work of its subcontractors and requires extensive rework. Requires much additional staff time/resources. N/A - The question is not applicable to this evaluation. </p>	<p>THE RANKING IS REVIEWED AND THE EVALUATION IS CONSIDERED FAIR</p>
C7	<p>Did a person with decision-making authority represent the contractor at pay/progress meetings? rank = ME</p> <p> EX - Pay/Progress meetings always attended by decision-making authority. Adds value to project. EE - Pay/Progress meetings always attended by decision-making authority ME - Pay/Progress meetings usually attended by decision-making authority I - Pay/Progress meetings mostly have sufficient representation by decision-making authority U - Pay/Progress meetings have little or no attendance by decision-making authority N/A - The question is not applicable to this evaluation. </p>	<p>THE RANKING IS REVIEWED AND THE EVALUATION IS CONSIDERED FAIR</p>
C8	<p>Did the contractor submit timely, relevant requests for information (RFIs) as needed? ranking = ME</p>	

- EX - EXCEPTIONAL** - Far exceeded expectations due to exceptionally high quality of performance and work in all areas of responsibility adding value to the project.
- EE - EXCEEDS EXPECTATIONS** - Consistently exceeded expectations in all essential areas of responsibility and quality of performance and work overall excellent
- ME - MEETS EXPECTATIONS** - Consistently met expectations in all essential areas of responsibility with few if any issues.
- I - IMPROVEMENT NEEDED** - Performance failed to meet expectations in one or more essential areas of responsibility. Usually requires some additional staff time and resources.
- U - UNSATISFACTORY** - Consistently below expectations in most essential areas of responsibility. Usually requires much additional staff time and resources.

For ranks of U and EX, Evaluator's must provide comments with details and links to specific minutes, consultant reports, memos, log notes etc. Provide eDoc #s wherever possible. Comments for I, ME, EE ranks are optional.

EX - Timely, accurate and in accordance with contract anticipating and avoiding problems and delays.

EE - Timely, accurate and in accordance with contract

ME - Usually timely, accurate and in accordance with contract

I - Frequently late, sometimes inaccurate, and sometimes not in accordance with contract. Requires some additional staff time and resources.

U - Constantly late, inaccurate, requiring frequent reminders, seldom in accordance with contract. Requires much additional staff time and resources.

N/A - The question is not applicable to this evaluation.

THE RANKING IS REVIEWED AND THE EVALUATION IS CONSIDERED FAIR

EX - EXCEPTIONAL - Far exceeded expectations due to exceptionally high quality of performance and work in all areas of responsibility adding value to the project.
EE - EXCEEDS EXPECTATIONS - Consistently exceeded expectations in all essential areas of responsibility and quality of performance and work overall excellent
ME - MEETS EXPECTATIONS - Consistently met expectations in all essential areas of responsibility with few if any issues.
I - IMPROVEMENT NEEDED - Performance failed to meet expectations in one or more essential areas of responsibility. Usually requires some additional staff time and resources.
U - UNSATISFACTORY - Consistently below expectations in most essential areas of responsibility. Usually requires much additional staff time and resources.

For ranks of U and EX, Evaluator's must provide comments with details and links to specific minutes, consultant reports, memos, log notes etc. Provide eDoc #s wherever possible. Comments for I, ME, EE ranks are optional.

C9	Were shop drawings submitted according to shop drawing schedule and in compliance with the contract?	ranking = ME
	<p>EX - Schedule and all shop drawings submitted on time and complete. Creative, approved substitutions added value to the project.</p> <p>EE - Schedule and all shop drawings submitted on time and complete</p> <p>ME - Schedule and most shop drawings submitted on time and complete</p> <p>I - Few schedules and shop drawings submitted on time resulting in problems/delays. Requires some additional staff time and resources.</p> <p>U - Poor or no schedule and shop drawings submitted on time, causing problems. Requires much additional staff time and resources.</p> <p>N/A - The question is not applicable to this evaluation.</p>	THE RANKING IS REVIEWED AND THE EVALUATION IS CONSIDERED FAIR
D. EXECUTION - Work Performance		
D1	Did the contractor complete the project on time?	ranking = U
	<p>EX - Contractor exceeds contractual completion date.</p> <p>EE - Contractor meets contractual completion date with no extensions.</p> <p>ME - Contractor meets contractual completion date with approved extensions.</p> <p>I - Contractor misses contractual completion date. Makes efforts to mitigate delay. Requires some additional staff time/resources.</p> <p>U - Contractor misses contractual completion date. Makes little effort to mitigate delay. Requires much additional staff time/resources.</p> <p>N/A - N/A is to be chosen for all but the final evaluation once the project is completed.</p>	Contractor has made little or no efforts to achieve the timely completion of the projects initial phase and has considerably delayed the most crucial part of the contract THE RANKING IS BASED ON OUR EXPERIENCE WITH FOUR SEASONS WORK ON COLLEGE STREET PROJECT AND THERE SHALL BE NO CHANGE TO THE RANKING OF "U" PLEASE SEE ATTACHED HIGHLIGHTED MINUTES AND EMAILS
D2	Did the contractor follow the approved schedule and meet milestones?	ranking = U
	<p>EX - Maintains an accelerated project schedule resulting in early completion of project before contract completion date</p> <p>EE - Meets all milestones and schedule.</p> <p>ME - Meets schedule and key milestones.</p> <p>I - Behind schedule and some key milestones missed. Requires some additional staff time/resources.</p> <p>U - Continually behind schedule and most key milestones missed. Requires much more additional staff time/resources.</p> <p>N/A - The question is not applicable to this evaluation.</p>	The contractor did not meet the schedule and or the milestones THE RANKING IS BASED ON OUR EXPERIENCE WITH FOUR SEASONS WORK ON COLLEGE STREET PROJECT AND THERE SHALL BE NO CHANGE TO THE RANKING OF "U" PLEASE SEE ATTACHED HIGHLIGHTED MINUTES AND EMAILS
D3	Did the contractor provide effective quality control?	ranking = I
	<p>EX - Exceptional QA/QC. No deficiencies. Adds value to Project.</p> <p>EE - Excellent QA/QC. Minor if any deficiencies which are corrected quickly. No additional staff effort required.</p> <p>ME - Adequate quality control. Few deficiencies which are corrected quickly</p> <p>I - Poor quality control. Some deficiencies which takes some additional staff time and effort to correct.</p> <p>U - Unacceptable QA/QC. Many deficiencies which requires much additional staff time and effort to correct.</p> <p>N/A - The question is not applicable to this evaluation.</p>	The contractor has not submitted the quality control plan as requested under a field instructions THE RANKING IS REVIEWED AND THE EVALUATION IS CONSIDERED FAIR
D4	Did the contractor keep the site clean and free of trash and debris in compliance with the contract?	ranking = U
	<p>EX - Performance in this area can not be Exceptional</p> <p>EE - Project site kept very clean and free of trash and debris</p> <p>ME - Most trash, debris cleaned up on a daily basis from project site</p> <p>I - Contractor periodically cleans up project site with minimal directive</p> <p>U - Non-responsive to repeated directives to clean up project site. Site not clean and visible trash and debris</p> <p>N/A - The question is not applicable to this evaluation.</p>	The contractor has been sent field instructions for the site cleanliness due to number of complaints from the BIA and the area residents THE RANKING IS BASED ON OUR EXPERIENCE WITH FOUR SEASONS WORK ON COLLEGE STREET PROJECT AND THERE SHALL BE NO CHANGE TO THE RANKING OF "U" PLEASE SEE ATTACHED HIGHLIGHTED MINUTES AND EMAILS
D5	Did the contractor promptly comply with change orders, change directives, site instructions, and RFQs?	ranking = ME

EX - EXCEPTIONAL - Far exceeded expectations due to exceptionally high quality of performance and work in all areas of responsibility adding value to the project.
EE - EXCEEDS EXPECTATIONS - Consistently exceeded expectations in all essential areas of responsibility and quality of performance and work overall excellent
ME - MEETS EXPECTATIONS - Consistently met expectations in all essential areas of responsibility with few if any issues.
I - IMPROVEMENT NEEDED - Performance failed to meet expectations in one or more essential areas of responsibility. Usually requires some additional staff time and resources.
U - UNSATISFACTORY - Consistently below expectations in most essential areas of responsibility. Usually requires much additional staff time and resources.

For ranks of U and EX, Evaluator's must provide comments with details and links to specific minutes, consultant reports, memos, log notes etc. Provide eDoc #s wherever possible. Comments for I, ME, EE ranks are optional.

EX - Performance in this area can not be Exceptional
 EE - All change orders, change directives, site instructions, RFQ's responded to immediately
 ME - All change orders, change directives, site instructions, RFQ's responded to in a timely manner with proper accurate documents
 I - Most change orders, change directives, site instructions, RFQ's responded to in a timely manner, some delays and problems
 U - Generally non-responsive to change orders, change directives, site instructions. Slow response to RFQs.
 N/A - The question is not applicable to this evaluation.

THE RANKING IS REVIEWED AND THE EVALUATION IS CONSIDERED FAIR

EX - EXCEPTIONAL - Far exceeded expectations due to exceptionally high quality of performance and work in all areas of responsibility adding value to the project.
EE - EXCEEDS EXPECTATIONS - Consistently exceeded expectations in all essential areas of responsibility and quality of performance and work overall excellent
ME - MEETS EXPECTATIONS - Consistently met expectations in all essential areas of responsibility with few if any issues.
I - IMPROVEMENT NEEDED - Performance failed to meet expectations in one or more essential areas of responsibility. Usually requires some additional staff time and resources.
U - UNSATISFACTORY - Consistently below expectations in most essential areas of responsibility. Usually requires much additional staff time and resources.

For ranks of U and EX, Evaluator's must provide comments with details and links to specific minutes, consultant reports, memos, log notes etc. Provide eDoc #s wherever possible. Comments for I, ME, EE ranks are optional.

D6	Did the contractor seek authorization to perform extra or additional work?	ranking = ME
	EX - Performance in this area can not be Exceptional EE - Provides quote and proceeds only after approval received. Occasionally expands scope at no cost to City. ME - Provides quote and proceeds only after approval received. I - Occasionally proceeds with work before quote reviewed and approved. U - Frequently proceeds with work without review or approval. N/A - The question is not applicable to this evaluation.	THE RANKING IS REVIEWED AND THE EVALUATION IS CONSIDERED FAIR
D7	Did the contractor adequately address disputes, damages and claims with third parties to City PM's knowledge?	ranking = I
	EX - On exceptional terms with subcontractors, utilities and public. No disputes. No liens or formal claims. Excellent working relationships adds value to the project. EE - On excellent terms with subcontractors, utilities and public. Few if any disputes resolved promptly. ME - Mostly on good terms with subcontractors, utilities and public. Resolves disputes, liens and formal claims promptly. I - Sometimes on good terms with subcontractors, utilities and public. Resolves disputes, liens and formal claims requiring some staff time and effort. U - Rarely on good terms with subcontractors, utilities and public. If resolved, disputes, liens and formal claims require much staff time and effort. N/A - The question is not applicable to this evaluation.	The contractor refused to address complaints regarding the flooding issues for the adjacent properties THE RANKING IS REVIEWED AND THE EVALUATION IS CONSIDERED FAIR
D8	Was the quality and submission timelines of the following items acceptable?	
D8.1	• Look ahead schedules or work plans	ranking = U
D8.2	• Accurate and complete record documents (as-builts)	ranking = N/A
D8.3	• Complete operations and maintenance manuals and closeout documents	ranking = N/A
D8.4	• Secure and/or closed applicable municipal permits	ranking = N/A
D8.5	• Startup testing and commissioning reports	ranking = N/A
D8.6	• Training plan and manuals	ranking = N/A
	EX - All submissions on time and of exceptional quality, adding value to the project. EE - All submissions on time and of excellent quality. ME - Most submissions on time and of good quality. Remaining revised and resubmitted quickly. I - Some submissions late and of poor quality. Remaining revised and resubmitted slowly requiring some additional staff time and resources. U - Most submissions late and of poor quality. Much revision and resubmission requiring much additional staff time and resources. N/A - The question is not applicable to this evaluation.	The submissions for look ahead schedules were not made in a timely manner THE RANKING IS REVIEWED AND THE EVALUATION IS CONSIDERED FAIR

E ADMINISTRATION - Contractor Performance and Diligence		COMMENTS/BACKUP
E1	Did the contractor communicate, cooperate, collaborate with the contract administrator, project team & stakeholders?	ranking = U
	EX - Communication with the contract administrator and all stakeholders excellent and in accordance with the contract documents, adding significant value to the project. EE - Communication with the contract administrator and all stakeholders excellent and in accordance with the contract documents ME - Communication with the contract administrator and all stakeholders timely, satisfactory, and in accordance with the contract I - Communication with the contract administrator and all stakeholders poor and causes periodic problems. Requires some additional staff time/resources. U - Contractors communication with the contract administrator and all stakeholders poor and the cause of constant problems. Strongly impacts the success of the project. Requires much additional staff time/resources. N/A - The question is not applicable to this evaluation.	The contractor has been non cooperative and have made several problems for the residents moving out and made difficult for businesses by not allowing them to install their signs "that the business is open during construction". The contractors appears to be non-supportive of the businesses which are mostly very small businesses and their livelihood depends on these businesses THE RANKING IS BASED ON OUR EXPERIENCE WITH FOUR SEASONS WORK ON COLLEGE STREET PROJECT AND THERE SHALL BE NO CHANGE TO THE RANKING OF "U" PLEASE SEE ATTACHED HIGHLIGHTED MINUTES AND EMAILS
E2	Did the contractor participate in resolving project problems and display initiative to implement solutions?	ranking = I

EX - EXCEPTIONAL - Far exceeded expectations due to exceptionally high quality of performance and work in all areas of responsibility adding value to the project.
EE - EXCEEDS EXPECTATIONS - Consistently exceeded expectations in all essential areas of responsibility and quality of performance and work overall excellent
ME - MEETS EXPECTATIONS - Consistently met expectations in all essential areas of responsibility with few if any issues.
I - IMPROVEMENT NEEDED - Performance failed to meet expectations in one or more essential areas of responsibility. Usually requires some additional staff time and resources.
U - UNSATISFACTORY - Consistently below expectations in most essential areas of responsibility. Usually requires much additional staff time and resources.

For ranks of U and EX, Evaluator's must provide comments with details and links to specific minutes, consultant reports, memos, log notes etc. Provide eDoc #s wherever possible. Comments for I, ME, EE ranks are optional.

EX - Cooperates in solving project problems often mitigating them. Creative solutions add value. No arguments, few and fair Change Orders. Quick resolution.
 EE - Cooperates in solving problems sometimes mitigating them. Few arguments, fair Change Orders and quick resolution.
 ME - Consistently cooperates in solving problems. Few arguments, reasonable solutions, quotes and timelines offered to solve.
 I - Reluctant to cooperate. Few reasonable solutions offered. Moderate number of arguments, expensive Change Orders and requires some additional staff time/resources to resolve.
 U - Rarely cooperates. Few reasonable solutions offered. Many arguments, expensive Change Orders and requires much additional staff time/resources to resolve.
 N/A - The question is not applicable to this evaluation.

There was some odour/smell in one of the area and despite isolating that area and moving to another location, the contractor completely stopped all electrical THE RANKING IS REVIEWED AND THE EVALUATION IS CONSIDERED FAIR

EX - EXCEPTIONAL - Far exceeded expectations due to exceptionally high quality of performance and work in all areas of responsibility adding value to the project.
EE - EXCEEDS EXPECTATIONS - Consistently exceeded expectations in all essential areas of responsibility and quality of performance and work overall excellent
ME - MEETS EXPECTATIONS - Consistently met expectations in all essential areas of responsibility with few if any issues.
I - IMPROVEMENT NEEDED - Performance failed to meet expectations in one or more essential areas of responsibility. Usually requires some additional staff time and resources.
U - UNSATISFACTORY - Consistently below expectations in most essential areas of responsibility. Usually requires much additional staff time and resources.

For ranks of U and EX, Evaluator's must provide comments with details and links to specific minutes, consultant reports, memos, log notes etc. Provide eDoc #s wherever possible. Comments for I, ME, EE ranks are optional.

E3	<p>Did the contractor demonstrate accountability for problems for which they were responsible?</p> <p>EX - Cooperates in solving their problems and others. Creative solutions add value. Always accepts responsibility for their errors with no argument and quick resolution. EE - Always cooperates in solving problems often mitigating them. Always accepts responsibility for their errors with no argument and quick resolution. ME - Consistently cooperates in solving problems (damages, errors, omissions, defective work) usually accepting responsibility. Few arguments and quick resolution. I - Reluctant to solve problems, frequently avoiding responsibility for their errors. Moderate number of arguments and requires some additional staff time/resources to resolve. U - Rarely acknowledges problems, avoiding responsibility and compounds them. Argumentative requiring much additional staff time/resources to resolve. N/A - The question is not applicable to this evaluation.</p>	<p>ranking = I</p> <p>The contractor tends to keep on blaming the City for most of the issues which the contractor shall address e.g. the flooding in the basements of adjacent properties shall have been prevented by the contractors it has been resulted due to the construction work, however the contractor refused to take any measures to prevent the water entering through the excavations and wanted the City to pay for such work THE RANKING IS REVIEWED AND THE EVALUATION IS CONSIDERED FAIR</p>
E4	<p>Did the contractor submit accurate, complete invoices in a timely manner?</p> <p>EX - Performance in this area can not be Exceptional EE - No errors, accurate representation of work completed ME - Few billing errors, quickly corrected and submitted I - Some billing errors, corrected and submitted requiring some staff time/resources to resolve U - Too many errors; frequent misrepresentations of completed work requiring much staff time/resources to resolve N/A - The question is not applicable to this evaluation.</p>	<p>ranking = ME</p>
E5	<p>Did the contractor provide competitive change order pricing?</p> <p>EX - Change order quotes are reasonable, timely. Occasionally expands scope at not cost to City. EE - Change order quotes are reasonable and timely; no unresolved issues ME - Change order quotes are reasonable and timely with complete backup documentation, few unresolved issues I - reluctant to negotiate, sometimes compromises, some unresolved issues remain. Requires some additional staff time to resolve. U - Contractor is not willing to compromise. Difficult, if not impossible, to negotiate with; many unresolved issues requiring much additional staff time/resources. N/A - The question is not applicable to this evaluation.</p>	<p>ranking = I</p> <p>The contractor quotes has been observed to be on the higher side THE RANKING IS REVIEWED AND THE EVALUATION IS CONSIDERED FAIR</p>
E6	<p>Did the contractor accept responsibility for the full scope and extent of the contract?</p> <p>EX - Complete acceptance of their scope and financial responsibility. No omissions, no arguments. Value added to project by suggestions improving scope or reducing City cost. EE - Complete acceptance of their scope and financial responsibility. No omissions, no arguments. ME - Good acceptance of their scope and financial responsibility. Few omissions and few arguments most resolved to City's satisfaction I - Poor acceptance of their scope and financial responsibility. Several omissions and several arguments; some not resolved to City's satisfaction. Requires some additional staff time/effort. U - Poor acceptance of their scope and financial responsibility. Many omissions and many frivolous arguments often not resolved to City's satisfaction. Requires much additional staff time/effort. N/A - The question is not applicable to this evaluation.</p>	<p>ranking = I</p> <p>The contractor continuously argues over most of the issues and is found to be reluctant and no cooperative in helping to the resolution and has also walked out of a meeting without while discussing the issue of bike rings installation THE RANKING IS REVIEWED AND THE EVALUATION IS CONSIDERED FAIR</p>
E7	<p>Did the contractor coordinate to minimize disruption to the public and City operations?</p>	<p>ranking = I</p>

- EX - EXCEPTIONAL** - Far exceeded expectations due to exceptionally high quality of performance and work in all areas of responsibility adding value to the project.
- EE - EXCEEDS EXPECTATIONS** - Consistently exceeded expectations in all essential areas of responsibility and quality of performance and work overall excellent
- ME - MEETS EXPECTATIONS** - Consistently met expectations in all essential areas of responsibility with few if any issues.
- I - IMPROVEMENT NEEDED** - Performance failed to meet expectations in one or more essential areas of responsibility. Usually requires some additional staff time and resources.
- U - UNSATISFACTORY** - Consistently below expectations in most essential areas of responsibility. Usually requires much additional staff time and resources.

For ranks of U and EX, Evaluator's must provide comments with details and links to specific minutes, consultant reports, memos, log notes etc. Provide eDoc #s wherever possible. Comments for I, ME, EE ranks are optional.

EX - Exceptional coordination/planning, always proactive, always resulting in satisfied staff and public.

EE - Excellent coordination/planning always proactive, usually resulting in satisfied staff and public.

ME - Good coordination/planning usually proactive, often resulting in satisfied staff and public.

I - Poor coordination/planning often reactive, sometimes resulting in unsatisfied staff and public. Requires some additional staff time/resources.

U - Poor or no coordination/planning usually reactive, often resulting in unsatisfied staff and public. Requires much additional staff time/resources.

N/A - The question is not applicable to this evaluation.

The contractor has not been cooperative in providing assistance to the area residents and businesses and has been asking the City to pay extra for the contractors time of opening the fence to let out the customers and the residents. THE RANKING IS REVIEWED AND THE EVALUATION IS CONSIDERED FAIR

From: Shahid Virk [<mailto:svirk@toronto.ca>]

Sent: July-15-16 9:38 AM

To: Keith LeBlanc <kleblan@toronto.ca>

Cc: Dan Smit <dsmit@toronto.ca>; Danny Bajit <dbajit@toronto.ca>; Marc Marrone <MMarrone@sitedevelopment.ca>; Lorenzo Sabbadin <LSabbadin@sitedevelopment.ca>; Grant Janes <gjanest@toronto.ca>; Jason Kerfont <jkerfont@toronto.ca>; Scott MacFarlane <smacfar@toronto.ca>

Subject: FW: Garbage collection along College St West between Shaw and Havelock Streets, north side
Importance: High

Thank you Keith,

Marco, can I please know why this waste was not relocated, also please remove it off-site and dispose ASAP, I will inform the Councillors office accordingly.

Thank you

Shahid

From: Keith LeBlanc

Sent: July-15-16 4:38 AM

To: Shahid Virk

Cc: Dan Smit; Danny Bajit; MMarrone@sitedevelopment.ca (MMarrone@sitedevelopment.ca); Lorenzo Sabbadin; Grant Janes; Jason Kerfont; Scott MacFarlane

Subject: RE: Garbage collection along College St West between Shaw and Havelock Streets, north side

Hi Shahid,

Attached are pictures of material we couldn't access because they weren't brought to the designated locations, all other materials were collected.

Regards

Keith

From: Shahid Virk

Sent: July 13, 2016 12:25 PM

To: Keith LeBlanc; Danny Bajit; MMarrone@sitedevelopment.ca (MMarrone@sitedevelopment.ca); Lorenzo Sabbadin

Cc: Dan Smit

Subject: RE: Garbage collection along College St West between Shaw and Havelock Streets, north side

Many thanks Keith/Dan

Marco, can you please ensure that the garbage is placed at these openings on the pickup day.

Thank you

Thank you Marco,

I think the issue raised by Four Seasons for installing the electric duct was dealt with in a timely manner, I am sure that you will agree that there is some time required for review and decisions. Also I don't appreciate you telling not to send email in the afternoon, I have to respond whenever I get time to do so.

I was at site this morning and while your subcontractor was investigating the feasibility of installing the electric duct at the location in question, I have informed Mr. Lorenzo, that if this is not feasible please proceed with removing the concrete at the sidewalk/corner. I also request you that **"Please do not stop the work due to this minor issue"** and proceed with removal of the concrete including the tech-tiles at the corner, for installation of the ducts as per plan.

Regarding your statement of delays due to jumping the tree pits, "please do not jump any tree pits" and construct them according to the drawings unless we have the approved details and an Official Directive is issued to Four Seasons. The design has been placed together by the consultants (PMA) and they have informed that Urban Forestry was consulted in depth prior to the getting the details together.

If you consider that the proposed tree pits cannot be constructed as per the design provided, you should have raised this issue during the tender process. There were several questions raised during the tender process but I don't think that any of the bidder(s) raised any questions regarding the constructability of the tree trenches. Please let me know what the specific issues are preventing you to construct the tree pits and we shall resolve those issues ASAP.

Please do not wait for any redesign and continue with the drawings and the contract documents provided to you unless you need any clarification and/or you have been specifically advised to stop the work for a specific component.

Thank you

Shahid Virk, M.Sc., P.Eng.
Senior Project Manager, Streetcar Way & Special Projects
Design & Construction Transportation Infrastructure
Engineering & Construction Services
City of Toronto
Metro Hall, 16th Floor
55 John Street
Toronto, Ontario M5V 3C6
P: 416.338.5542
F: 416.392.6279
E: svirk@toronto.ca

From: Marc Marrone [<mailto:MMarrone@sitedevelopment.ca>]
Sent: July-14-16 6:04 PM
To: Shahid Virk

From: Shahid Virk [<mailto:svirk@toronto.ca>]

Sent: September-07-16 7:06 PM

To: Marc Marrone ; Cheryl Zammit

Cc: Joe Pellegrini ; Marc Marrone ; Phillip Tsolakis ; Lucas Eremita ; Danny Bajit ; Lorenzo Sabbadin

Subject: RE: To clarify protocol

Importance: High

Marco,

Please let me make it clear that no yelling and unprofessional behavior is acceptable towards the City site staff, any future incidence where a City employee is harassed or yelled at, will be taken very seriously and will be reported to the related City Health & Safety officials. Any misconduct at the part of Four Seasons employee shall be grounds of removal of that employee from the site of work.

Thank you

Shahid

From: Danny Bajit

Sent: September-07-16 5:10 PM

To: Lorenzo Sabbadin

Cc: Shahid Virk; Joe Pellegrini; Marc Marrone; Phillip Tsolakis; Lucas Eremita

Subject: To clarify protocol

Lorenzo,

I have to tell you that I am not under your control to go wherever there is trouble. I was in the middle of my paper works and that made you so upset and you feel I abandoned you when I did not go immediately. If there is a problem between you, your workers and the public, you have to deal with it being the site supervisor. If I have to call the police, just let me know and I will call wherever I am. You have humiliated me in front of other people while I was busy with my works. I can not concentrate as you were practically yelling. This is not the first this happened. So please if you want me to speak to you in mutual respect please do not act like what you did.

Thank you.

Danny Bajit

Inspector Municipal Construction, Construction Inspection
Engineering Support Services

City of Toronto

18 Dyas Road, 2nd Floor

Toronto, Ontario M3B 1V5

P: 416.436.8398

F: 416.397.0900

E: dbajit@toronto.ca

From: Shahid Virk [mailto:svirk@toronto.ca]

Sent: September-07-16 11:59 AM

To: Marc Marrone ; Lorenzo Sabbadin

Cc: Mohammad Kashani ; Danny Bajit ; Rick Shrestha ; Joe Pellegrini

Subject: Incident at College Street

Marco/Lornzo,

I have received the following highlighted complaint from one of the gentleman on College Street, please ensure that your crews do not treat people with disrespect. I will like to make very clear that the City shall not tolerate such behavior in future and your persistent noncooperation with the area residents and business owners shall be reflected in your performance evaluation

"I am writing because I witnessed a construction worker verbally assault three people this morning. He was extremely aggressive and profane. One of the people was a man of colour, and the other was a woman. He was aggressive with them because these individuals were walking in the "construction zone". What he failed to listen to or even acknowledge is that these people lived in a space where the construction was right outside their door, and that they had no option other than to enter that "zone". As opposed to directing them in an orderly way, he was extremely entitled and angry with them. He is not here to police people, and has zero right to behave this way. It got to the point where he looked like he was going to physically assault one of the men. The male victim was harassed by the assaulter and there were cement smears on his arm from where he was touched.

As I'm sure you know, this behavior is absolutely unjust. He has no right to be policing people. If there is no exit provided for resident, that is the fault of the construction company. Often in our society, strong white men get a pass for their behavior, and as a result feel more entitled to behave however they want. It's shameful, and I am doing my part to stop the cycle.

I have a video of the second altercation which I can send to you upon request. It's quite a large file, and shows quite clearly how inappropriate this person was behaving. I also have the two victims coming in to give me their names, should you want to speak with them.

I'm expecting you will take action and let the construction company know this behavior is completely unacceptable."

Thank you

Shahid Virk, M.Sc., P.Eng.

Senior Project Manager, Streetcar Way & Special Projects

Design & Construction Transportation Infrastructure

Engineering & Construction Services

City of Toronto

Metro Hall, 16th Floor

55 John Street

Toronto, Ontario M5V 3C6

P: 416.338.5542

Good AM Shahid,

I think the contamination is localized near the fire hydrant and the pipes were already installed at that location (attached). There are still around 25 meter length of 25 mm pipe towards the north of Ossington for GFI68 which can be installed but Lorenzo has presumed the soil there is also contaminated. I asked the expert opinion of Justine Tse, the AMEC technician that they can continue excavating but if they notice contamination, do not reuse the soil for backfill and separate it. As for other works, I think Black and Mac can still resume installing the 100 mm ducts across Ossington from NW to NE corner, or proceed with CD #20. Other remaining works along north side are to install the GFIs but still waiting for the trees to be planted, pulling rope for fishing cables, installation of power supply cabinets and wirings. This still depends on how contractor schedules these works.

Regards,

Danny Bajit

Inspector Municipal Construction, Construction Inspection

Engineering Support Services

City of Toronto


18 Dyas Road, 2nd Floor

Toronto, Ontario M3B 1V5

P: 416.436.8398

F: 416.397.0900

E: dbajit@toronto.ca

 **Toronto Engineering & Construction Services**

From: Shahid Virk

Sent: September-14-16 6:05 PM

To: Danny Bajit

Cc: 'Marc Marrone'; 'Chris Chechak'; 'Cheryl Zammit'; Antonella Nicaso; Mohammad Kashani; Danny Bajit; Mike Major; 'Lorenzo Sabbadin'; 'MMarrone@sitedevelopment.ca' (MMarrone@sitedevelopment.ca)

Subject: RE: College Street Ossington Parkette Diesel Found

Good afternoon Danny,

Can you kindly evaluate the electrical work on site and let me know if there was any work available for the subcontractor (B & M), at the time when Four Seasons claimed for the standby time.

Thank you

Shahid

Shahid Virk, M.Sc., P.Eng.

Senior Project Manager, Streetcar Way & Special Projects

Design & Construction Transportation Infrastructure

Engineering & Construction Services

City of Toronto

Metro Hall, 16th Floor

55 John Street

Toronto, Ontario M5V 3C6

P: 416.338.5542

Shahid,

We will inform our staff to avoid these types of conversations with the establishments going forward. Point noted. That being said, we have informed the City including yourself, the BIA reps. And the consultants ahead of excavating that this situation would present itself. This is not a good situation and may repeat itself. We at Four Seasons have done our diligence in informing you of the potential damage to these properties, due to the lack of waterproofing on the building foundations. We will maintain our position, that this design should be reconsidered to avoid these issues.

I repeat as previously mentioned, Four Seasons will not accept any liability due to this matter or similar matters regarding the lack of waterproofing or dilapidated foundation walls.

In regards to the Portuguese Chicken Guy, what is the amount of the cheque going to be made for?

Regards,
Marco

From: Shahid Virk [<mailto:svirk@toronto.ca>]
Sent: July-27-16 4:28 PM
To: Rohit Bansal ; Marc Marrone
Cc: Mohammad Kashani ; Danny Bajit ; Antonella Nicaso
Subject: FW: Poor Communication and Negligence
Sensitivity: Confidential

Good afternoon Rohit/Marco,

Kindly review the email below from one of the property owner, I request you that Mr. Lorenzo shall be stopped telling the area residents and the businesses that the installation of tree pits is a problem to their properties. Mr. Lorenzo said this in my presence to the property owner which is not going to help with the smooth progress of work.

The owner has also noted that the City inspector had the similar comments but that is a misstatement as during our discussion the inspector at no point in the presence of the property owner made such statement. The tree pits are a part of this project and we are asked by our client for the construction of these tree pits, if there are any concerns this shall be brought to our attention and we pass it to our clients for their review. At this stage we need to work as a team in order to deliver the project successfully and your cooperation will be very much appreciated.

Thank you

Shahid

ITEM NO.	DESCRIPTION	ACTION
3.0	BIA Requirements/ Mesh Banners/Signs	
3.1	<ul style="list-style-type: none"> - Banners indicating that the businesses are open during construction are installed - The contractor was advised to review/assess all the ramps, accesses provided to the properties on daily basis and ensure that they are maintain/reinstated as required for providing a safe pedestrian access 	FS/Info
4.0	Schedule / Progress	
4.1	<ul style="list-style-type: none"> - The revised schedule has not been submitted by the contractor for City review, the contractor shall provide the schedule within couple of days. - The sidewalk excavation has been completed on north side - The electrical work at side street crossings is in progress - The concrete and forming work is also in progress <p><i>Note 1: The contractor was reminded that as discussed earlier the crews shall work longer hours as required to expedite the progress</i></p> <p><i>Note 2: the Contractor has not submitted the schedule as agreed and the schedule is still awaited</i></p> <p><i>Note 3: subsequent to the meeting the progress of work was reviewed and the contractor was informed that the progress appears to be very slow and must be expedited in order to meet the completion dates for each phase</i></p>	FS/E&C

ITEM NO.	DESCRIPTION	ACTION
4.0	Schedule / Progress	
4.1	<ul style="list-style-type: none"> - The revised schedule has not been submitted by the contractor for City review, the contractor forwarded the schedule during the meeting for review of the City - The sidewalk excavation has been completed on north side - The electrical work at side street crossings is also completed except for two locations - The tree pit excavation is completed to Ossington - The concrete and forming work is in progress <p><i>Note 1: The contractor was reminded that as discussed earlier the crews shall work longer hours as required under the contract to expedite the progress</i></p> <p><i>Note 2: subsequent to the meeting the progress of work was reviewed and the contractor was informed that the progress appears to be very slow and must be expedited in order to meet the completion dates for each phase</i></p>	FS/E&C
5.0	Traffic Protection/Pedestrian Access	
5.1	<ul style="list-style-type: none"> - The contractor shall submit revised/updated traffic control plan as per the recommendation of the traffic coordinator - The contractor shall ensure the safe pedestrian access to all the properties 	FS

ITEM NO.	DESCRIPTION	ACTION
4.0	Schedule / Progress	
4.1	<ul style="list-style-type: none"> - The contractor shall submit a revised schedule based on start date of July 4th - The sidewalk excavation has been completed to Ossington and the electrical work is in progress - The concrete work shall continue starting July 20th from west limit and proceeding towards east - The contractor shall proceed with the work of tree pits as per the original proposed details unless a written directions are issued by the City for any changes <p><i>Note: Subsequent to the meeting the contractor was reminded that as discussed earlier the crews shall work longer hours as required to expedite the progress</i></p>	FS/E&C
5.0	Traffic Protection/Pedestrian Access	
5.1	<ul style="list-style-type: none"> - The contractor shall submit revised/updated traffic control plan as per the recommendation of the traffic coordinator - The contractor shall review the existing traffic control at Dovercourt and College Street - The City Cycling infrastructure shall remove the existing bike station at north/east of Dovercourt and College Street within three weeks - The cycling infrastructure shall also look for an appropriate location to permanently relocate the bike station, due to the construction of Parkett at the existing location - The contractor shall ensure the safe pedestrian access to all the properties 	FS/E&C/Info

ITEM NO.	DESCRIPTION	ACTION
4.0	Schedule / Progress	
4.1	<ul style="list-style-type: none"> - The contractor agreed to submit a revised schedule by the end of this week - The sidewalk excavation has been completed to Roxton - The electrical work is in progress and has been completed to Ossington except for the side streets - The concrete and forming work is in progress <p><i>Note: The contractor was reminded that as discussed earlier the crews shall work longer hours as required to expedite the progress</i></p> <p><i>Note: the Contractor has not submitted the schedule by the end of the week</i></p>	FS/E&C
5.0	Traffic Protection/Pedestrian Access	
5.1	<ul style="list-style-type: none"> - The contractor shall submit revised/updated traffic control plan as per the recommendation of the traffic coordinator - The contractor shall review the existing traffic control at College and Shaw Street - The contractor shall ensure the safe pedestrian access to all the properties - PMA shall provide the CAD drawings to Four Seasons and the contractor will provide the details of quantity reduction to items due to changes in tree pits. Eco Dev shall present these changes to BIA for information/approval 	FS/E&C/Info

Email from Business owners

Shahid, we have been bearing with, for weeks....13 weeks to be exact. It has taken 2x as long to do this side of the street....we're asking because these sites hurt the businesses on these blocks, tremendously. It may not seem like a Lot to others, but it's huge to these businesses.

I understand that you are pushing to get everything done ASAP- but please understand that this is people's livelihood - and we are being patient, but we feel like we're not being heard and that no one from FS cares.

We're asking that as long as noone is working On these 2 sites, they not be storage for materials - this would help IMMENSELY. We realize it causes a bit more work for FS, but it would go a huge long way for surrounding businesses.

Thank you in advance,

>

> We have asked the contractor, please see his attached response. Kindy bear with us for some time and we will try to find a suitable location next week.

>

> Regards

> Shahid

>

> I know shahid asked FS to clear out some of the wood and pylons, but it's still not done around 400 and surrounding businesses- I've gotten a few complaints from the business owners there. Is there anyway it can be cleaned up this afternoon, before the weekend when they are busiest?

> They all say the same thing- they're tired of looking at the garbage (and I don't blame them)

>

> Please and thank you!!!

>

>

Email from Business owner

Actually, related to timing - why are we extending the time frame as opposed to having the contractor work 7 days a week as is allowed in his contract.

I would like to see the work on college proper be complete by the end of August...first week of September the latest - why can't the guys work longer days, or more days per week to get this done?

Why did we even get this extension when they haven't been working at the max time allotted?

Email from Business owner

That might be fine for you to close - but it will not be fine for everyone moving forward - it is in our contract to have access to our businesses -IT IS NOT OK.....we were all very clear, yesterday - Safety AND access.

Email from Business owner

Hi,

Incase you were not yet made aware by FS, they hit a water pipe, and although they are pumping it out, other properties have voiced concern over the fact that they only have a small sump pump pulling the water, and it seems to be coming out faster than it is being pumped out. Can someone please make sure this is being handled properly?

Thank you,

Email from Business owner

Hi, just a little more of an update. The Contractor took down the green signs that stated that the Contractor had issues with the MOL, strange they would take these signs down not to look bad and at the same time sent notices and pasted notices on residential doors as well about the 7 to 7 situation. Yes, some have asked me if I'm open tomorrow, there is still confusion and not communication. Hopefully a better work schedule would be appreciated and the notice corrected.

Email from Business owner

I have noticed the pavers are being installed very slow, it seems that the pavers are defective in sizing and they may want to send some back, can you get Fung to find out about this. It's making it very difficult for the installers to do a good job with defective pavers.

Please note that there is no change to the tree pit details and proceed with them as per drawing unless advised otherwise

Thank you

Sent from my BlackBerry 10 smartphone on the TELUS network.

From: Shahid Virk

Sent: Wednesday, July 20, 2016 5:04 AM

To: Marc Marrone

Subject: Fw: This is beyond crazy

Sent from my BlackBerry 10 smartphone on the TELUS network.

From: svirk@toronto.ca

Sent: Wednesday, July 20, 2016 5:02 AM

To: Marc Marrone

Subject: Fw: This is beyond crazy

As discussed earlier please note that you are required to work extended hours for this contract
Also please revise your schedule and resubmit as outlined in the contract

Thank you

Sent from my BlackBerry 10 smartphone on the TELUS network.

From: Julie Fass

Sent: Tuesday, July 19, 2016 5:42 PM

To: Michael Vieira

Cc: Shahid Virk; Antonella Nicaso; Angela Surdi; Mike Layton; Ana Bailao; ; seniormike@bellnet.ca; bernadette clementino; ; Andrew BIA; Ron Nash

Subject: Re: This is beyond crazy

Actually, related to timing - why are we extending the time frame as opposed to having the contractor work 7 days a week as is allowed in his contract.

I would like to see the work on college proper be complete by the end of August....first week of September the latest - why can't the guys work longer days, or more days per week to get this done?

Why did we even get this extension when they haven't been working at the max time allotted?

Julie Fass

Ziggy's at Home

416.535.8728

www.ziggysathome.com

On Jul 19, 2016, at 4:03 PM, Michael Vieira <mvieira2@toronto.ca> wrote:

Shahid & Antonella,

Please advise on why this is now taking 4-6 weeks, instead of the 2-3 weeks that were originally promised. Councillor Bailão would like to know.

Why would we be discussing tree pit details at this point in the project?

This is Exhibit "BB" referred to in the Affidavit of ROHIT
BANSAL sworn March 28th, 2017



Commissioner for Taking Affidavits (or as may be)

NADEJDA KOLOUPAEVA
A Commissioner, etc.,
Regional Municipality of Peel,
for Four Seasons Site Development Ltd.
Expires June 6, 2019



Michael Pacholok
Director

Purchasing and Materials
Management Division
City Hall, 18th Floor, West Tower
100 Queen Street West
Toronto, Ontario M5H 2N2

Joanne Kehoe
Manager
Construction Services

November 21, 2016

BY EMAIL

Attention: Rohit Bansal
Four Seasons Site Development Ltd.
42 Wentworth Ct, Unit #1
Brampton
Ontario, L6T 5K6

Via email: rbansal@sitedevelopment.ca
mmarrone@sitedevelopment.ca

Dear Mr. Bansal,

Re: Warning Letter – Contractor Performance Evaluation score below 2.5
City of Toronto ("City") contract no. 16ECS-TI-11SP (the "Contract") with Four Seasons Site Development Ltd. ("Four Seasons") for Sidewalk Construction, Streetscape Improvements, Tree trenches and Construction of Parkettes on College Street and side Streets between Shaw Street and Havelock Street (the "Project")

The City evaluates contractors on their performance on construction projects using its Contractor Performance Evaluation ("CPE") form. Any score below 2.5 triggers the issuance of a warning letter by the City's Purchasing & Materials Management ("PMMD") Division.

PMMD has been informed that Four Season's performance under the Contract has scored 2.01 on the attached Interim #1 CPE form. This form was originally provided to Four Seasons in September 2016 indicating a score of 1.91. (The performance issues have previously been raised in progress meetings and correspondence.) A written objection was subsequently received from Four Seasons on September 23, 2016, and on November 17, 2016 the City provided a response to those objections along with a revision to the report.

This letter is to inform Four Seasons it may be at risk of suspension from future construction awards if there is poor performance reported on this Contract or another City project. Any future suspension decision would be made by City Council upon recommendation by City staff.

Regards,

Joanne Kehoe
Manager, Construction Services
Purchasing & Materials Management

Encl. Interim #1 CPE Form

cc Michael Pacholok, Director PMMD



Contractor Performance Evaluation

version 1.2 - Feb 25-15

☐ Final
☒ Interim # 1
 DATE: Sep 14/16

CONTRACTOR: Four Seasons Site Site Development			
PROJECT NAME: College Street Streetscaping Improvements			
DESCRIPTION: Sidewalk Construction, Streetscape Improvements, on College Street and side Streets		Ranking	
CONTRACT No.: 16ECS-TI-11SP	START DATE: Jul 04/16	For definitions refer to Backup sheets	
CONTRACT VALUE: \$3.45 Million	COMPLETION DATE: Nov 04/16	U	I ME EE EX N/A
A. SAFETY & COMPLIANCE - Laws & Standards		sub-score	Weight
1. Did the contractor comply with OHSA requirements?		2.00	25%
2. Did the contractor adhere to environmental, (non-OHSA) safety requirements, and other laws & policies?			
3. Did the contractor take adequate precautions with any hazardous materials and designated substances?			
B. QUALITY - Compliance with Contract Standards & Specifications		sub-score	Weight
1. Did the contractor comply with standards and specifications in the contract?		2.00	25%
2. Was the quality and workmanship in compliance with the contract documents?			
3. Did the contractor promptly & effectively correct defective work as the project progressed?			
C. ORGANIZATION - Work Plan and Management		sub-score	Weight
1. Did the contractor submit a satisfactory baseline schedule in compliance with the contract?		2.38	12.5%
2. Did the contractor commence the work on time?			
3. Did the contractor submit schedule updates in accordance with the contract?			
4. Did the contractor adequately staff and resource the project in compliance with the contract?			
5. Did the contractor provide adequate & competent site supervision?			
6. Did the contractor effectively coordinate and manage the work of its subcontractors?			
7. Did a person with decision-making authority represent the contractor at pay/progress meetings?			
8. Did the contractor submit timely, relevant requests for information (RFIs) as needed?			
9. Were shop drawings submitted according to shop drawing schedule and in compliance with the contract?			
D. EXECUTION - Work Performance		sub-score	Weight
1. Did the contractor complete the project on time?		1.90	25%
2. Did the contractor follow the approved schedule and meet milestones?			
3. Did the contractor provide effective quality control?			
4. Did the contractor keep the site clean and free of trash and debris in compliance with the contract?			
5. Did the contractor promptly comply with change orders, change directives, site instructions, and RFQs?			
6. Did the contractor seek authorization to perform extra or additional work?			
7. Did the contractor adequately address disputes, damages and claims with third parties to City PM's knowledge?			
8. Was the quality and submission timelines of the following items acceptable?			
8.1 Look ahead schedules or work plans			
8.2 Accurate and complete record documents (as-builts)			
8.3 Complete operations and maintenance manuals and closeout documents			
8.4 Secure and/or closed applicable municipal permits			
8.5 Startup testing and commissioning reports			
8.6 Training plan and manuals			
ADMINISTRATION - Contractor Performance and Diligence		sub-score	Weight
1. Did the contractor communicate, cooperate, collaborate with the contract administrator, project team & stakeholders?		1.88	12.5%
2. Did the contractor participate in resolving project problems and display initiative to implement solutions?			
3. Did the contractor demonstrate accountability for problems for which they were responsible?			
4. Did the contractor submit accurate, complete invoices in a timely manner?			
5. Did the contractor provide competitive change order pricing?			
6. Did the contractor accept responsibility for the full scope and extent of the contract?			
7. Did the contractor coordinate to minimize disruption to the public and City operations?			

2.01 Total Score (weighted)

	Name (Print or Type)	Signature	Date
Project Manager:	Shahid Virk		Nov 17/16
Manager:	Mohammad Kashani		Nov 17/16
Director: (required for Final only)	Frank Clarizio		

NOTE: If the contractor disagrees with this evaluation, it is to submit its objections in writing with supporting evidence within five (5) business days to the Division Manager (for Interim Reports) or to the Division Director (for Final Reports)

This is Exhibit "CC" referred to in the Affidavit of ROHIT
BANSAL sworn March 28th, 2017



Commissioner for Taking Affidavits (or as may be)

NADEJDA KOLOUPAEVA
A Commissioner, etc.,
Regional Municipality of Peel,
for Four Seasons Site Development Ltd.
Expires June 6, 2019

Engineering & Construction Services**Metro Hall**
55 John Street
16th Floor
Toronto, Ontario M5V 3C6Reply to: Shahid Virk, P.Eng.
Tel: 416-338-5542
Fax: 416-392-5418
Email: svirk@toronto.ca
www.toronto.ca

September 28, 2016

SENT BY EMAILFour Seasons Site Development Inc.
42 Wentworth Court, Unit 1
Brampton, Ontario
L6T 5K6**Attention: Rohit Bansal****Re: Contract No. 16ECS-TI-11SP - Sidewalk Construction, Streetscape Improvements, Tree trenches and construction of Parkettes on College Street and side Streets between Shaw Street and Havelock Street (the "Contract") – NOTICE OF DEFAULT OF CONTRACT - GC 4.06**

Dear Mr. Bansal:

I write further to our letter dated August 18, 2016 and September 15, 2016 with respect to the above-noted Contract and the letter of your legal counsel dated August 23, 2016.

Four Seasons is still failing to maintain safe access to all properties adjoining the working area as required by the terms of contract (General Condition 7.07). Although the City recognizes the challenge posed by the Ministry of Labour Order dated August 5, 2016, it is the responsibility of Four Seasons as contractor and constructor to plan and stage the work (GC7.01.03) in strict compliance with the Occupational Health and Safety Act (GC 7.01.06) and in accordance with the contract terms (including those requiring access to adjacent properties). Four Seasons' continuing failure to coordinate and facilitate access with the City, local residents and businesses falls well short of Four Seasons' contractual obligations and the City's expectations for customer service from its contractors.

In addition, and despite several written and verbal notices, Four Seasons has failed to meet the extended work hours requirements specified in the Contract. In accordance with the construction constraints contained in Special Provision GN102M01 (the "Special Provision"), which forms part of the Contract, Four Seasons is required to work an extended day from 7:00am to 11:00am Monday to Friday and to use the time available between 9:00am – 7:00pm on Saturday and 9:00am-6:00pm on Sunday to assist you in completing the contract.

Four Seasons is not and has not been working extended hours on weekdays, in violation of the Contract. Therefore, the schedules Four Seasons has submitted are not compliant with sections 16 and 32 of the Special Provision, and these have been rejected by the City.

Four Seasons' failure to work the hours required by the Contract has resulted in significant delay to the progress and completion of the Contract. This is a breach of Four Seasons' requirement to execute the work properly (GC 4.05.02) and to perform the work with all due expedition and in a thoroughly worker-like manner in all respects in strict accordance with all terms and conditions of the Contract Documents (s. 3 Form of Agreement).

In accordance with GC 4.05.02, Four Seasons's failure to comply with the requirements of the Contract is sufficient ground to note that Four Seasons is in default of contract. The City therefore hereby declares Four Seasons to be in default of the Contract in accordance with GC 4.06. Should Four Seasons fail to correct this default within 5 working days, the City will have no choice but to pursue a legal remedy.

Please note that all of Four Seasons's obligations under the Contract with respect to quality, correction, and warranty of the work performed prior to today's date remain in force.

The City reserves the right to pursue any rights and remedies available to it, whether under the terms of Contract or otherwise at law, including the exercise of the City's remedies under GC 4.0 in respect of this or any other default under the Contract.

Thank you for your attention.

Yours truly,



Frank Clarizio, P. Eng.
Director, Design & Construction
Transportation Infrastructure
Engineering & Construction Services
City of Toronto
416-392-8412

CC: Mohammad Kashani, A/Manager, Streetcar Way & Special Projects
Shahid Virk, Senior Project Manager
Mike Major, Manager, Business Improvement Areas
AVIVA Insurance Company of Canada

This is Exhibit "DD" referred to in the Affidavit of ROHIT
BANSAL sworn March 29th, 2017



Commissioner for Taking Affidavits (or as may be)

NADEJDA KOLOUPAEVA
A Commissioner, etc.,
Regional Municipality of Peel,
for Four Seasons Site Development Ltd.
Expires June 6, 2019

HARVEY S. DORSEY

BARRISTER SOLICITOR

Professional Corporation

77 King Street West
Suite 2915, P.O. Box 344
TD Centre North Tower
Toronto, Ontario M5K 1K7

Telephone: (416) 861-1876
Fax: (416) 861-1430
E-Mail: hsd@dorseylaw.ca

September 30, 2016

Delivered by Email svirk@toronto.ca

City of Toronto
Engineering & Construction Services
Metro Hall
55 John Street, 16th Floor
Toronto, ON M5V 3C6

Attention: Shahid Virk

Dear Mr. Virk:

Re: Contract No. 16ECS-TI-11SP College Street - Street Scape Improvements
City of Toronto ("City") and Four Seasons Site Development Ltd. ("Four Seasons")

This is in response to Mr. Clarizio's letter of September 28, 2016.

In respect to the alleged failure of Four Seasons, to maintain access to adjacent properties, we refer you to our letter of August 23, 2016. Nothing has changed in the interim, nor has the City provided any suggested procedure that will permit compliance with both the MOL Order and GC 7.07. Four Seasons continues to invite the City to propose a reasonable and workable solution, in respect to this issue.

The issue of "**Safe Access**" is now raised by the City. Four Seasons is at a loss to understand the allegation of the failure to maintain Safe Access and requires immediately, particulars of same to determine if there is any validity to this allegation and if so, to permit Four Seasons to take corrective measures. In fact, it is our understanding that compliance by Four Seasons with the MOL Order has resulted in site conditions that exceed the safety requirements, as provided for in the Contract.

In respect to the alleged failure to meet extended work hour requirements, we are advised that Four Seasons, in the alternative has had on site during regular hours, extra crews that have at least doubled the work hours that normally would occur during regular hours. The extra crews have ensured that the work proceeds, at the same or greater pace than if a normal compliment of work crews were employed during both regular and extended hours. There is also a further benefit to the methodology that Four Seasons has utilized, in that during regular hours, there is imminent access to consulting engineers and architects, as issues arise on site which has been the case a number of times. Obviously, had the same issues arisen during extended hours, it is likely that the work would have come to a complete stop awaiting the consultation of the engineer or architect, the next day.

We are advised that the net effect of extra crews has resulted in the pace of work being maintained, as originally contemplated in the Base Line Schedule. There has been and continues to be a number of reasons why Four Seasons has provided Revised Schedules, as a result of delay beyond the responsibilities of Four Seasons. Four Seasons denies the unfounded allegation that significant delay or any delay of the work and completion of the Contract is the responsibility of Four Seasons. We are advised that the causes of the delay are primarily, as follows:

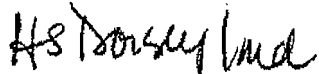
- (a) Utility locates, *now resolved*;
- (b) Abandoned utility poles, requiring wiring removal, *now resolved*;
- (c) Fuel tank requiring decommissioning located at 952 College Street, *presently outstanding*;
- (d) Diesel leaching located at 820 College Street, *presently outstanding*;
- (e) Ossington Parkette, contaminated matter, *presently outstanding*;
- (f) Numerous changes in the drawings, *continuing*;

We understand that the continuing causes of the delay, as set out, *supra*, are located on the north side of College Street. We are advised that Four Seasons has proposed commencing work on the south side of College Street while these delay issues are resolved. We understand that the City has refused to permit Four Seasons from commencing work on the south side of College Street without an adequate explanation causing yet further delay. Notwithstanding the provisions of the Contract, the inflexible approach taken by the City in respect to this issue and others will no doubt cause significant delay in completion that is not the responsibility of Four Seasons.

We also are advised that Four Seasons has proposed a traffic plan contained in Book 7 of the Traffic Manual which would also increase the progress of the work. This proposal has also apparently been rejected by the City without any reasonable explanation.

In summation, Four Seasons denies any default under the Contract and if the City proceeds to exercise unwarranted remedy, Four Seasons will take appropriate steps to protect its interest.

Yours very truly,
HARVEY S. DORSEY BARRISTER SOLICITOR PROFESSIONAL CORPORATION

A handwritten signature in black ink, appearing to read "H S Dorsey" followed by a stylized flourish or "md".

Per: Harvey S. Dorsey

HSD/md

cc: Rohit Bansal

This is Exhibit "EE" referred to in the Affidavit of ROHIT
BANSAL sworn March 28, 2017



Commissioner for Taking Affidavits (or as may be)

NADEJDA KOLOUPAEVA
A Commissioner, etc.,
Regional Municipality of Peel,
for Four Seasons Site Development Ltd.
Expires June 6, 2019

Engineering & Construction Services

Metro Hall
55 John Street
16th Floor
Toronto, Ontario M5V 3C6

Reply to: Shahid Virk, P.Eng.
Tel: 416-338-5542
Fax: 416-392-5418
Email: svirk@toronto.ca
www.toronto.ca

October 5, 2016

SENT BY EMAIL AND COURIER

Four Seasons Site Development Inc.
42 Wentworth Court, Unit 1
Brampton, Ontario
L6T 5K6

Attention: Rohit Bansal

Re: Contract No. 16ECS-TI-11SP - Sidewalk Construction, Streetscape Improvements, Tree trenches and construction of Parkettes on College Street and side Streets between Shaw Street and Havelock Street (the "Contract")

NOTICE OF TERMINATION

Dear Mr. Bansal:

This letter is in response to your letter dated September 30, 2016 and further to our letter dated September 28, 2016, with respect to the above-noted Contract.

The Contract requires Four Seasons to "execute and perform the whole of of the Work" and "carry out, perform, observe, fulfill, keep and abide by all the covenants, agreements, stipulations, provisos, terms and conditions mentioned and contained in the Contract Documents


Four Seasons has failed to correct the default(s) noted in our September 28, 2016 letter. In response, the City is exercising its right under GC 4.08.01(b) to terminate Four Seasons' right to continue the remaining Contract work, effective immediately. Four Seasons is therefore required to remove all equipment and materials from the site and vacate the project working area without delay.

In accordance with the General Conditions of Contract, the City will be withholding further payments to Four Seasons with respect to the withdrawn work (GC 4.08.02(c)) and setting off from those funds any additional cost required to complete the remaining work (GC 4.08.02(d) / GC 8.02.03.08). If the cost to complete the work is less than the amount withheld, the balance will be paid to Four Seasons in accordance with GC 4.09.01, subject to any other set off in favour of the City. If the cost to complete the work is more than the amount withheld, the City will pursue Four Seasons for the additional cost.

Please note that all of Four Seasons' obligations under the Contract with respect to quality, correction, and warranty of the work performed prior to today's date remain in force.

The City reserves the right to pursue any other rights and remedies available to it, whether under the terms of contract or otherwise at law.

Yours truly,

A handwritten signature in black ink, appearing to read 'Frank Clarizio', with a stylized flourish at the end.

Frank Clarizio, P.Eng.
Director, Design & Construction
Transportation Infrastructure
Engineering & Construction Services
City of Toronto
416-392-8412

CC: Mohammad Kashani, A/Manager, Streetcar Way & Special Projects
Shahid Virk, Senior Project Manager
Mike Major, Manager, Business Improvement Areas
AVIVA Insurance Company of Canada

This is Exhibit "FF" referred to in the Affidavit of ROHIT
BANSAL sworn March 29, 2017



Commissioner for Taking Affidavits (or as may be)

NADEJDA KOLOUPAEVA
A Commissioner, etc.,
Regional Municipality of Peel,
for Four Seasons Site Development Ltd.
Expires June 6, 2019

From: Rohit Bansal [rbansal@sitedevelopment.ca]
Sent: Wednesday, October 05, 2016 10:18 PM
To: Mohammad Kashani
Cc: Frank Clarizio; Mike Major; Shahid Virk; 'anton_perchenok@avivacanada.com'; Marc Marrone; Harvey Dorsey
Subject: RE: 16ECS-TI-11SP - College Street - Termination - 161005

Hi Mohammad,

As per your directive, we have started to de-mobilize from site. It may not be physically possible to remove all fences etc before 3p.m. tomorrow, even though everything is being scheduled. The City shall not be handling or damaging any property of Four Seasons in any manner.

Four Seasons will deliver to The City the pictures of the site as of this evening.

The City should take proper care to restore all unfinished areas in workmanlike manner. Asphaltting open areas meant for the interlock will cause damage to the rest of the construction. Any damage caused to the work performed by Four Seasons will be to The City's account.

Four Seasons is notifying the Ministry of Labour to withdraw the Notice of Project and as such we will no longer be the constructor on site. There are a number of areas on site with open excavation due to the fuel tanks/contaminated matters, that will be an open hazard as we remove our fences. Please note that The City shall be responsible for all of these areas immediately.

Further, there are a number of materials that are custom order for this project. Some of these materials are on site that will become City property that The City would use to perform the contract in whatever manner it chooses. The rest of the materials are being held at manufacturer locations due to lack of space on site. Please confirm where these are to be delivered immediately. We would encourage The City to verify the same with Four Seasons representative tomorrow.

Please note that all properties have had safe access on site.

The City should also have the quantities of work performed brought up to today and be reconciled with Four Seasons representative on site.

Regards,
Rohit Bansal

From: Mohammad Kashani [mailto:mkashan@toronto.ca]
Sent: October-05-16 7:06 PM
To: Rohit Bansal <rbansal@sitedevelopment.ca>
Cc: Frank Clarizio <FCLARIZI@toronto.ca>; Mike Major <mmajor@toronto.ca>; Shahid Virk <svirk@toronto.ca>; 'anton_perchenok@avivacanada.com' <anton_perchenok@avivacanada.com>; Marc Marrone <mmarrone@sitedevelopment.ca>
Subject: Re: 16ECS-TI-11SP - College Street - Termination - 161005

Hi Rohit,

Thank you for your email and offer.

I just finished the walk through with Transportation services regarding restoration. We have engaged the City Transportation services to take care of restoration works.

Please make sure to remove all your personnel, equipment and materials from the job site by tomorrow 3 pm at the latest.

Thank you.

Mohammad Kashani, P.Eng., PMP
Acting Manager, Streetcar Way & Special Projects
Design & Construction Transportation Infrastructure
Engineering & Construction Services
City of Toronto
Metro Hall, 16th Floor
55 John Street
Toronto, Ontario M5V 3C6
P: 416.338.5372
F: 416.392.6279
E: mkashan@toronto.ca

From: Rohit Bansal
Sent: Wednesday, October 5, 2016 5:07 PM
To: Mohammad Kashani
Cc: Frank Clarizio; Mike Major; Shahid Virk; 'anton_perchenok@avivacanada.com'; Harvey Dorsey; Marc Marrone
Subject: RE: 16ECS-TI-11SP - College Street - Termination - 161005

Dear Mr. Kashani,

It is most unfortunate that The City has taken such a discriminatory approach to issue the letter of termination of the above contract, in spite of no default by Four Seasons. While a proper response is delivered, Four Seasons will remove all its personnel, equipment and materials from the job site. However, this can't be done today. The process will start immediately and is likely to be completed by Friday. Should we leave the site in its existing condition, there will be significant safety issues for which we will accept no responsibility of. It is suggested that The City allow Four Seasons to complete current restoration around the tree pits tomorrow and other such activities to eliminate the safety risks.

If you are in agreement, please confirm the same. Otherwise, we will follow your order and de-mobilize from site between tomorrow and Friday. Please also de-mobilize from site office on Friday so that it can be cleared up.

Thank you,
Rohit Bansal

From: Mohammad Kashani [<mailto:mkashan@toronto.ca>]
Sent: October-05-16 4:10 PM
To: Rohit Bansal <rbansal@sitedevelopment.ca>
Cc: Frank Clarizio <FCLARIZI@toronto.ca>; Mike Major <mmajor@toronto.ca>; Shahid Virk <svirk@toronto.ca>; 'anton_perchenok@avivacanada.com' <anton_perchenok@avivacanada.com>
Subject: 16ECS-TI-11SP - College Street - Termination - 161005


Hi Rohit,

Please see attached letter.

Thank you.

Mohammad Kashani, M.E.Sc., P.Eng., PMP
Acting Manager, Streetcar Way & Special Projects

Design & Construction Transportation Infrastructure
Engineering & Construction Services
City of Toronto
Metro Hall, 16th Floor
55 John Street
Toronto, Ontario M5V 3C6
P: 416.338.5372
F: 416.392.6279
E: mkashan@toronto.ca

 **Toronto** Engineering & Construction Services

This is Exhibit "GG" referred to in the Affidavit of ROHIT
BANSAL sworn March ..25.., 2017



Commissioner for Taking Affidavits (or as may be)

NADEJDA KOLOUPAEVA
A Commissioner, etc.,
Regional Municipality of Peel,
for Four Seasons Site Development Ltd.
Expires June 6, 2019

HARVEY S. DORSEY

BARRISTER SOLICITOR

Professional Corporation

77 King Street West
Suite 2915, P.O. Box 344
TD Centre North Tower
Toronto, Ontario M5K 1K7

Telephone: (416) 861-1876
Fax: (416) 861-1430
E-Mail: hsd@dorseylaw.ca

October 7, 2016

Delivered by Email – svirk@toronto.ca

City of Toronto
Engineering & Construction Services
Metro Hall
55 John Street, 16th Floor
Toronto, Ontario M5V 3C6

Attention: Shahid Virk

Dear Sir:

Re: Contract No. 16ECS-TI-11SP College Street ("Contract")

As you are aware, I act for Four Seasons Site Development Ltd. ("Four Seasons") incorrectly referred to in Mr. Clarizio's letter of October 5, 2016 ("Clarizio Letter") as Four Seasons Site Development Inc.

This letter is in response to the Notice of Termination as contained in the Clarizio Letter.

Four Seasons denies as it has in the past that it is in breach of the above noted Contract.

Four Seasons has performed under the Contract diligently and in conformity with the approved work schedule other than delays resulting from unknown site conditions which were not the responsibility of Four Seasons.

Furthermore, Four Seasons has performed the Contract, in compliance with all laws and regulations, as required. Where there has been a change in the terms of the Contract, in respect to access, the change has occurred, as you are aware only as a result of compliance with provincial safety regulations and statutes. The provisions of the Contract that are in conflict with the requirement to comply with provincial safety

regulations and statutes are unenforceable and therefore do not constitute a breach of the Contract.

Wherein the Contract requires work after hours, to maintain a pace of work, Four Seasons has in the alternative employed extra crews on site during the days. Therefore, there has been no prejudice to the City, as subject to the above noted unknown site conditions, the work schedule has been maintained.

Four Seasons, as a result of the wrongful termination of the Contract by the City has suffered damages including, inter alia, loss of profits. Four Seasons hereby notifies the City that it intends to commence an Action for damages unless the matters can be resolved amicably.

Four Seasons is prepared to meet with representatives of the City in the presence of Counsel on a without prejudice basis, in order to discuss an early resolution of Four Seasons' claims.

Four Seasons and the writer has been contacted by a reporter for the Toronto Star who by voice mail message has advised that a representative of the City has advised him that Four Seasons has been fired, as a result of delays caused by Four Seasons and the refusal by Four Seasons to work extended hours. We strongly suggest that the City retracts this statement immediately and issues a public apology through the press failing which in addition to the other damages that Four Seasons will pursue, Four Seasons will proceed with a claim for defamation and other related causes of action.

Yours very truly,

HARVEY S. DORSEY BARRISTER SOLICITOR PROFESSIONAL CORPORATION



Per: Harvey S. Dorsey

HSD/mc

cc: Rohit Bansal

This is Exhibit "HH" referred to in the Affidavit of ROHIT
BANSAL sworn March 29, 2017



Commissioner for Taking Affidavits (or as may be)

NADEJDA KOLOUPAEVA
A Commissioner, etc.,
Regional Municipality of Peel,
for Four Seasons Site Development Ltd.
Expires June 6, 2019



Four Seasons Site Development Ltd
42 Wentworth Court, Unit 1
Brampton, Ontario L6T 5K6

Phone: (905) 789-0111
Fax: (905) 670-9589

October 14, 2016

Delivered by e-mail: svirk@toronto.ca

The City of Toronto
Engineering and Construction Services
55 John Street, 16th Floor
Toronto, ON M5V 3C6

Attention: Mr. Shahid Virk, P.Eng, Senior Engineer

Dear Mr. Virk,

Re: Contract Number 16ECS-TI-11SP – Contract Delays

Notwithstanding the wrongful termination of the above contract by The City, this letter lists all the delays caused to the project by factors and sources beyond the Contractors' control. Four Seasons is seeking contract time extension and will forward a claim for damages resulting from The City's failure to mitigate the delays caused to Four Seasons during the execution of the above contract.

The numerous causes of the delays are documented in the attached document titled "College Street – Delay Log". Though there are numerous delays to the date of contract termination by The City, most of them run concurrently and are overlapping. The longest running delay is 79 working days to the date of termination and continuing. This delay prevented in completion of the North side of the street that prevented us in performing work on the South side of the street.

We are also enclosing a log of all the revisions to the contract "Issued for Construction" drawings by The City with the last revision being issued on September 30th, after The City issued us a letter of default. The document titled "College Street - Drawing Revision Log" is attached.

The delays caused by the utility companies in providing locates have been well documented in various e-mail communications provided to The City through June and July 2016. The attached document titled "College Street - Locate Status" shows the due

diligence by Four Seasons in calling for locates before the award of the contract by The City.

We are preparing the financial impact of the delays caused to Four Seasons by the overall 79 days of delay during July 4-October 5, 2016, and will submit the same shortly.

Yours truly,
Four Seasons Site Development Ltd

(Rohit Bansal)

College Street 16-19
DELAY LOG

Event #	Major Events	Beginning Of Delay	End Of Delay	Number Of Days Incl Sat Sun	Comments:
1	No Locates Received	June 27 2016	July 6 2016	10	Ticket number 20162322750 Havelock to Delaware north side including side streets. Called out June 2nd, locates received by Qx paper work Jul 4th, 2016. Ticket number 20162322765 Delaware to Shaw locates received July 18th. all side streets were not included above and locates for this were completed on July 20th.
1b	Locates @ Flank Streets and Side Steets	June 27 2016	July 20 2016	24	all side streets were not included above and locates for this were completed on July 20th.
2	Issue with Restaurant at 1002,1000 stopped at 12:30 due to Soccer game and owner did not want tus to dig in front of business.	July 6 2016	July 7 2016	1	City or BIA did nothing to rectify the situation, 4S decided to shutdown production at 2:00pm as tempers were escalating and situation and personnel felt unsafe, restarted next day.
3	Precast Reglet RFI # 005 and structural design	June 17 2016	Sept 7 2016	72	Precast reglet had no plan view indicating locations or length of each piece and no cross sections or rebar detailing to complete build. Regrets were replaced with trench drains and later COT went back to the reflet design. Structural review was required for shop drawings. No current COT drawing was available for this material.
4	RFI # 006 Inspection Port Locations	June 27 2016	Aug 3 2016		Deleted from contract no delay
Event #	Major Events	Beginning Of Delay	End Of Delay	Number Of Days Incl Sat Sun	Comments:

College Street 16-19
DELAY LOG

5	RFI # 003 Root Zone ID Locations	June 27 2016	July 4 2016		Deleted from contract no delay Aug 3 2016
6	RFI # 011 Code 1000 for Areaways	July 5 2016			No clarity received to date on this matter. 4S told to just try to investigate from inside the buildings, even though it was conveyed to COT that these areas are not exposed on the inside in most circumstances
7	Informed City that Bus shelter on N/E corner is still in place and concrete removal crew had to jump area to con't to remove concrete.	July 11 2016	July 14 2016	4	Bus shelter was removed.
8	Hydro Still on 2 Ex Hydro ploes to be removed email sent July 15 to notify City	July 15 2016	Aug 23 2016	39	Toronto Hydro removed power and poles from ground on Aug 22, Black and Mac removed the pieces Aug 23. concrete poured and pavers complete in September.
9	Found Ex oil Tank at address 952 College informed City	July 18 2016	Ongoing at time of termination	79	July 19 - Directed to shorten Tree Pit to 9m. July 21 - Directed under CD to do Exploration with Vac Truck. July 22 - Directed under CD to Vacx out oil from tank. CD 28 was issued on Sept 29/16. Oct. 3/16 4S requested missing document from TSSA which was referenced in the CD. COT provided same day. 4S engaged Accuworx (email) to go ahead with work and call for utility locates.
Event #	Major Events	Beginning Of Delay	End Of Delay	Number Of Days Incl Sat Sun	Comments:
10	Concrete Removal West of Rusholme Change in Alignment Under CD	July 26 2016	July 29 2016	3	Removed July 26 formed July 27 repoured July 29

College Street 16-19
DELAY LOG

11	Found 2 Spread footings for BIA lights at 936, 840	July 15 2016	Sept 8 2016	55	936 work done Aug 18, 840 work done sept 8 still don't have CD
12	Received revised tree pit drawings based on clarification of 20 RFI responses (# 2 - 22)	June 27 2016	Sept 1 2016	66	Details revised July 28th to make several changes to tree pits (PDF only). CAD drawings received Sept. 1 2016. these are required to complete the layout on site. Later clarifications were still required for tree pit catchbasin locations and bike ring details. Following these drawings RFI 025 - 27 were issued for curb alignment details, as COT drawings did not match PMA details. later clarified and re-work was required to correct issues from Havelock to Rushholme (July 29)
13	Received revised electrical drawings	Aug 3 2016	Sept 13 2016	41	Received July 28th to make necessary changes according to the streetscape drawings. Drawings did not coordinate with streetscape drawings and RFI 028 was issued. Further revisions to clarify were made on Aug 19 2016 and further clarified in LSK-12 on Aug 25 2016. site meeting required to acheive consensus
14	Precast Panel Revision	June 17 2016	July 18 2016	31	City of toronto wanted Four Seasons to complete structural review. Approved July 18 2016
15	Paver tray Sizes	June 17 2016	Aug 9 2016	53	Sizes of the Grates changed from 1500 to 1600 and back to 1500 in drawing revisions - effects completion of panels and pavers
15B	Tree guard Sizes	June 17 2016	Aug 9 2016	53	Sizes of the guards changed from 400 to 600 and back to 400 in drawing revisions - effects completion of guards and electrical outlet wiring
16	Mira drain install and vac out trench	July 4 2016	Aug 1 2016	26	RFI 010 set out July 4th, CCN 2 issued July 11th, based on PMA direction. Quote approved late and Four Seasons had to go back to redig from Havelock to dovercourt tree trenches (3 days additional time to dig). CD 7 issued July 29 2016.
17	Found diesel contaminated dirt in tree pit at #822 were told to leave and move to next treepit. Awaiting City decision	Aug 17 2016	Ongiong at time of termination	35	Sept 9 - 311 Barry Mapes water service investigation came to investigate. Issue CD 17 Aug 30 to Vac out Contaiminates work done Sept 6, Amec onsite Sept 14 to take soil samples. CD 29 issued Oct 3/16. FS requested findings/report from soil investigations completed by Amec, as there was 2' of water (contaminated) that needed to be removed prior to backfilling the hole, as the water would have to be disposed according to MOE regs.

College Street 16-19
DELAY LOG

18	told not to pour parkette North east corner of Concord due to MH in middle is where tree is to be planted.	Aug 24 2016	Sept 9 2016	16	Received new drawing for Parkette Aug 25 , form Sept7 pour Sept 9
19	Received Revised Drawing for parkette, requested CAD drawing for layout	Aug 25 2016	Aug 26 2016	1	Received CAD drawing
20	S & I Thaler inserts CCO #6	Aug 15 2016	Aug 30 2016	17	Quoted on Aug 15 2016, approved Aug 23 2016 & ordered on Aug 23 2016, returned to remove pavers already installed and replaced
21	Tree Drain Frame & Cover from Green Blue	June 17 2016	Aug 26 2016	70	F&C shown in the design did not coordinate with the tree pit covers (too deep). Design revised. Shop drawing submitted & approved Aug 26 2016. Delivery Oct 3/16. Installation began Oct 4/16.
23	TTC Traffic Loop Reinstal CCO # 7 Submitted no Approval	Aug 18 2016			
24	Diesel Found North West Parkette Ossington	Sept 14 2016	Ongiong at time of termination	21	COT sent Amec to take Samples Sept 29, no word received to date. CA said that B&M would be on stand-by however to date a CD was not issued, as the CA was investigating to need to go on stand-by.
25	Bike posts and ring installation details unclear	Jul 27 2016	Ongoing at time of termination	77	COT provided Dwg. No. T-346 for bike post and ring installation. These details did not cooresspond with the design drawings and the existing posts scheduled for re-use were too short. 3 other revisions of LSK-15 were issued and 4S provided a quote on September 26th for the latest change.

[illegible]

Construction Drawings

Description	Date Received	Revision #	Comments
CAD Drawings - Construction	June 23rd, 2016		
DRAFT - proposed revised tree pit details including subsurface drainage and continuous trench drain with concrete shelf	July 18th, 2016		quote provided for as requested by C.O.T for new treepit details.
Electrical Drawings Revision	July 28th, 2016		Alex from B&M emailed Aug 3rd requesting if these drawings were issued for pricing or do we follow original IFC. B&M noted some works shown as deleted on drawings were actually already completed and some of the additions on drawings were in finished areas
Overall Landscape Drawings - changes made to revised details based on numerous RFI's	July 28th, 2016	3	Revised Treepit locations, Revised Details for CB's for rain water distribution, change in concrete thickness for tree trench, deletion of Root ID, deletion of inspection port.
Revised Electrical Drawings - North side of College Street at Dovercourt clarifying drawing issued July 28th	Aug 19th, 2016		revision to power feed at dovercourt 1 duct from cabinet B to BH4, GFI 143 feed from BH4
Sketch LSK-13R2 Tree Pit Detail changes at 790 College	Aug 24th, 2016		revision to Treepit and electrical layout due to WM location and onsite obstacles, light poles, hydro poles, ETC
Sketch LSK-12 Issued for pavers on Dovercourt up to Matador	Aug 24th, 2016		Addition work
Concord Parkette Design Changes LSK-14	Aug 25th, 2016	1	Due to findings on site
LSK - 12 Clarifying Electrical Changes	Aug 25th, 2016		revision to extend dovercourt north east Parkette to the north to encompass power feed from east side.
Received CAD Drawing for Concord Parkettes	Aug 26th, 2016		Requested for Layout
LSK-16 clarifying location of inlet catch basins	Aug 31st, 2016		later changed again
Revised Landscape Drawings for College Street and Parkettes	Sept 1st, 2016		Received 12pm

Received revision drawings including landscape and electrical drawings in CAD	Sept 1st, 2016		Complete set of drawing revision to reflect treepit and electrical changes to date. Needed for layout
LSK 17 was issued for 856 College Street showing planter revisions	Sept 2nd, 2016		This work was deleted as FS had already completed work as per contract
PX 2430 was issued to change crosswalk locations at Shaw	September 6, 2016		Received during concrete pour
Toronto Hydro and Bell Conflicition Drawing	September 7, 2016		This was received after all North side work was completed therefore no action was taken
FS issued drawing super imposing NEW CAD on Original CAD drawing	September 20, 2016		Client insinuated FS made errors in completing work. FS surveyed to prove the difference and provided this drawing. City later confirmed FS was accurate and drawings were off
Blue Room revisions to grades - Ossington west Parkettes	September 21, 2016	3	changes made in the field due to designers not liking the vision lines
LSK 15R3 revising Bike Ring brackets	September 28, 2016		CCO 008 quoted
Received COT dwg.T-346 for bike ring installation from Roan at COT	July 27, 2016		
New COT bike ring installation dwg from Jason Neil	August 9, 2016		This detail could not be achieved as the current posts to be reused were too short.
LSK15 released revising bike bracket in tree pits. Later revised again	September 9, 2016		
LSK15R2 released revision depth of bike bracket in precast	September 7, 2016		Later revised for stability
LSK 18 making changes to metal edging around planters	September 28, 2016		Listed in the file as LSK 19 Steel surrounds for planters were delayed on order
Revised CAD drawings issued correcting previous CAD's	September 30, 2016		
Revised Planting List	September 30, 2016		All landscape drawings revised
Revised Electrical Drawings	September 30, 2016		Sent out to correct layout issues and previous deficiencies and coordination issues

First Locates - Delaying Start of Project

Locates Ticket #	Description of Actual Locate	Date of Call Out	Date of Locate Completion	Date Paperwork Received	Description of Actual Locate Requested
20162322750	Havelock to Delaware - North Side Only - No Side Streets	June 2nd	June 30th	July 4th	
20162322765	Delaware to Shaw - North Side Only - No Side Streets	June 2nd	July 18th	July 18th	
20162322765	Road Crossing Havelock to Shaw - North Side	June 2nd	July 20th	July 20th	

This is Exhibit "II" referred to in the Affidavit of ROHIT BANSAL
sworn March 23, 2017



Commissioner for Taking Affidavits (or as may be)

NADEJDA KOLOUPAEVA
A Commissioner, etc.,
Regional Municipality of Peel,
for Four Seasons Site Development Ltd.
Expires June 6, 2019

Rohit Bansal

From: Shahid Virk <Shahid.Virk@toronto.ca>
Sent: January-11-17 12:20 PM
To: Rohit Bansal; Marc Marrone
Cc: Mohammad Kashani
Subject: FW: Response Letter to Four Seasons (College Street)
Attachments: 16ECS-TI-11SP - Response Letter 20160109.pdf

Hello Rohit,

Attached please see our response to your letter dated October 14, 2016

Regards

Shahid Virk, M.Sc., P.Eng.

Senior Project Manager, Streetcar Way & Special Projects
Design & Construction Transportation Infrastructure
Engineering & Construction Services
City of Toronto
Metro Hall, 16th Floor
55 John Street
Toronto, Ontario M5V 3C6
P: 416.338.5542
F: 416.392.6279
E: svirk@toronto.ca

Engineering & Construction Services

Metro Hall
55 John Street
16th Floor
Toronto, Ontario M5V 3C6

Reply to: Shahid Virk, P.Eng. ;
Tel: 416-338-5542
Fax: 416-392-5418
Email: svirk@toronto.ca
www.toronto.ca

January 9, 2017

SENT BY EMAIL

Four Seasons Site Development Inc.
42 Wentworth Court, Unit 1
Brampton, Ontario
L6T 5K6

Attention: Rohit Bansal

Re: Contract No. 16ECS-TI-11SP - Sidewalk Construction, Streetscape Improvements, Tree trenches and construction of Parkettes on College Street and side Streets between Shaw Street and Havelock Street (the "Contract")

Dear Mr. Bansal:

We are writing in response to Four Seasons letter dated October 14, 2016 with respect to the above-noted Contract.

The City has reviewed the records and has not found any request made by Four Seasons for an extension to the Contract Time. Four Seasons submitted a series of purported "revised schedules", but these were not approved by the City.

As previously stated, it is the City's position that due to Four Seasons' failure to execute the work in accordance with the contract, the contract was not completed in a timely and orderly manner which has caused great inconvenience to the City and to area residents. The City shall be pursuing a claim to recover all the associated costs incurred by all City departments including the costs incurred by City Street Furniture and Parking Authority for removal and reinstallation of their accoutrements. The cost of temporary restoration and other associated costs shall be recovered from funds otherwise payable to Four Seasons.

The letter sent by Four Seasons include several contentions and claims. Although the City is of the general view that any delays that occurred are the responsibility of Four Seasons, the City addresses the individual claims advanced by Four Seasons here. The claims are listed in sequence, using Four Seasons' exact wording. For the reasons that follow, the City rejects Four Seasons' claims.

Delay Log (submitted by Four Seasons)

1 - Four Seasons claim: "No Locates Received (Ticket number 20162322750 Havelock to Delaware north side including side streets. Called out June 2nd, locates received by Qx paper work Jul 4th, 2016. Ticket number 20162322765 Delaware to Shaw locates received July 18th. all side streets were not included above and locates for this were completed on July 20th.)."

A1 - The locates are the responsibility of the contractor. Consequently any delays in obtaining locates are the responsibility of Four Seasons.

1B - Four Seasons claim: "Locates @ Flank Streets and Side Streets (all side streets were not included above and locates for this were completed on July 20th.)."

A1B - The locates are the responsibility of the contractor. Consequently any delays in obtaining locates are the responsibility of Four Seasons.

2 - Four Seasons claim: "Issue with Restaurant at 1002, 1000 stopped at 12:30 due to Soccer game and owner did not want us to dig in front of business. (City or BIA did nothing to rectify the situation, 4S decided to shut down production at 2:00pm as tempers were escalating and situation and personnel felt unsafe, restarted next day.)"

A2 – It was the responsibility of Four Seasons to plan and stage the work. If Four Seasons encountered disruptions, it was the responsibility of Four Seasons to manage these, including contacting the appropriate authorities if required. Moreover, Four Seasons could have elected to work elsewhere rather than suspend work.

3 - Four Seasons claim: "Precast Reglet RFI # 005 and structural design (Precast reglet had no plan view indicating locations or length of each piece and no cross sections or rebar detailing to complete build. Regrets were replaced with trench drains and later COT went back to the reflet design. Structural review was required for shop drawings. No current COT drawing was available for this material.)"

A3 – If Four Seasons had any concerns regarding the design of the reglets, this concern should have been raised during the bidding process and not after Four Seasons had priced for that item. In any case, no delay to the project occurred due to any discussions over the use of reglets.

4 - Four Seasons claim: "RFI # 006 Inspection Port Locations (Deleted from contract no delay)."

A4 - Since Four Seasons has indicated that there was no delay for this item, the City has no comments.

5 - Four Seasons claim: "RFI # 003 Root Zone ID Locations (Deleted from contract no delay Aug 3 2016)."

A5 - Since Four Seasons has indicated that there was no delay for this item, the City has no comments.

6 - Four Seasons claim: "RFI # 011 Code 1000 for Areaways (No clarity received to date on this matter. 4S told to just try to investigate from inside the buildings, even though it was conveyed to COT that these areas are not exposed on the inside in most circumstances)."

A6 – The City provided Four Seasons with all available documentation relating to areaways in its possession prior to construction. If Four Seasons had any remaining concerns, it was the responsibility of Four Seasons to further investigate the properties. No time was lost nor delay incurred as a result of this issue.

7 - Four Seasons claim: "Informed City that Bus shelter on N/E corner is still in place and concrete removal crew had to jump area to can't to remove concrete."

A7 – The City notes that you have not indicated the location of the bus shelter, however our records indicate that there was no delay due to the removal of any bus shelter and your crews were continuously working without any standby time.

8 - Four Seasons claim: "Hydro Still on 2 Ex Hydro poles to be removed email sent July 15 to notify City (Toronto Hydro removed power and poles from ground on Aug 22, Black and Mac removed the pieces Aug 23. concrete poured and pavers complete in September.)."

A8 – We have reviewed our records and found that Four Seasons did not lose any time due to the removal of hydro poles and your crews were continuously working without any standby time. There was no delay due to the removal of these poles.

9 - Four Seasons claim: "Found Ex oil Tank at address 952 College informed City (July 19 - Directed to shorten Tree Pit to 9m. July 21 - Directed under CD to do Exploration with Vac Truck. July 22 - Directed under CD to Vacx out oil from tank. CD 28 was issued on Sept 29/16. Oct. 3/16 4S requested missing document from TSSA which was referenced in the CD. COT provided same day. 4S engaged Accuworx (email) to go ahead with work and call for utility locates.)"

A9 - Four Seasons claim for 66 days delay is not valid. The area in question was cordoned off to complete the required procedures prior to backfill. During that time, Four Seasons continued (or ought to have continued) to work on other areas.

10 - Four Seasons claim: "Concrete Removal West of Rusholme Change in Alignment under CD (Removed July 26 formed July 27 repoured July 29)"

A10 – The City has no record of issuing any Change Directive for concrete removal West of Rusholme for an alignment change.

11 - Four Seasons claim: "Found 2 Spread footings for BIA lights at 936, 840 (936 work done Aug 18, 840 work done sept 8 still don't have CD)"

A11 – Our records indicate that there was no delay caused by the work carried out at 936 and 840 College Street and at no point did Four Seasons indicate or claim a delay of 55 days for reinstating two pole bases. Also it appears that pole bases were damaged by Four Seasons during sidewalk removal.

12 - Four Seasons claim: "Received revised tree pit drawings based on clarification of 20 RFI responses (# 2 - 22) (Details revised July 28th to make several changes to tree pits (PDF only). CAD drawings received Sept. 1 2016. These are required to complete the layout on site. Later clarifications were still required for tree pit catchbasin locations and bike ring details. Following these drawings RFI 025 - 27 were issued for curb alignment details, as COT drawings did not match PMA details. Later clarified and re-work was required to correct issues from Havelock to Rushholme (July 29))."

A12 –Four Seasons was repeatedly informed that they were to continue as per original design drawings without any change unless revised drawings are issued. The City direction was documented in the progress review meeting No. 1 dated July 19, 2016. However upon a request from Four Seasons the minor change in the incurvature of the curb was agreed to expedite the process of the paver installation. Any claim that the project was delayed as a result of this issue is not reasonable or credible.

13 - Four Seasons claim: "Received revised electrical drawings (Received July 28th to make necessary changes according to the streetscape drawings. Drawings did not coordinate with streetscape drawings and RFI 028 was issued. Further revisions to clarify were made on Aug 19 2016 and further clarified in LSK-12 on Aug 25 2016. site meeting required to achieve consensus)."

A13 - Four Seasons was repeatedly informed that they were to continue as per original design drawings without any change unless revised drawings are issued. The City direction was documented in the progress review meeting No. 1 dated July 19, 2016. Any claim that the project was delayed as a result of this issue is not reasonable or credible.

14 - Four Seasons claim: "Precast Panel Revision and City asked for structural review, (City of Toronto wanted Four Seasons to complete structural review. Approved July 18 2016)"

A14 – Four Seasons was required by the contract to provide shop drawings signed and stamped by a professional engineer (SS 46 of section 4A of the contract). The precast panels were accepted as soon as Four Seasons provided

the signed and stamped drawings. This was also documented in the minutes of first progress review meeting. There was no delay caused by the City.

15 - Four Seasons claim: "Paver tray Sizes (Sizes of the Grates changed from 1500 to 1600 and back to 1500 in drawing revisions - effects completion of panels and pavers)"

A15 - Four Seasons was repeatedly informed that they were to continue as per original design drawings without any change unless revised drawings are issued. The City direction was documented in the progress review meeting No. 1 dated July 19, 2016. Any claim that the project was delayed as a result of this issue is not reasonable or credible.

15B - Four Seasons claim: "Tree guard Sizes (Sizes of the guards changed from 400 to 600 and back to 400 in drawing revisions - effects completion of guards and electrical outlet wiring)"

A15B - Four Seasons was repeatedly informed that they were to continue as per original design drawings without any change unless revised drawings are issued. The City direction was documented in the progress review meeting No. 1 dated July 19, 2016. Any claim that the project was delayed as a result of this issue is not reasonable or credible.

16- Four Seasons claim: "Mira drain install and vac out trench (RFI 010 set out July 4th, CCN 2 issued July 11th, based on PMA direction. Quote approved late and Four Seasons had to go back to redig from Havelock to Dovercourt tree trenches (3 days additional time to dig). CD 7 issued July 29 2016)"

A16 - The delay in BIA approval resulted in additional work of 5.5 hours which was spread over three days when Four Seasons had to re-excavate to install a mira drain (i.e. 1.5 hours the first day, 2 hours the second day and 2 hours the third day). There was no other delay in placing the mira drain in trenches. Considering the time constraint a diligent contractor is expected to provide additional resources for performing any such additional work and given Four Seasons was required to work extended hours the additional 5.5 hours should not have been an issue. In any case, the City has already agreed to compensate Four Seasons for this extra work, but this issue did not delay the project.

17- Four Seasons claim: "Found diesel contaminated dirt in tree pit at #822 were told to leave and move to next tree pit. Awaiting City decision (Sept 9 - 311 Barry Mapes water service investigation came to investigate. Issue CD 17 Aug 30 to Vac out Contaminates work done Sept 6, Amec onsite Sept 14 to take soil samples. CD 29 issued Oct 3/16. FS requested findings/report from soil investigations completed by Amec, as there was 2' of water (contaminated) that needed to be removed prior to backfilling the hole, as the water would have to be disposed according to MOE regs.)"

A17 -Four Seasons' claim for 35 days' delay is not valid as the area was cordoned off to complete the required procedures prior to backfill. The City does

not agree with your claim that there was 2 feet of standing water within the excavation. In any event, no delay occurred and no construction time was lost as a result of this issue as Four Seasons continued (or ought to have continued) to work on areas outside the cordon.

18- Four Seasons claim: "told not to pour Parkettes North east corner of Concord due to MH in middle is where tree is to be planted"

A18 – The area of Parkettes was not on the critical path for the work on College Street and therefore no delay occurred.

19- Four Seasons claim: "Received Revised Drawing for Parkettes, requested CAD drawing for layout"

A19 - The work at the Parkettes was to be performed during the last phase of project as this area on side streets was not on the critical path for the work on College Street and therefore no delay occurred.

20- Four Seasons claim: "S & I Thaler inserts CCO #6"

A20 – We have reviewed our records and found no evidence of Four Seasons installing the Thalers on the job site.

21- Four Seasons claim: "Tree Drain Frame & Cover from Green Blue"

A21 – Design revisions to accommodate certain items particularly in streetscape projects is not unusual, as there are several custom item details in such contracts and any contractor who has performed such work is aware of this fact. However revised drawings were provided to Four Seasons (on August 3rd) as soon as the issue was brought to the knowledge of the City. Four Seasons took over three weeks to produce the shop drawings for frame and covers and provided the shop drawings on August 26th. The City approved these shop drawings on the same day and returned to Four Seasons. There was no delay on the part of the City.

23- Four Seasons claim: "TTC Traffic Loop Reinstall CCO # 7 submitted no Approval"

A23 –The reason for not providing the approval was that the City did not agree with Four Seasons' quotation for this work. In any case, this work was to be performed after all work on College including on the south side should have been completed. No delay to the project was caused by this issue.

24- Four Seasons claim: "Diesel Found North West Parkettes Ossington"

A24 - The area was not on critical path for the work on College Street and therefore no delay occurred.

25- Four Seasons claim: "Bike posts and ring installation details unclear"

A25 – There was no delay due to the details for Bike rings as the details for the installation were provided in the original design. It was Four Seasons who refused to follow the details provided in the drawings. This was also documented in the minutes of progress review meeting number 8. Any claim that the project was delayed as a result of this issue is not reasonable or credible.

Drawing Revision Log (submitted by Four Seasons)

With respect to the items listed in Four Seasons' document titled "Drawing Revision Log", Four Seasons was advised at several meetings that they were not to suspend the work due to discussions over revisions and should continue the work as per the original drawings unless they are supplied with the revisions and instructed to follow the revised design. As you know, design revisions to accommodate certain items is not unusual in streetscape projects, as there are several custom item details in such contracts. If Four Seasons elected to stop work for possible design revisions when other work not affected by possible revisions was available, that is the responsibility of Four Seasons.

Conclusion

As previously indicated, in accordance with the General Conditions of Contract, the City will be withholding further payments to Four Seasons with respect to the withdrawn work (GC 4.08.02(c)) and setting off from those funds any additional cost required to complete the remaining work (GC 4.08.02(d) / GC 8.02.03.08). If the cost to complete the work is less than the amount withheld, the balance will be paid to Four Seasons in accordance with GC 4.09.01, subject to any other set off in favour of the City. If the cost to complete the work is more than the amount withheld, the City will pursue Four Seasons for the additional cost.

Please note that all of Four Seasons obligations under the Contract with respect to quality, correction, and warranty of the work performed prior to the date of termination date remain in force.

The City reserves the right to pursue any other rights and remedies available to it, whether under the terms of contract or otherwise at law.



Mohammad Kashani, M.E.Sc., P.Eng., PMP
Acting Manager, Streetcar Way & Special Projects
Design & Construction Transportation Infrastructure
Engineering & Construction Services

CC: Mike Major, Manager, Business Improvement Areas
Shahid Virk, Senior Project Manager
AVIVA Insurance Company of Canada

This is Exhibit "JJ" referred to in the Affidavit of ROHIT BANSAL
sworn March 29, 2017



Commissioner for Taking Affidavits (or as may be)

NADEJDA KOLOUPAEVA
A Commissioner, etc.,
Regional Municipality of Peel,
for Four Seasons Site Development Ltd.
Expires June 6, 2019



Tracking Status

- This item was considered by Bid Committee on July 6, 2016 and was adopted without amendment.

Bid Committee consideration on July 6, 2016

BD90.3	ACTION	Adopted		Ward:27
--------	--------	---------	--	---------

Award of Tender Call No. 165-2016 to Four Seasons Site Development Ltd. for Shuter Street - from Yonge Street to Sherbourne Street: Watermain Replacement and Waterservice Upgrades, Minor Arterial Road Resurfacing and Watermain Trench Restoration

Committee Decision

The Bid Committee adopted the following:

- Bid Committee grant authority to award the contract in accordance with the Contract Details set out in the report (June 29, 2016) from the Director, Purchasing and Materials Management:

Call No:	Tender No. 165-2016
Description:	Contract No. 16ECS-TI-18SP for Shuter Street - from Yonge Street to Sherbourne Street: Watermain Replacement and Waterservice Upgrades, Minor Arterial Road Resurfacing and Watermain Trench Restoration
Recommended Bidder:	Four Seasons Site Development Ltd.
Contract Award Value:	<p>\$2,886,570.00 net of all applicable taxes and charges \$3,261,824.10 including all applicable taxes and charges \$2,937,373.63 net of HST recoveries</p> <p>Contract is expected to start on Date of Award and end on September 30, 2016.</p>

Origin

(June 29, 2016) Report from the Director, Purchasing and Materials Management

Summary

Ward No:	Ward 27 - Toronto Centre - Rosedale													
Call Dates:	Issued: May 3, 2016; Closed: May 25, 2016													
No. of Addenda Issued:	Two (2)													
Number of Bids: Five (5)	<table><tr><th>Firm Name</th><th>Bid Price (Incl. HST)</th></tr><tr><td>Four Seasons Site Development Ltd.</td><td>\$3,261,824.10</td></tr><tr><td>Gio Crete Construction Ltd.</td><td>\$3,420,504.35*</td></tr><tr><td>Direct Underground Inc.</td><td>\$3,495,474.20</td></tr><tr><td>CG Construction Services Ltd.</td><td>\$4,088,430.40</td></tr><tr><td>Sam Rabito Construction Ltd.</td><td>\$4,480,591.25</td></tr></table> <p>*Tender prices were corrected for mathematical errors. Purchasing and Materials Management has verified that the mathematical errors were corrected.</p>		Firm Name	Bid Price (Incl. HST)	Four Seasons Site Development Ltd.	\$3,261,824.10	Gio Crete Construction Ltd.	\$3,420,504.35*	Direct Underground Inc.	\$3,495,474.20	CG Construction Services Ltd.	\$4,088,430.40	Sam Rabito Construction Ltd.	\$4,480,591.25
Firm Name	Bid Price (Incl. HST)													
Four Seasons Site Development Ltd.	\$3,261,824.10													
Gio Crete Construction Ltd.	\$3,420,504.35*													
Direct Underground Inc.	\$3,495,474.20													
CG Construction Services Ltd.	\$4,088,430.40													
Sam Rabito Construction Ltd.	\$4,480,591.25													
Division Contacts	Joanne Kehoe Manager Purchasing and Materials Management Construction Services Telephone: 416-392-7323 Email: jkehoe@toronto.ca	Frank Clarizio Director Design and Construction Transportation Infrastructure Telephone: 416-392-8412 Email: fclarizi@toronto.ca												

Background Information

(June 29, 2016) Report from the Director, Purchasing and Materials Management on Award of Tender Call No. 165-2016 to Four Seasons Site Development Ltd. for Shuter Street - from Yonge Street to Sherbourne Street: Watermain Replacement and Waterservice Upgrades, Minor Arterial Road Resurfacing and Watermain Trench Restoration
<http://www.toronto.ca/legdocs/mmis/2016/bd/bgrd/backgroundfile-94758.pdf>

Motions*Motion to Adopt Item (Carried)*

That the Bid Committee grant authority to award Tender Call No. 165-2016 to Four Seasons Site Development Ltd. for Shuter Street - from Yonge Street to Sherbourne Street: Watermain Replacement and Waterservice Upgrades, Minor Arterial Road Resurfacing and Watermain Trench Restoration, in accordance with the Contract Details set out in the report (June 29, 2016) from the Director, Purchasing and Materials Management, moved by David McLeod.

Source: Toronto City Clerk at www.toronto.ca/council

This is Exhibit "KK" referred to in the Affidavit of ROHIT
BANSAL sworn March ..~~29~~1., 2017



Commissioner for Taking Affidavits (or as may be)

NADEJDA KOLOUPAEVA
A Commissioner, etc.,
Regional Municipality of Peel,
for Four Seasons Site Development Ltd.
Expires June 6, 2019

Section 5 – General Conditions Of Contract
Tender Call No. 165-2016 Contract No. 16ECS-TI-18SP

City of Toronto

**General Conditions of Contract
Linear Infrastructure**

December 2013

Section 5 – General Conditions of Contract

City of Toronto General Conditions of Contract – Linear Infrastructure December 2013

Table of Contents

Paragraph GC 1.0 – Interpretation

GC 1.01	Captions	5-4
GC 1.02	Abbreviations.....	5-4
GC 1.03	Gender and Singular References.....	5-4
GC 1.04	Definitions.....	5-5
GC 1.05	Final Acceptance.....	5-10
GC 1.06	Interpretation of Certain Words	5-11
GC 1.07	Language of the Contract.....	5-11

Paragraph GC 2.0 – Contract Documents

GC 2.01	Reliance on Contract Documents – Underground Structures and Utilities	5-12
GC 2.02	Order of Precedence	5-12

Paragraph GC 3.0 – Administration of Contract

GC 3.01	Contract Administrator's Authority	5-14
GC 3.02	Working Drawings	5-15
GC 3.03	Right of the Contract Administrator to Modify Methods and Equipment....	5-16
GC 3.04	Emergency Situations	5-16
GC 3.05	Layout.....	5-16
GC 3.06	Working Area.....	5-17
GC 3.07	Extension of Contract Time	5-18
GC 3.08	Delays	5-18
GC 3.09	Assignment of Contract.....	5-19
GC 3.10	Subcontracting by the Contractor.....	5-19
GC 3.11	Changes in the Work.....	5-20
GC 3.12	Notices	5-21
GC 3.13	Use and Occupancy of the Work Prior to Substantial Performance.....	5-21
GC 3.14	Claims, Negotiations, Mediation.....	5-21
GC 3.14.01	Continuance of the Work.....	5-22
GC 3.14.02	Record Keeping.....	5-22
GC 3.14.03	Claims Procedure.....	5-22
GC 3.14.04	Negotiations	5-23
GC 3.14.05	Mediation.....	5-24
GC 3.14.06	Payment	5-24
GC 3.14.07	Rights of Both Parties.....	5-24
GC 3.15	Arbitration	5-24
GC 3.15.01	Conditions for Arbitration.....	5-24
GC 3.15.02	Arbitration Procedure	5-25
GC 3.15.03	Appointment of Arbitrator	5-25
GC 3.15.04	Costs	5-26
GC 3.15.05	The Decision	5-26

Section 5 – General Conditions of Contract

GC 3.16	Archaeological Finds	5-26
GC 3.17	Changed Geotechnical or Subsurface Conditions	5-26
Paragraph GC 4.0 – Owner's Responsibilities and Rights		
GC 4.01	Working Area.....	5-28
GC 4.02	Approvals and Permits	5-28
GC 4.03	Management and Disposition of Materials	5-28
GC 4.04	Construction Affecting Railway Property	5-29
GC 4.05	Default by the Contractor	5-29
GC 4.06	Notification of Default	5-30
GC 4.07	Contractor's Right to Correct a Default.....	5-30
GC 4.08	Owner's Right to Correct Default or Terminate the Contract.....	5-30
GC 4.09	Final Payment to Contractor.....	5-31
GC 4.10	Continuation of Contractor's Obligations.....	5-31
GC 4.11	Owner's Right to Request Documents	5-31
Paragraph GC 5.0 – Material		
GC 5.01	Supply of Material.....	5-32
GC 5.02	Quality of Material	5-32
GC 5.03	Rejected Material	5-33
GC 5.04	Substitutions.....	5-33
GC 5.05	Owner Supplied Material	5-33
GC 5.05.01	Ordering of Excess Material	5-33
GC 5.05.02	Care of Material.....	5-33
Paragraph GC 6.0 – Insurance, Protection and Damage		
GC 6.01	Protection of Work, Persons and Property	5-35
GC 6.02	Indemnification	5-35
GC 6.03	Contractor's Insurance	5-37
GC 6.04	Bonding	5-38
Paragraph GC 7.0 – Contractor's Responsibilities and Control of the Work		
GC 7.01	General.....	5-39
GC 7.02	Layout.....	5-42
GC 7.02.01	Layout by Contractor	5-42
GC 7.02.02	Layout by Owner	5-43
GC 7.03	Damage by Vehicles or Other Equipment	5-43
GC 7.04	Excess Loading of Motor Vehicles	5-44
GC 7.05	Condition of the Working Area	5-44
GC 7.06	Maintaining Roadways and Detours.....	5-45
GC 7.07	Access to Properties Adjoining the Work and Interruption of Utility Services.....	5-45
GC 7.08	Approvals and Permits	5-46
GC 7.09	Suspension of Work	5-46
GC 7.10	Contractor's Right to Stop the Work or Terminate the Contract.....	5-46
GC 7.11	Notices by the Contractor.....	5-47
GC 7.12	Obstructions	5-47
GC 7.13	Limitations of Operations.....	5-48
GC 7.14	Cleaning Up Before Acceptance	5-48
GC 7.15	Warranty	5-48
GC 7.16	Contractor's Workers.....	5-49
GC 7.17	Resident or property owner complaints or claims	5-49

Section 5 – General Conditions of Contract

GC 7.18	Contractor's responsibility for drainage	5-49
GC 7.19	Blasting.....	5-49
Paragraph GC 8.0 – Measurement and Payment		
GC 8.01	Measurement	5-50
GC 8.01.01	Quantities	5-50
GC 8.01.02	Variations in Tender Call	5-50
GC 8.02	Payment	5-50
GC 8.02.01	Payment for Work.....	5-50
GC 8.02.02	Advance Payments for Material	5-51
GC 8.02.03	Certification and Payment	5-52
GC 8.02.03.01	Progress Payment Certificate.....	5-52
GC 8.02.03.02	Certification of Subcontract Completion	5-52
GC 8.02.03.03	Subcontract Statutory Holdback Release Certificate and Payment	5-52
GC 8.02.03.04	Certification of Substantial Performance	5-53
GC 8.02.03.05	Substantial Performance Payment and Substantial Performance Statutory Holdback Release Payment Certificates	5-54
GC 8.02.03.06	Certification of Completion	5-55
GC 8.02.03.07	Completion Payment and Completion Statutory Holdback Release Payment Certificates	5-55
GC 8.02.03.08	Owner's Set-off.....	5-55
GC 8.02.04	Payment on a Time and Material Basis.....	5-56
GC 8.02.04.01	Definitions.....	5-56
GC 8.02.04.02	Daily Work Records.....	5-57
GC 8.02.04.03	Payment for Work.....	5-57
GC 8.02.04.04	Payment for Labour	5-58
GC 8.02.04.05	Payment for Material	5-58
GC 8.02.04.06	Payment for Equipment.....	5-58
GC 8.02.04.06.01	Working Time	5-58
GC 8.02.04.06.02	Standby Time	5-59
GC 8.02.04.07	Payment for Hand Tools.....	5-59
GC 8.02.04.08	Payment for Work By Subcontractors	5-59
GC 8.02.04.09	Submission of Invoices.....	5-59
GC 8.02.04.10	Payment Other Than on a Time and Material Basis	5-60
GC 8.02.04.11	Payment Inclusions	5-60
GC 8.02.05	Final Acceptance Certificate.....	5-60
GC 8.02.06	Payment of Workers	5-60
GC 8.02.07	Records	5-61
GC 8.02.08	Taxes and Duties	5-61
GC 8.02.09	Liquidated Damages	5-62

Section 5 – General Conditions of Contract

Paragraph GC 1.0 Interpretation

GC

1.01
.01

Captions

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

1.02
.01

Abbreviations

For the purposes of the Contract Documents where used anywhere in the Contract Documents, the following abbreviations shall have the corresponding meanings:

"AASHTO"	- American Association of State Highway Transportation Officials
"ACI"	- American Concrete Institute
"ANSI"	- American National Standards Institute
"ASTM"	- American Society for Testing and Materials
"AWG"	- American Wire Gauge
"AWWA"	- American Water Works Association
"CCIL"	- Canadian Council of Independent Laboratories
"CESA"	- Canadian Engineering Standards Association
"CGSB"	- Canadian General Standards Board
"CSA"	- Canadian Standards Association
"CWB"	- Canadian Welding Bureau
"GC"	- General Condition
"MOE"	- Ministry of the Environment (Ontario)
"MTO"	- Ontario Ministry of Transportation
"MUTCD"	- Manual of Uniform Traffic Control Devices, published by MTO
"NSF"	- NSF International
"OPS"	- Ontario Provincial Standard
"OPSD"	- Ontario Provincial Standard Drawing
"OPSS"	- Ontario Provincial Standard Specification
"OTM"	- Ontario Traffic Manual
"PEO"	- Professional Engineers Ontario
"SAE"	- Society of Automotive Engineers
"SSPC"	- Structural Steel Painting Council
"THESL"	- Toronto Hydro Energy Services Limited
"TRCA"	- Toronto Region Conservation Authority
"UL"	- Underwriters Laboratories
"ULC"	- Underwriters Laboratories Canada

1.03
.01

Gender and Singular References

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

Section 5 – General Conditions of Contract

GC

1.04 Definitions

.01 For the purposes of the Contract Documents the following definitions shall apply:

Actual Measurement means a field measurement approved by the Contract Administrator with respect to an item of Work.

Addenda mean any additions or changes in the tender documents issued by the Owner prior to tender closing.

Base means a layer of material of specified type and thickness placed immediately below the Pavement, driving surface, finished grade, curb and gutter or sidewalk.

Bid means an offer in writing from the Contractor to complete the Work, submitted in accordance with the Tender Call.

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

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

Change Directive means a written instruction signed by the Owner, or by the Contract Administrator where so authorized, directing the Contractor to proceed with a Change in the Work .

Change in the Work means the deletion, extension, increase, decrease or alteration of lines, grades, dimensions, quantities, methods, drawings, changes in the character of the Work to be done or materials of the Work or part thereof, including changes in geotechnical, subsurface, surface or other conditions.

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

City means the City of Toronto

Completion has the meaning as set out in the Construction Lien Act, R.S.O. 1990, c. C.30, as amended;

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

Section 5 – General Conditions of Contract

GC

Completion Payment Certificate means the certificate described more particularly in paragraph GC 8.02.03.07

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

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

Contract Documents mean the executed agreement between the Owner and the Contractor, including its various schedules, the Tender Call, the General Conditions, the Specific Conditions, Standard Specifications, Special Specifications, Contract Drawings, Addenda, such other documents as may be listed in the agreement and any Change Orders.

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

Contract Price means the amount payable by the Owner to the Contractor for Work to be completed under the Contract in accordance with the method and manner of payment stipulated in the Contract Documents and the unit prices or lump sum prices tendered by the Contractor, and includes any additional amounts payable for approved Changes in the Work as provided for and authorised in the Contract Documents.

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

Contractor means the person, partnership or corporation undertaking the Work as identified in the Contract Documents.

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

Cut-off Date means the date up to which payment may be made for Work performed.

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

Section 5 – General Conditions of Contract

GC # _____

Day means a calendar day.

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

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

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

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

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

Form of Agreement means the Contract Execution Package Form of Agreement

GC or General Conditions means these general conditions, which shall form part of the Contract Documents;

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

Grade means the required elevation of a specific part of the Work.

Hand Tools means tools that are commonly referred to as "tools of the trade" or "implements of the trade" and include small power tools.

Hazardous Material means any contaminant, pollutant, dangerous substance, potentially dangerous substance, noxious substance, toxic substance, hazardous waste, flammable material, explosive material, radioactive material, urea formaldehyde foam insulation, asbestos, polychlorinated biphenyls, coal tar and any other biological or chemical agent, substance or material named, described, declared or defined to be hazardous, toxic, or a contaminant or pollutant in, or pursuant to, any applicable federal, provincial or municipal statutes, by-laws, regulations, codes, agreements, standards or orders.

Section 5 – General Conditions of Contract

GC

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

Lot means a specific quantity of material or a specific amount of construction commonly from a single source and produced by the same process.

Lump Sum Item means a Tender Call item for which payment will be made at a single tendered price rather than based on a measured quantity.

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

- i. \$100,000, or
- ii. 5% of the total Tender Call value calculated on the basis of the total of all the estimated Tender Call quantities and the Tender Call unit prices.

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

Owner means the City.

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

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

Progress Payment Certificate means that certificate described in paragraph GC 8.02.03.01, Progress Payment Certificate.

Record means any of the Contractor's books, payrolls, accounts, invoices, receipts or other information or documentation that relates to the Work or any Change in the Work or claims arising therefrom or that are required to identify or calculate taxes paid or payable and any savings resulting from tax changes.

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

Shop Drawing means any drawing, diagram, illustration, schedule, performance chart, scheme, brochure or data which is provided or required to be provided by the Contractor to illustrate specific details of the performance and construction of a portion of the Work.

Section 5 – General Conditions of Contract

GC

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

Special Specification means a specification containing requirements specific to the Work that are not included in any Standard Specification or which are intended to supplement, amend or override part or all of a Standard Specification.

Standard Drawing or Standard Specification means a standard practice required and stipulated by the Owner for performance of the Work.

Specific Conditions means that part of the Tender Call referred to as 'Specific Conditions'.

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

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

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

Substantial Performance has the meaning as set out in the Construction Lien Act, R.S.O. 1990, c. C.30, as amended.

Substantial Performance Payment Certificate means a payment certificate as defined more particularly in paragraph GC 8.02.03.05.02.

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

Superintendent means the Contractor's authorized representative in charge of the Work and who shall be a "competent person" within the meaning of the definition contained in the Occupational Health and Safety Act, R.S.O. 1990, c. O.1, as amended.

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

Tender Call means the Tender Call package in its entirety, inclusive of all appendices and Addenda/Addendum that may be issued by the City.

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

Section 5 – General Conditions of Contract

GC # _____

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

Warranty Period means the period of 24 months measured from the date of Substantial Performance or such longer or shorter period as may be specified for certain Materials or some or all of the Work, in the Contract Documents.

Work means the total construction and related services required by the Contract Documents.

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

Working Day means any Day,

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

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

1.05
.01

Final Acceptance

For the purposes of determining whether Final Acceptance has occurred, the Contract Administrator shall not take into account, in determining the discharge of the Contractor's obligations, any warranty obligation of the Contractor to the extent that the warranty extends beyond 24 months after Substantial Performance.

Section 5 – General Conditions of Contract

GC

- 1.06** **Interpretation of Certain Words**
.01 The words "acceptable", "approval", "authorized", "considered necessary", "directed", "required", "satisfactory", or words of like import, shall mean approval of, directed, required, considered necessary or authorized by and acceptable or satisfactory to the Contract Administrator, unless the context clearly indicates otherwise.
- 1.07** **Language of the Contract**
.01 For the purposes of this Contract, all documents and communications pertaining to this Contract shall be in the English language.

Section 5 – General Conditions of Contract

Paragraph GC 2.0 Contract Documents

GC

- 2.01 Reliance on Contract Documents – Underground Structures and Utilities**
- .01 The Owner represents that the information furnished in the Contract Documents can be relied upon, but subject to the following limitations or exceptions:
- a) the location of all underground utilities or other structures that may affect the Work shall be shown in any drawing to a tolerance of:
 - i. 1 meter horizontal and
 - ii. 0.3 meters vertical;
- .02 Despite paragraph GC 2.01.01, the Owner does not warrant or make any representation with respect to:
- a) interpretations of data or opinions expressed in any Subsurface Report or Geotechnical Report available for the perusal of the Contractor, whether or not such report is included as part of the Contract Documents, and
 - b) other information specifically excluded from this warranty.
- 2.02 Order of Precedence**
- .01 In the event of any inconsistency or conflict in the contents of the following documents, which form part of the Contract Documents, such documents shall take precedence and govern in the following descending order:
- a) Form of Agreement
 - b) Addenda
 - c) Pricing Form, which forms part of the Bid
 - d) Special Specifications
 - e) Contract Drawings
 - f) Standard Specifications
 - g) Specific Conditions
 - h) General Conditions
 - i) Working Drawings
- Later dates shall govern within each of the above categories of documents.
- .02 In the event of any conflict among or inconsistency in the information shown on Drawings, the following rules shall apply:
- a) Dimensions shown in figures on a Drawing shall govern where they differ from dimensions scaled from the same Drawing;
 - b) Drawings of larger scale shall govern over those of smaller scale;

Section 5 – General Conditions of Contract

GC # _____

- c) Detailed Drawings shall govern over general Drawings; and
- d) Drawings of a later date shall govern over those of an earlier date in the same series.

.03

In the event of any inconsistency or conflict in the contents of Standard Specifications, the following order of precedence shall govern:

- a) City of Toronto Standard Specifications and Standard Drawings, then
- b) Ontario Provincial Standard Specifications and Drawings; including any amendments, then
- c) Other Standard Specifications, such as those produced by Canadian Standards Association, Canadian General Standards Board, American Society for Testing and Materials and American National Standards Institute and referenced in the City of Toronto Standard Specifications, Standard Drawings or Ontario Provincial Standard Specifications.

.04

The Contract Documents are complementary, and what is required by any one shall be as binding as if required by all.

Section 5 – General Conditions of Contract

Paragraph GC 3.0 Administration of the Contract

GC

- 3.01**
.01 **Contract Administrator's Authority**
The Contract Administrator shall be the Owner's representative during construction and until the issuance of the Completion Certificate or the issuance of the Final Acceptance Certificate whichever is later. Instructions to the Contractor including instructions from the Owner may be issued by the Contract Administrator or the Owner. The Contract Administrator shall have the authority to act on behalf of the Owner to the extent provided in the Contract Documents.
- .02 All claims, disputes and other matters in question relating to the performance and the quality of the Work or the interpretation of the Contract Documents shall be referred to the Contract Administrator in writing by the Contractor.
- .03 The Contract Administrator may inspect the Work to evaluate his or her conformity with the Contract Documents, and to record any data deemed necessary by the Contract Administrator or the Owner.
- .04 The Contract Administrator shall determine the amounts owing to the Contractor under the Contract and shall issue certificates for payment in such amounts as provided for in paragraph GC 8.0, Measurement and Payment.
- .05 The Contract Administrator shall, with reasonable promptness, review and take appropriate action upon the Contractor's submissions such as Shop Drawings, product data, and samples in accordance with the Contract Documents.
- .06 The Contract Administrator shall be entitled to investigate all allegations of a Change in the Work made by the Contractor in writing and issue appropriate instructions.
- .07 The Contract Administrator shall prepare Change Directives and Change Orders for the Owner's approval.
- .08 Upon written application by the Contractor, the Contract Administrator and the Contractor shall jointly conduct an inspection of the Work to establish the date of Substantial Performance of the Work or the date of Completion of the Work or both.
- .09 The Contract Administrator shall be, in the first instance, the interpreter of the Contract Documents and the judge of the performance thereunder by both parties to the Contract Documents. Interpretations and decisions of the Contract Administrator shall be consistent with the intent of the Contract Documents and in making these decisions the Contract Administrator shall not show partiality to either party.

Section 5 – General Conditions of Contract

GC #

- .10 The Contract Administrator shall have the authority to reject any part of the Work or Material that does not conform to the Contract Documents.
- .11 In the event that the Contract Administrator determines that any part of the Work performed by the Contractor is defective, whether the result of poor workmanship, the use of defective material, or damage through carelessness or other act or omission of the Contractor and whether or not incorporated in the Work or otherwise fails to conform to the Contract Documents, then the Contractor shall when directed by the Contract Administrator promptly, as directed by the Contract Administrator, remove the Work and replace, make good, or re-execute the Work at no additional cost to the Owner.
- .12 Any part of the Work destroyed or damaged by such removals, replacements or re-executions shall be made good, promptly, at no additional cost to the Owner.
- .13 If, in the opinion of the Contract Administrator, it is not expedient to correct defective work or work not performed in accordance with the Contract Documents, the Owner may deduct from monies otherwise due to the Contractor the difference in value between the work as performed and that called for by the Contract Documents, which amount shall be determined in the first instance by the Contract Administrator.
- .14 Notwithstanding any inspections made by the Contract Administrator or the issuance of any certificates or the making of any payment by the Owner, the failure of the Contract Administrator to reject any defective work or Material shall not constitute acceptance of defective work or Material.
- .15 The Contract Administrator shall have the authority to temporarily suspend the Work for such reasonable time as may be necessary, for the following reasons:
- a) to facilitate the checking of any portion of the Contractor's construction layout;
 - b) to facilitate the inspection of any portion of the Work; or
 - c) for the Contractor to remedy its non-compliance with any provision of the Contract Documents.

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

Section 5 – General Conditions of Contract

GC

- .16 In the case of non-compliance with the provisions of the Contract Documents by the Contractor, the Contract Administrator shall have the authority to either suspend the Work for such reasonable time as may be necessary to remedy such non-compliance or terminate the Work, at the sole discretion of the Owner. The Contractor shall not be entitled to any compensation for suspension or termination of the Work in these circumstances.
- .17 If the Contract Administrator determines that any worker employed on the Work is incompetent, as defined by the Occupational Health and Safety Act, or is disorderly, then the Contract Administrator shall provide written notice to the Contractor and the Contractor shall immediately remove the worker from the Working Area. Such worker shall not return to the Working Area without the prior written consent of the Contract Administrator.
- 3.02 Working Drawings**
- .01 The Contractor shall arrange for the preparation of clearly identified and dated Working Drawings as called for by the Contract Documents.
- .02 The Contractor shall submit Working Drawings to the Contract Administrator in accordance with an agreed upon schedule or otherwise with reasonable promptness and in orderly sequence so as to not cause delay in the Work. If either the Contractor or the Contract Administrator so requests they shall jointly prepare a schedule fixing the dates for submission and return of Working Drawings. Working Drawings shall be submitted in printed form. At the time of submission the Contractor shall notify the Contract Administrator in writing of any deviations from the Contract Documents that exist in the Working Drawings.
- .03 The Contract Administrator shall review and return Working Drawings in accordance with an agreed upon schedule, or otherwise, with reasonable promptness so as not to cause delay.
- .04 The Contract Administrator's review shall check for conformity with the design concept and for general arrangement only and such review shall not relieve the Contractor of responsibility for errors or omissions in the Working Drawings or of responsibility for meeting all requirements of the Contract Documents unless a deviation on the Working Drawings has been approved in writing by the Contract Administrator.
- .05 The Contractor shall make any changes in Working Drawings that the Contract Administrator may require to make the Working Drawings consistent with the Contract Documents and resubmit unless otherwise directed by the Contract Administrator. When resubmitting, the Contractor shall notify the Contract Administrator in writing of any revisions other than those requested by the Contract Administrator.
- .06 Work related to the Working Drawings shall not proceed until the Working Drawings have been signed and dated by the Contract Administrator and

Section 5 – General Conditions of Contract

<u>GC #</u>	
	marked with the words "Reviewed. Permission to construct granted".
.07	The Contractor shall keep one set of the reviewed Working Drawings, marked as above, at the site at all times.
3.03	Right of the Contract Administrator to Modify Methods and Equipment
.01	The Contractor shall, when requested in writing, make alterations in the method, Equipment or work force at any time the Contract Administrator considers the Contractor's actions to be unsafe, or damaging to either the Work or existing facilities or the environment.
.02	The Contractor shall, when requested in writing, alter the sequence of its operations on the Contract so as to avoid interference with work being performed by others.
.03	Notwithstanding the foregoing, the Contractor shall ensure that all necessary safety precautions and protection are maintained throughout the Work.
3.04	Emergency Situations
.01	The Contract Administrator has the right to determine the existence of an emergency situation, and when such an emergency situation is determined to exist, the Contract Administrator may instruct the Contractor to take action to remedy the situation. If the Contractor does not take timely action, or if the Contractor is not available, the Contract Administrator may direct others to remedy the situation.
.02	If the emergency situation was the fault of the Contractor, the remedial work shall be done at the Contractor's expense. If the emergency situation was not the fault of the Contractor, the Owner shall pay for the remedial work.
3.05	Layout
.01	The Contract Administrator shall provide baseline and benchmark information for the general location, alignment, and elevation of the Work. The Owner shall be responsible only for the correctness of the information provided by the Contract Administrator.
3.06	Working Area
.01	The Contractor's sheds, site offices, toilets, other temporary structures and storage areas for material and equipment shall be grouped in a compact manner and maintained in a neat and orderly condition at all times.
.02	The Contractor shall confine its construction operations to the Working Area. Should the Contractor require more space than that shown on the Contract Drawings, the Contractor shall, with the Contract Administrator's written consent, obtain such space at no additional cost to the Owner.
.03	The Contractor shall not enter upon or occupy any private property for any purpose, unless the Contractor has received prior written permission from

Section 5 – General Conditions of Contract

GC

the property owner.

- .04 All benchmarks and survey monuments within the Working Area shall be protected by the Contractor. In the case of their destruction or removal, such benchmarks and survey monuments shall be replaced by the Owner at the Contractor's expense.

3.07 Extension of Contract Time

- .01 An application for an extension of Contract Time shall be made in writing by the Contractor to the Contract Administrator as soon as the Contractor is of the opinion that such an extension may be required and at least 15 Days prior to the expiration of the Contract Time. The application for an extension of Contract Time shall enumerate the reasons, and state the length of extension required. Neither the Owner nor the Contract Administrator shall be under any obligation to consider an extension of the Contract Time unless the Contractor makes a request for an extension of Contract Time under this paragraph.

- .02 Circumstances suitable for consideration of an extension of Contract Time include:

- a) Delays, in accordance with paragraph GC 3.08; and
- b) Changes in the Work, in accordance with paragraph GC 3.11

- .03 The Contract Administrator shall, in considering an application for an extension to the Contract Time, take into account whether the delays or Changes in the Work involve a Controlling Operation.

- .04 The Contract Time shall be extended for such additional time as may be recommended by the Contract Administrator and deemed fair and reasonable by the Owner.

- .05 The terms and conditions of the Contract shall continue for such extension of Contract Time.

3.08 Delays

- .01 If the Contractor is delayed in the performance of the Work by,
- a) war, blockades, and civil commotions, errors in the Contract Documents;
 - b) an act or omission of the Owner or Contract Administrator, or anyone employed or engaged by them directly or indirectly, contrary to the provisions of the Contract Documents;
 - c) the Contract Administrator giving notice as described in paragraph GC 7.09, Suspension of Work;
 - d) abnormal inclement weather; or
 - e) archaeological finds in accordance with paragraph GC 3.16, Archaeological Finds,

then the Contractor shall be reimbursed by the Owner for reasonable costs

Section 5 – General Conditions of Contract

GC

incurred by the Contractor as the result of such delay, provided that in the case of an application for an extension of Contract Time due to abnormal inclement weather, the Contractor shall, with the Contractor's application, submit evidence from Environment Canada in support of such application. Extension of Contract Time will be considered in accordance with paragraph GC 3.07, Extension of Contract Time.

- .02 If the Work is delayed by labour disputes, strikes or lock-outs - including lock-outs decreed or recommended to its members by a recognized contractor's association, of which the Contractor is a member or to which the Contractor is otherwise bound - which are beyond the Contractor's control, then the Contract Time shall be extended in accordance with paragraph GC 3.07, Extension of Contract Time. In no case shall the extension of Contract Time be less than the time lost as the result of the event causing the delay, unless a shorter extension is agreed to by the Contractor. The Contractor shall not be entitled to payment for costs incurred as the result of such delays unless such delays are the result of actions of the Owner.
- .03 The Contractor shall not be entitled to payment for the cost of delays incurred as a result of a dispute between the Contractor and Owner. The Contractor shall execute the Work and may pursue resolution of the dispute in accordance with paragraph GC 3.14, Claims, Negotiations, Mediations.
- 3.09 Assignment of Contract**
- .01 The Contractor shall not assign the Contract, either in whole or in part, without the prior written consent of the Owner, which consent may be withheld or given subject to such terms and conditions as the Owner deems appropriate.
- 3.10 Subcontracting by the Contractor**
- .01 Subject to paragraph GC 3.10.03, the Contractor may subcontract any part of the Work, in accordance with the Contract Documents and any limitations specified therein.
- .02 The Contractor shall notify the Contract Administrator 10 Days prior to the start of construction, in writing, of the intention to subcontract. Such notification shall identify the part of the Work, and the Subcontractor with whom it is intended.
- .03 The Contract Administrator shall, within 10 Days of receipt of such notification, accept or reject the intended Subcontractor. A rejection shall be in writing and shall include the reasons for the rejection.
- .04 The Contractor shall not, without the written consent of the Owner, change a Subcontractor who has been engaged in accordance with the Contract Documents.

Section 5 – General Conditions of Contract

GC

- .05 The Contractor shall preserve and protect the rights of the Owner under the Contract Documents with respect to that part of the Work to be performed under subcontract and shall,
- a) enter into agreements with the intended Subcontractors to require them to perform their work in accordance with the Contract Documents; and
 - b) be as fully responsible to the Owner for acts and omissions of the Contractor's Subcontractors and of persons directly or indirectly employed by them as for acts and omissions of persons directly employed by the Contractor.
- .06 The Owner's consent to subcontracting by the Contractor shall not be construed to relieve the Contractor from any obligation under the Contract and shall not impose any liability upon the Owner. Nothing contained in the Contract Documents shall create a contractual relationship between a Subcontractor and the Owner.
- .07 The Contractor and all associated Subcontractors shall be subject to the Owner's Fair Wage Policy, as adopted by the Owner from time to time, and any of the Owner's or legislated labour trades requirements. Failure to comply with this policy and/or these requirements, may lead to termination of the Contract, or termination or rejection of a Subcontractor, as the case may be, with no recourse by the Contractor in respect of such termination or rejection.
- 3.11 Changes in the Work**
- .01 The Owner, or the Contract Administrator where so authorized, may, by order in writing, make a Change in the Work without Invalidating the Contract.
- .02 Where a Change in the Work relates solely to quantities of tendered unit price Work items, or where a Change in the Work must be undertaken prior to agreement between the Owner and the Contractor on a change in the Contract Price and/or Contract Time, the Change in the Work may be ordered by a Change Directive. The Contractor shall not be required to proceed with a Change in the Work until in receipt of a Change Directive. Upon the receipt of such Change Directive the Contractor shall proceed with the Change in the Work.
- .03 The Contractor may apply for an extension of Contract Time according to the terms of paragraph GC 3.07, Extension of Contract Time.
- .04 If the Change in the Work relates solely to quantities of unit price Work items in the Tender Call, payment for the Work shall be made according to the conditions in paragraph GC 8.01.02, Variations in Tender Call Quantities. If the Change in the Work does not relate solely to quantities of unit price Work items in the Tender Call, payment for the Change in the Work shall be made in accordance with:

Section 5 – General Conditions of Contract

GC

- a) a lump sum price or unit price agreed to between the Contractor and the Contract Administrator prior to commencement of the Change in the Work, in which case the Contract Administrator shall issue a Change Order that states the agreed lump sum price or unit price, as applicable; or
- b) the Schedule of Prices for Changes in the Work in the event that the Contract Documents include such a Schedule and the work item required is set out in the Schedule, in which case the Contract Administrator shall issue a Change Order; or
- c) the provisions contained in paragraph GC 8.02.04, Payment on a Time and Material Basis.

3.12

Notices

.01

Any notice permitted or required to be given to the Contract Administrator or the Superintendent in respect of the Work shall be deemed to have been given to and received by the addressee on the date of delivery if delivered by hand, email or by facsimile transmission and on the fifth Day after the date of mailing if sent by mail.

.02

The Contractor and the Owner shall provide each other with the mailing addresses, telephone numbers, email addresses and facsimile terminal numbers for the Contract Administrator and the Superintendent at the commencement of the Work, and update as necessary.

.03

In the event of an emergency situation or other urgent matter the Contract Administrator or the Superintendent may give a verbal notice, provided that such notice is confirmed in writing within 2 Days.

.04

Any notice permitted or required to be given to the Owner or the Contractor shall be given in accordance with the notice provision of the Contract.

3.13

Use and Occupancy of the Work Prior to Substantial Performance

.01

The Owner may use or occupy the Work or any part thereof prior to Substantial Performance unless otherwise specified in the Contract Documents.

.02

The use or occupancy of the Work or any part thereof by the Owner prior to Substantial Performance shall not constitute an acceptance of the Work or parts so occupied. In addition, the use or occupancy of the Work shall not relieve the Contractor or the Contractor's Surety from any liability that has arisen, or may arise, from the performance of the Work. Such use or occupancy of any part of the Work by the Owner does not waive the Owner's right to charge the Contractor liquidated damages in accordance with the terms of the Contract.

Section 5 – General Conditions of Contract

GC #

3.14 Claims, Negotiations, Mediation

3.14.01 Continuance of the Work

.01 Unless the Contract Documents have 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.

3.14.02 Record Keeping

.01 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 Contract Administrator shall keep Daily Work Records to be used in assessing the Contractor's claim, all in accordance with paragraph GC 8.02.07, Records.

.02 The Contractor and the Contract Administrator 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 Contract Administrator 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.

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

3.14.03 Claims Procedure

.01 The Contractor shall give oral notice to the Contract Administrator 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 Contract Administrator 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.

.02 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 Contract Administrator.

Section 5 – General Conditions of Contract

<u>GC #</u>	
.03	Within 30 Days of the receipt of the Contractor's detailed claim, the Contract Administrator may request the Contractor to submit any further and other particulars as the Contract Administrator considers necessary to assess the claim. The Contractor shall submit the requested information within 30 Days of receipt of such request.
.04	Within 90 Days of receipt of the detailed claim, the Owner, or if authorized by the Owner, the Contract Administrator, shall advise the Contractor, in writing, of the Owner's opinion with regard to the validity of the claim.
3.14.04	Negotiations
.01	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.
.02	Should the Contractor disagree with the opinion given in paragraph GC 3.14.03.04, with respect to any part of the claim, the Contract Administrator shall enter into negotiations with the Contractor to resolve the matters in dispute. Negotiation shall occur on three levels; first, with the Contract Administrator, second with the Owner's Manager level, and third, with the Owner's Director, General Manager or Executive Director. Corresponding level shall be involved in the discussions on behalf of the Contractor. Any agreement reached with the Contract Administrator 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 put in writing, to be used in the event of a dispute in issue.
.03	Discussions with the Contract Administrator 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 GC 3.14.03.04. The Manager level discussion shall be completed as soon as possible following failed discussions with the Contract Administrator, 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
.04	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 Contract Administrator shall notify the other party in writing if he or she wishes to pursue an issue to the next level of negotiation.
05	Where a negotiated settlement cannot be reached, or it is agreed that payment cannot be made on a Time and Material basis in accordance with paragraph GC 8.02.04, Payment on a Time and Material Basis, the parties may, upon mutual agreement, proceed in accordance with paragraph GC 3.14.05, Mediation.

Section 5 – General Conditions of Contract

GC

3.14.05 Mediation

- .01 If a claim is not resolved satisfactorily through the negotiation process in paragraph GC 3.14.04, and either party wishes to pursue the issue further, the parties may, upon mutual agreement, utilize the services of an independent third party mediator.
- .02 The mediator shall be mutually agreed upon by the Owner and Contractor.
- .03 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.
- .04 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.

3.14.06 Payment

- .01 In the event that the parties resolve a claim through mediation, then any agreed upon payment shall be made no later than 30 Days after the date of resolution of the claim or dispute, unless the parties agree otherwise.

3.14.07 Rights of Both Parties

- .01 Unless the parties agree otherwise, no action taken under this paragraph GC 3.14, Claims, Negotiations, Mediation, by either party shall be construed as a renunciation or waiver of any of the rights or recourse available to the parties.

3.15 Arbitration

3.15.01 Conditions for Arbitration

- .01 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 3.15. Notwithstanding this, in the case of claims for amounts less than \$150,000, exclusive of H.S.T., the provisions of article GC 3.15, 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.
- .02 If the Parties engage in arbitration to resolve the issue, notification to that effect shall be communicated in writing to the Contract Administrator within 30 Days of completing the negotiations referred in paragraph 3.14.04, or, if the parties proceed to mediation under paragraph 3.14.05, within 30 Days of completing that mediation.

Section 5 – General Conditions of Contract

GC

- .03 The parties shall be bound by the decision of the arbitrator.
- .04 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 this paragraph GC 3.15, Arbitration.
- 3.15.02 Arbitration Procedure**
- .01 If the Parties agree to engage in arbitration to resolve an issue, the parties shall enter into an agreement to arbitrate in accordance with the Arbitration Act, 1991, S.O. 1991, Ch. 17.
- The following provisions shall be included in the agreement to arbitrate:
- a) All existing actions in respect of the matters under arbitration shall be stayed pending arbitration;
 - b) All then unresolved claims and matters to be settled shall be set out in a schedule to the agreement. Only such claims and matters as are in the schedule shall be arbitrated; and
 - c) Before proceeding with the arbitration, the Contractor shall confirm that all matters in dispute are set out in the schedule.
- 3.15.03 Appointment of Arbitrator**
- .01 The arbitrator shall be mutually agreed upon by the Owner and Contractor to adjudicate the dispute.
- .02 Where the Owner and Contractor cannot agree on a sole arbitrator within 30 Days of the notification of arbitration referred to in paragraph GC 3.15.01.02, the Owner and the Contractor shall each choose an appointee with 37 Days of the notice of arbitration.
- .03 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.
- .04 The arbitrator shall not be interested financially in the Contract nor in either party's business and shall not be employed by either party.
- .05 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.
- .06 The hearing shall commence within 90 Days of the appointment of the arbitrator.

Section 5 – General Conditions of Contract

GC

3.15.04

Costs

- .01 The arbitrator's fee shall be equally shared by the Owner and the Contractor.
- .02 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.
- .03 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.
- .04 The arbitrator may, in his or her discretion, award reasonable costs, related to the arbitration.

3.15.05

The Decision

- .01 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 the decision of the Arbitrator.

3.16

Archaeological Finds

- .01 If the Contractor's operations expose any items that may indicate an archaeological find, such as building remains, hardware, accumulations of bones, pottery, or arrowheads, the Contractor shall immediately notify the Contract Administrator and suspend operations within the area identified by the Contract Administrator. Initial notification may be verbal provided that such notice is confirmed in writing by the Contractor within 2 Days. Work shall remain suspended within that area until otherwise directed by the Contract Administrator in writing, in accordance with paragraph GC 7.09, Suspension of Work.
- .02 Any delay in the completion of the Contract that is caused by such a suspension of Work shall be considered to be beyond the Contractor's control in accordance with paragraph GC 3.08.01.
- .03 Any work directed or authorized in connection with an archaeological find shall be considered as a Change in the Work in accordance with paragraph GC 3.11, Changes in the Work.
- .04 The Contractor shall take all reasonable action to minimize additional costs that may accrue as a result of any work stoppage.

3.17

Changed Geotechnical or Subsurface Conditions

- .01 If the geotechnical or subsurface conditions in the Working Area appear to the Contractor or the Contract Administrator to differ materially from those indicated in the Contract Documents, then the Contractor or the Contract

Section 5 – General Conditions of Contract

GC #

Administrator, respectively, shall immediately notify the other party. Notification may be verbal provided that the notice is confirmed in writing by the party giving the notice within 2 Days. The Contract Administrator shall promptly investigate the apparent changed geotechnical or subsurface conditions and make a finding. Subject to the provisions of GC 2.01, if the finding is that the conditions differ materially and this would cause an increase or decrease in the Contract Price or Contract Time, then the Contract Administrator, with the Owner's approval, shall provide the Contractor with a Change Directive in accordance with the provisions of GC 3.11. If the finding is that the conditions are not materially different or that no change in the Contract Price or the Contract Time is justified, the Contract Administrator shall promptly report the reasons for this finding to the Contractor and Owner in writing.

Section 5 – General Conditions of Contract

Paragraph GC 4.0 Owner's Responsibilities and Rights

GC

- 4.01 Working Area**
.01 The Owner shall acquire all property rights that are deemed necessary by the Owner for the construction of the Work, including temporary working easements.
- 4.02 Approvals and Permits**
.01 The Owner shall pay for all plumbing and building permits.
.02 The Owner shall obtain and pay for all permits, licenses and certificates solely required for the design of the Work.
- 4.03 Management and Disposition of Materials**
.01 The Owner shall identify in the Contract Documents the materials to be moved within or removed from the Working Area, and any characteristics of those materials that necessitate special materials management and disposition.
.02 In accordance with regulations under the Occupational Health and Safety Act, R.S.O. 1990, c.O.1, as amended, the Owner advises that,
a) the designated substance arsenic may be present throughout the Working Area occurring naturally, in contaminated soil or in sewage;
b) the designated substance asbestos is typically present throughout the Working Area in cement products, asphalt, and conduits for utilities. Exposure may occur as a result of activities by the Contractor such as cutting, grinding, drilling, blasting, breaking, crushing or removing of cement products, asphalt or conduits;
c) the designated substance lead may be present throughout the Working Area in contaminated soil, in sewage or in lead-containing paints, coatings, or conduits. Exposure may occur during soil excavation, or during removal or high temperature cutting/welding of paints/coatings or during cutting, grinding, drilling or removing of conduits;
d) the designated substance silica is typically present throughout the Working Area in cement materials. Exposure may occur as a result of activities such as sweeping, drilling, cutting, grinding, breaking or removing rock, concrete, masonry, stone or refractory materials; and
e) The designated substances benzene and mercury may be present throughout the Working area in sewage.
.03 Where building records or test results indicate the presence of a designated substance as set out above, specific information on its condition and location shall be provided by the Owner in the Contract Documents.
.04 If the Owner or Contractor discovers or is advised of the presence of designated substances or hazardous materials that are in addition to those listed in paragraph GC 4.03.02, or not clearly identified in the Contract

Section 5 – General Conditions of Contract

GC

Documents according to paragraph GC 4.03.03, then verbal notice shall be provided to the other party immediately and written confirmation shall be provided within 2 Days. The Contractor shall stop work in the area immediately and shall determine the necessary steps required to complete the Work in accordance with applicable legislation and regulations.

- .05 The Owner shall be responsible for any reasonable additional costs of removing, managing and disposing of any Hazardous Materials not identified in the Contract Documents, or where conditions exist that could not have been reasonably foreseen at the time of tendering. All work under this paragraph GC 4.03.05 shall be deemed to be a Change in the Work.

- .06 Prior to commencement of the Work, the Owner shall provide to the Contractor a list of those products controlled under the Workplace Hazardous Materials Information System (WHMIS), that the Owner shall supply or use as part of the Work, together with copies of the Materials Safety Data Sheets for these products. The Owner shall notify the Contractor in writing of changes to the list and provide relevant Material Safety Data Sheets.

4.04 Construction Affecting Railway Property

- .01 The Owner shall pay the costs of all flagging and other traffic control measures required and provided by a railway company unless such costs are solely a function of the Contractor's chosen method of completing the Work.

- .02 Every precaution shall be taken by the Contractor to protect all railway property at track crossings or otherwise, on which construction operations are to take place in accordance with the terms of this Contract Documents.

- .03 The Contractor shall be required to conduct the construction operations in such a manner as to avoid the possibility of damaging any railway property in the vicinity of the Work. Every reasonable precaution shall be taken by the Contractor to ensure the safety of all workers, Subcontractors, and Equipment, as well as railway property throughout the duration of the Contract.

4.05 Default by the Contractor

- .01 If the Contractor is adjudged bankrupt, or makes a general assignment for the benefit of creditors because of the Contractor's insolvency, or if a receiver is appointed because of the Contractor's insolvency, the Owner may, without prejudice to any other right or remedy the Owner may have, by giving the Contractor or receiver or trustee in bankruptcy notice in writing, terminate the Contract.

- .02 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 execute the Work properly or otherwise fails to comply with the requirements of the Contract, the Owner

Section 5 – General Conditions of Contract

GC

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.

4.06 .01

Notification of Default

The Owner may give written notice of a default to the Contractor, provided that failure to give such notice in a timely way shall neither constitute nor be construed as waiver of the default. The notice shall include instructions to correct the default within 5 Working Days following receipt of such notice.

4.07 .01

Contractor's Right to Correct a Default

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

.02

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

- a) commences the correction of the default within the 5 Working Days following receipt of the notice;
- b) provides the Owner with a schedule satisfactory to the Owner for the progress of such correction; and
- c) completes the correction in accordance with such schedule.

4.08 .01

Owner's Right to Correct Default or Terminate the Contract

If the Contractor fails to correct the default within the time specified in paragraph GC 4.07, Contractor's Right to Correct a Default, the Owner may, without prejudice to any other right or remedy:

- a) correct such default and deduct the cost thereof, as certified by the Contract Administrator, from any payment then or thereafter due to the Contractor; and
- b) terminate the Contractor's right to continue the Work in whole or in part by giving written notice to the Contractor.

.02

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

- a) take possession of the Working Area or that portion of the Working Area devoted to that part of the Work terminated;
- b) utilize any Material within the Working Area ;
- c) withhold further payments to the Contractor with respect to the Work or the portion of the Work withdrawn from the Contractor until the Work or portion thereof withdrawn is completed;
- d) charge the Contractor the additional cost over the Contract Price of completing the Work or portion thereof withdrawn from the Contractor, as certified by the Contract Administrator, which additional cost shall include any additional compensation paid to the

Section 5 – General Conditions of Contract

GC

- Contract Administrator arising from the correction of the default;
- e) charge the Contractor a reasonable allowance, as determined by the Contract Administrator, to cover correction to the Work performed by the Contractor that may be required under paragraph GC 7.15, Warranty;
 - f) charge the Contractor for any damages the Owner may have sustained as a result of or in relation to the default; and
 - g) charge the Contractor the amount by which the cost of corrections to the Work under paragraph GC 7.15, Warranty, exceeds the allowance provided for such corrections.

4.09

.01

Final Payment to Contractor

If the Owner's cost to correct and complete the Work in whole or in part is less than the amount withheld from the Contractor under paragraph GC 4.08.02, the Owner shall pay the balance to the Contractor as soon as the final accounting for the Contract is complete.

4.10

.01

Continuation of Contractor's Obligations

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

4.11

.01

Owner's Right to Request Documents

The Contractor shall, at the sole request of the Owner, provide any documentation requested by the Owner, where that documentation relates to any of the Work. The Contractor shall ensure that all such documentation is provided no later than ten (10) days following the receipt of any such request.

Section 5 – General Conditions of Contract

Paragraph GC 5.0 Material

GC

- | | |
|-------------|--|
| 5.01 | Supply of Material |
| .01 | All Material necessary for the proper completion of the Work, except those listed as being supplied by the Owner, shall be supplied by the Contractor at its sole expense. |
| 5.02 | Quality of Material |
| .01 | All Material supplied by the Contractor shall be new, unless otherwise specified in the Contract Documents. |
| .02 | Material supplied by the Contractor shall conform to the requirements of the Contract Documents. |
| .03 | As specified in the Contract Documents or as otherwise requested by the Contract Administrator, the Contractor shall make available for inspection or testing a sample of any Material to be supplied by the Contractor. |
| .04 | The Contractor shall obtain for the Contract Administrator the right to enter onto the premises of the Material manufacturer or supplier to carry out such inspection, sampling and testing as specified in the Contract Documents or as otherwise requested by the Contract Administrator. |
| .05 | The Contractor shall notify the Contract Administrator of the sources of supply sufficiently in advance of the Material shipping dates to enable the Contract Administrator to perform the required inspection, sampling and testing. |
| .06 | The Owner shall not be responsible for any delays to the Contractor's operations where the Contractor fails to give sufficient advance notice to the Contract Administrator to enable the Contract Administrator to carry out the required inspection, sampling and testing before the scheduled shipping dates. |
| .07 | The Contractor shall not change the source of supply of any Material without the written authorization of the Contract Administrator. |
| .08 | Material that is not specified shall be of a quality best suited to the purpose required, and the use of such Material shall be subject to the approval of the Contract Administrator. |
| .09 | All Material inspection, sampling, and testing shall be carried out on a random basis in accordance with the standard inspection or testing methods required for the Material. Any approval given by the Contract Administrator for the Material that is based upon the random method shall not relieve the Contractor from the responsibility of incorporating Material that conforms to the Contract Documents into the Work or properly performing the Contract and of any liability arising from the failure to properly perform as specified in |

Section 5 – General Conditions of Contract

GC

the Contract Documents.

5.03

.01

Rejected Material

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

5.04

.01

Substitutions

Where the Tender Call requires the Contractor to supply a Material designated by a trade or other name, the Bid shall be based only upon supply of the Material so designated, which shall be regarded as the standard of quality required by the Tender Call. After the acceptance of the Bid, the Contractor may apply to the Contract Administrator to substitute another Material identified by a different trade or other name for the Material designated in the Tender Call. The application to the Contract Administrator shall be in writing and shall state the price for the proposed substitute Material, and such other information as the Contract Administrator may require.

.02

The Contractor shall not propose any substitute Material prior to the acceptance of the Bid. The Contractor shall not substitute any Material without the prior approval of the Contract Administrator. The approval or rejection of a proposed substitution shall be made at the discretion of the Contract Administrator.

5.05

Owner Supplied Material

5.05.01

.01

Ordering of Excess Material

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

5.05.02

.01

Care of Material

The Contractor shall, in advance of receipt of shipments of Material supplied by the Owner, provide adequate and proper storage facilities acceptable to the Contract Administrator and on the receipt of such Material shall promptly place it in storage except where it is to be incorporated forthwith into the Work.

.02

The Contractor shall be responsible for acceptance of Material supplied by the Owner, at the specified delivery point and for its safe handling and storage. If such Material is damaged while under the control of the Contractor, it shall be replaced or repaired by the Contractor at no expense

Section 5 – General Conditions of Contract

GC

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

Section 5 – General Conditions of Contract

Paragraph GC 6.0 Insurance, Protection and Damage

GC

6.01 Protection of Work, Persons and Property

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

6.02 Indemnification

- .01 The Contractor shall indemnify and hold harmless the Owner and the Contract Administrator, and each of their 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,

Section 5 -- General Conditions of Contract

GC

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. .

- .02 The Contractor shall indemnify and hold harmless the Owner from all and every claim for damages, royalties or fees for the infringement of any patented invention or copyright occasioned by the Contractor in connection with the Work performed or Material furnished by the Contractor under the Contract.
- .03 The Owner shall indemnify and hold harmless the Contractor from and against all claims, demands, actions, suits or proceedings brought 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.
- .04 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 Working Area. The Contractor expressly waives the right to indemnify for claims other than those stated above.
- .05 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 pursuant to GC 6.01 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 Contract Administrator 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 Contract Administrator, 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 Contract Administrator 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.

Section 5 – General Conditions of Contract

GC

- 6.03** **Contractor's Insurance**
- .01** Without restricting the generality of paragraph GC 6.02, Indemnification, the Contractor shall, at no additional cost to the Owner, at all times until the Work has been completed and handed over to the Owner, obtain and maintain insurance policies for the Work as outlined in the Contract Documents and as described below.
- .02** The Contractor shall obtain Commercial General Liability Insurance such that the policy:
- a) is in the amount of not less than Five Million Dollars (\$5,000,000.00), per occurrence;
 - b) adds the Contract Administrator, the City, its boards, agencies and commissions and subsidiary operations, as applicable, as additional insured(s) but only with respect to liability arising out of the operation of the Contractor for which a contract is issued by the City;
 - c) has provisions for cross-liability and severability of interest, blanket form contractual liability, owner's and contractor's protective liability, broad form property damage, contingent and/or employer's liability, products/completed operations, non-owned automobile liability and any other provision relevant as detailed in the proposal/contract documents, and if applicable, including coverage for blasting, pile driving and collapse; and
- .03** The Contractor shall provide the following policies of insurance:
- a) Standard Automobile Liability Insurance for all owned or leased licensed motorized vehicles that will be used in the performance of the Work with a limit of not less than TWO Million Dollars (\$2,000,000.00);
 - b) Contractor's Equipment Insurance – All-Risk property insurance on the Contractor's equipment, materials and supplies used in the performance of the contract, including temporary boilers and pressure vessels in an amount to reflect replacement cost. The Contractor shall have no claim against the Owner or the Owner's insurers for any damage or loss to its property and shall require its property insurers to waive any right of subrogation against the Owner.
- .04** The Contractor shall, if requested by the City, provide the following policies of insurance as described below:
- a) Contractor's Pollution with a limit of \$1,000,000 for sudden and gradual pollution occurrences associated with the Work, if applicable;
- .05** All policies taken out by the Contractor shall be placed with an insurance company licensed to write in the Province of Ontario.

Section 5 – General Conditions of Contract

GC

- .06 The insurance policies required pursuant to this paragraph GC 6.03 shall be primary and shall not call into contribution any insurance available to the Owner.
- .07 Prior to the commencement of the Work, the Contractor shall deliver to the City an original certificate of insurance in the City's standard form, signed by the insurer or an authorized agent of the insurer. The Contractor shall provide original signed Certificates evidencing renewals or replacements to the Owner prior to the expiration date of the original policies, without notice or request by the Owner.
- .08 The Contractor agrees that the insurance policies may be subject to reasonable deductible amounts, which deductible amounts shall be borne entirely by the Contractor. The amount of the deductible for the purpose of this Contract shall not be more than \$25,000.00.
- .09 Unless specified otherwise the duration of each insurance policy shall be from the date of commencement of the Work until 10 Days after the date of Final Acceptance of the Work, as set out in the Final Acceptance Certificate.
- .10 It is understood and agreed that the coverage and limits of liability noted above are not to be construed as the limit of liability of the Contractor in the performance of the Work.
- .11 The Contractor shall maintain completed operations coverage for a period of six (6) years from Substantial Performance, 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 shall not be binding on the Owner.
- .12 Each policy (except for the policy of automobile insurance required under paragraph 1 of GC 6.03.03) shall contain an endorsement requiring the insurer(s) to notify the City of Toronto in writing, by registered mail, at least thirty (30) days, (fifteen (15) days if cancellation is due to non-payment of premium), prior to any cancellation of the Contractor's insurance.
- 6.04 Bonding**
- .01 The Contractor shall provide the Owner with any bonds required by the Tender Call, which bonds shall be addressed to the correct obligee, in the amount and for the duration set out in the Tender Call.
- .02 Such bonds shall be issued by a Surety and shall be maintained in good standing until the fulfillment of all obligations set out in the Contract Documents.
- .03 The Contractor and Subcontractors shall not include any additional bonding costs in their quotation for any change order Work that may be required or performed.

Section 5 – General Conditions of Contract

Paragraph GC 7.0 Contractor's Responsibilities and Control of the Work

GC

- 7.01 General**
- .01** The Contractor warrants that the site of the Work has been visited during or prior to the preparation of the Bid and the character of the Work and all local conditions which may affect the performance of the Work are known.
- .02** The Contractor shall not commence the Work nor deliver anything to the Working Area until the Contractor has received a written order to commence the Work, signed by the Contract Administrator.
- .03** The Contractor shall effectively direct and supervise the Work so as to ensure conformity with the Contract Documents. The Contractor shall be responsible for construction means, methods, techniques, sequences and procedures and for coordinating the various parts of the Work. The Contractor shall provide adequate labour, Equipment, and Material to ensure the completion of the Work in accordance with the Contract Documents. The Work shall be performed as vigorously and as continuously as weather conditions or other interferences may permit.
- .04** The Contractor, so as to ensure conformity with the Contract Documents shall, except where otherwise required by the Owner, have the sole responsibility for the design, erection, operation, maintenance and removal of temporary structures and other temporary facilities and the design and execution of construction methods required in their use.
- .05** Notwithstanding paragraph GC 7.01.04, where the Contract Documents include designs for temporary structures and other temporary facilities or specify a method of construction in whole or part, such facilities and methods shall be considered to be part of the design of the Work, and the Contractor shall not be held responsible for that part of the design or the specified method of construction. The Contractor shall, however, be responsible for the execution of such design or specified method of construction in the same manner that the Contractor is responsible for the execution of the Work.
- .06** The Contractor shall execute the terms of the Contract in strict compliance with the requirements of the Occupational Health and Safety Act, R.S.O. 1990, c. O.1 (the "Act") and Ontario Regulation 213/91 (which regulates Construction Projects) and any other regulations under the Act (the "Regulations") which may affect the performance of the Work, as the "constructor" or "employer", as defined by the Act, as the case may be. The Contractor shall ensure that:
- a) worker safety is given first priority in planning, pricing and performing the Work;
 - b) its officers and supervisory employees have a working knowledge of the duties of a "constructor" and "employer" as defined by the Act and the provisions of the Regulations applicable to the Work, and a

Section 5 – General Conditions of Contract

GC

- personal commitment to comply with them;
 - c) a copy of the most current version of the Act and the Regulations are available at the Contractor's office within the Working Area, or, in the absence of an office, in the possession of the supervisor responsible for the performance of the Work;
 - d) workers employed to carry out the Work possess the knowledge, skills and protective devices required by law or recommended for use by a recognized industry association to allow them to work in safety;
 - e) its supervisory employees are "Competent Persons" as defined in the Act, and carry out their duties in a diligent and responsible manner with due consideration for the health and safety of the workers; and
 - f) all Subcontractors and their workers are properly protected from injury while in the Working Area.
- .07 The Contractor, when requested, shall provide the Owner with a copy of its health and safety policy and program and shall respond promptly to requests from the Owner for confirmation that its methods and procedures for carrying out the Work comply with the Act and Regulations. The Contractor shall cooperate with representatives of the Owner and inspectors appointed to enforce the Act and the Regulations in any investigations of worker health and safety in the performance of the Work. The Contractor shall indemnify and save the Owner harmless from any additional expense which the Owner may incur to have the Work performed or in respect of any fine incurred or claim made as a result of the Contractor's failure to comply with the requirements of the Act and the Regulations.
- .08 Prior to commencement of the Work the Contractor shall provide to the Contract Administrator a list of those products controlled under the Workplace Hazardous Materials Information System or WHMIS, which the Contractor expects to use for the Work. Related Materials Safety Data Sheets shall accompany the submission. All containers used in the application of products controlled under WHMIS shall be labelled. The Contractor shall notify the Contract Administrator, in writing, of changes in the products to be used and provide relevant Material Safety Data Sheets.
- .09 The Contractor shall have a Superintendent on the site while any Work is being performed, to supervise the Work and to act for or on the Contractor's behalf. Prior to commencement of construction, the Contractor shall notify the Contract Administrator of the names, addresses, positions and cell phone, pager and telephone numbers of the Superintendent who can be contacted at any time to deal with matters relating to the Contract and update as necessary.
- .10 The Contractor shall designate a person to be responsible for traffic control and work zone safety. The designated person shall be a competent worker who is qualified because of knowledge, training, and experience to perform

Section 5 – General Conditions of Contract

GC

the duties, is familiar with Book 7 of the OTM and has knowledge of all potential or actual danger to workers and motorists. Prior to the commencement of construction, the Contractor shall notify the Contract Administrator of the name, address, position, cell phone, pager, and telephone numbers of the designated person, and update as necessary. The designated person may have other responsibilities, including other construction sites, and need not be present in the Work Area at all times.

- .11 The Contractor shall, at no additional cost to the Owner, furnish all reasonable aid, facilities and assistance required by the Contract Administrator for the proper inspection and examination of the Work or the taking of measurements for the purpose of payment.
- .12 The Contractor shall prepare, and update as required, a construction schedule of operations, indicating the proposed methods of construction and sequence of work and the time the Contractor proposes to complete the various items of work within the Contract Time. The schedule shall be designed to ensure conformity with the specified Contract Time. The schedule shall be submitted to the Contract Administrator within 7 Days from the date of the Contract award, unless otherwise required by the Contract. If the Contractor's schedule is materially affected by changes, the Contractor shall submit an updated construction schedule, if requested by the Contract Administrator, within 7 Days of the request. This updated schedule shall show how the Contractor proposes to perform the balance of the Work, so as to complete the Work within the time specified in the Contract Documents. The Owner shall at its sole discretion be entitled to decide to not issue an order to commence work, until such a schedule has been received.
- .13 Where the Contractor finds any error, inconsistency or omission relating to the Contract Documents or the Work, the Contractor shall promptly report it to the Contract Administrator and shall not proceed with the activity affected until receiving advice from the Contract Administrator.
- .14 The Contractor shall arrange with the appropriate utility authorities for the stake out of all underground utilities and service connections that may be affected by the Work. The Contractor shall observe the location of the stake outs, prior to commencing the Work, and in the event that there is a discrepancy between the location of the stake outs and the locations shown on the Contract Documents, that may affect the Work, the Contractor shall immediately notify the Contract Administrator and the affected utility companies, in order to resolve the discrepancy. The Contractor shall be responsible for any damage done to the underground Utilities and service connections by the Contractor's forces during construction.

Section 5 – General Conditions of Contract

GC

- .15 The Contractor shall comply with and conform to all statutes, laws, by-laws, regulations, requirements, ordinances, notices, rulings, orders, directives and policies of the municipal, provincial and federal governments and any other lawful authority and all court orders, judgments and declarations of a court of competent jurisdiction (collectively referred to as the "Laws"), applicable to the Work to be provided by, and the undertakings and obligations of, the Contractor under this Contract.
- 7.02 Layout**
- 7.02.01 Layout by Contractor**
- .01 Where the Contract Documents provide for the Contractor to lay out the Work, sub paragraphs .02 to .08 of paragraph 7.02.01 shall apply.
- .02 Prior to commencement of construction, the Contract Administrator and the Contractor shall locate on site those property bars, baselines and benchmarks that are necessary to delineate the Working Area and to lay out the Work, all as shown on the Contract Drawings.
- .03 The Contractor shall be responsible for the preservation of all property bars while the Work is in progress, except those property bars that must be removed to facilitate the Work. Any other property bars disturbed, damaged or removed by the Contractor's operations shall be replaced by an Ontario Land Surveyor, at the Contractor's expense.
- .04 At no extra cost to the Owner, the Contractor shall provide the Contract Administrator with such materials and devices as may be necessary to lay out the baseline and benchmarks, and as may be necessary for the inspection of the Work.
- .05 The Contractor shall provide qualified personnel to lay out and establish all lines and grades necessary for construction. The Contractor shall notify the Contract Administrator of any layout work carried out, so that the same may be checked by the Contract Administrator.
- .06 The Contractor shall install and maintain substantial alignment markers and secondary benchmarks as may be required for the proper execution and inspection of the Work. The Contractor shall supply one copy of all alignment and grade sheets to the Contract Administrator.
- .07 The Contractor shall assume full responsibility for alignment, elevations and dimensions of each and all parts of the Work, regardless of whether the Contractor's layout work has been checked by the Contract Administrator.
- .08 All stakes, marks and reference points shall be carefully preserved by the Contractor. In the case of their destruction or removal, for any reason, before the end of the Contract Time, such stakes, marks and reference points shall be replaced, to the satisfaction of the Contract Administrator, at the Contractor's expense.

Section 5 – General Conditions of Contract

GC

7.02.02

Layout by Owner

- .01 Where the Contract Documents provide for the Owner to layout the Work, sub paragraphs .02 to .09 of paragraph 7.02.02 shall apply.
- .02 The Owner shall be responsible for setting out the line and setting out the Grade for the project.
- .03 The Owner shall supply a copy of the alignment and grade sheets to the Contractor to facilitate the construction of the Work according to the Contract Drawings.
- .04 The Owner shall install and maintain substantial alignment markers and secondary benchmarks as may be required for the proper execution and inspection of the Work.
- .05 All stakes, marks and reference points provided by the Owner shall be carefully preserved by the Contractor. In the case of the destruction or removal as a result of the Contractor's operations, such stakes, marks and reference points shall be replaced by the Owner at the Contractor's expense.
- .06 The Contractor shall give the Owner at least 24 hours notice before requiring levels, lines or stakes, on any portion of the Work and the Contractor shall clearly state in such notice the exact locality or localities where such are needed for use.
- .07 The Contractor must satisfy itself before commencing work at any point as to the meaning and accuracy of all stakes and marks, and no claim shall be considered by the Owner for or on account of any alleged inaccuracies or for any alternations subsequently rendered necessary on account of any such alleged inaccuracies, unless the Contractor notifies the Owner thereof in writing before commencing the Work.
- .08 The Contractor shall be responsible for the preservation of all property bars while the Work is in progress, except those property bars which must be removed to facilitate the Work. Any other property bars disturbed, damaged or removed by the Contractor's operations shall be replaced by an Ontario Land Surveyor, at the Contractor's expense.
- .09 All stakes, marks and reference points shall be carefully preserved by the Contractor. In the case of their destruction or removal as a result of the Contractor's operations, such stakes, marks and reference points shall be replaced, to the satisfaction of the Contract Administrator, at the Contractor's expense.
- #### **7.03**
- #### **Damage by Vehicles or Other Equipment**
- .01 If at any time, in the opinion of the Contract Administrator, damage is being done or is likely to be done to any Roadway or any improvement thereon, outside the Working Area, by the Contractor's vehicles or other Equipment,

Section 5 – General Conditions of Contract

GC

whether licensed or unlicensed Equipment, the Contractor shall, on the direction of the Contract Administrator, and at no extra cost to the Owner, make changes or substitutions for such vehicles or Equipment, and shall alter loadings, or in some other manner, remove the cause of such damage to the satisfaction of the Contract Administrator.

7.04

Excess Loading of Motor Vehicles

.01

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

7.05

Condition of the Working Area

.01

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

7.06

Maintaining Roadways and Detours

.01

Where an existing Roadway is affected by construction, it shall, at all times, be kept open to traffic. The Contractor shall, at no additional cost to the Owner, be responsible for providing and maintaining, for the duration of the Work an alternative route for both pedestrian and vehicular traffic through the Working Area in accordance with the OTM, whether along the existing Highway under construction or on a detour road beside or adjacent to the Highway under construction.

.02

Subject to the approval of the Contract Administrator, the Contractor may block traffic for short periods of time to facilitate construction of the Work in accordance with the OTM. Any temporary lane closures shall be kept to a minimum.

.03

The Contractor shall not be required to maintain a road through the Working Area until such time as the Contractor has commenced operations or during seasonal shut down or on any part of the Work that has been accepted in accordance with the Contract Documents. The Contractor shall not be required to apply de-icing chemicals or abrasives or carry out snowplowing unless otherwise specified in the Contract Documents.

.04

Where localized and separated sections of a Highway are affected by the Contractor's operations, the Contractor shall not be required to maintain intervening sections of that Highway until such times as these sections are located within the limits of the Highway affected by the Contractor's general operations under the Contract. Nothing in this section shall be taken as limiting the Contractor's obligation to maintain all areas of a Highway affected by the traffic control measures undertaken in relation to the Work

Section 5 – General Conditions of Contract

GC

and to fulfill all traffic control responsibilities thereon.

- .05 Where the Contract Documents provide for, or the Contract Administrator requires, detours at specific locations, payment for the construction of the detours, and if required, for the subsequent removal of the detours, shall be made at the Contract Prices appropriate to such work.
- .06 The Contractor shall maintain, to the satisfaction of the Owner and the Contract Administrator, a road through the Working Area. The road through the Working Area shall 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 shall be at the Contract prices appropriate to the Work or, where there are no such prices, at negotiated prices. Notwithstanding the foregoing, the cost of blading required to maintain the surface of such roads and detours shall be deemed to be included in the prices bid for the various tender items and no additional payment shall be made.
- .07 Where Work is discontinued for any extended period including seasonal shutdown, the Contractor shall, when directed by the Contract Administrator, open and place the Highway and detours in a passable, safe and satisfactory condition for public travel.
- .08 Where the Contractor constructs a detour that is not specifically provided for in the Contract Documents or required by the Contract Administrator, the construction of the detour and, if required, the subsequent removal shall be performed at the Contractor's sole expense. The detour shall be constructed and maintained to structural and geometric standards approved by the Contract Administrator. Removal and site restoration shall be performed as directed by the Contract Administrator.
- .09 Where, with the prior written approval of the Contract Administrator, a Highway is closed and the traffic diverted entirely off the Highway to any other Highway, the Contractor shall, at no extra cost to the Owner, supply, erect and maintain traffic control devices in accordance with the OTM.
- .10 Compliance with the foregoing provisions shall in no way relieve the Contractor of obligations under paragraph GC 6.01, Protection of Work, Persons and Property, dealing with the Contractor's responsibility for damage claims, except for claims arising on sections of a Highway within the Working Area that are being maintained by others.
- 7.07 Access to Properties Adjoining the Work and Interruption of Utility Services**
- .01 The Contractor shall provide, at all times, and at no extra cost to the Owner,
- a) safe and adequate pedestrian and vehicular access; and
 - b) continuity of Utility services; and

Section 5 – General Conditions of Contract

GC

- c) access for any and all emergency response vehicles and services, to any and all properties adjoining the Working Area.
- .02 The Contractor shall provide, at all times and at no extra cost to the Owner, access to fire hydrants, water and gas valves, and all other Utilities located in the Working Area.
- .03 Where any interruptions in the supply of Utility services are required and are authorized by the Contract Administrator, the Contractor shall give the affected property owners notice in accordance with paragraph GC 7.11, Notices by the Contractor, and shall arrange such interruptions so as to create a minimum of interference to those affected.
- 7.08 Approvals and Permits**
- .01 Except as specified in paragraph GC 4.02, Approval and Permits, the Contractor shall obtain and pay for any permits, licenses, and certificates that are required for the performance of the Work.
- .02 The Contractor shall arrange for all necessary inspections required by the approvals and permits specified in paragraph GC 7.08.01
- 7.09 Suspension of Work**
- .01 The Contractor shall, upon written notice from the Contract Administrator, discontinue or delay any or all of the Work and Work shall not be resumed until the Contract Administrator so directs in writing. Delays, in these circumstances, shall be administered according to paragraph GC 3.08, Delays.
- 7.10 Contractor's Right to Stop the Work or Terminate the Contract**
- .01 The Contractor may notify the Owner in writing, with a copy to the Contract Administrator, that the Owner is in default of contractual obligations if,
 - a) the Contract Administrator fails to issue certificates in accordance with the provisions of paragraph GC 8.0 Measurement and Payment;
 - b) the Owner fails to pay the Contractor, within 30 Days of the due dates identified in paragraph GC 8.02.03, Certification and Payment, the amounts certified by the Contract Administrator or within 30 Days of an award by an arbitrator or court; or
 - c) the Owner commits a major default of the requirements of the Contract.
- .02 The Contractor's written notice to the Owner shall advise that if the default is not corrected in the 15 Days immediately following the receipt of the written notice the Contractor may, without prejudice to any other right or remedy the Contractor may have, stop the Work or terminate the Contract.
- .03 If the Contractor terminates the Contract under the conditions set out in

Section 5 – General Conditions of Contract

GC

paragraph GC 7.10, above, the Contractor shall only be entitled to be paid for that portion of the Work that is, in the Contract Administrator's opinion, satisfactorily performed.

7.11 **.04**

Notices by the Contractor

Before Work is carried out that may affect the property or operations of any Ministry or agency of government or any person, company, partnership or corporation, including a municipal corporation or any board or commission thereof, and in addition to such notices of the commencement of specified operations as are prescribed elsewhere in the Contract Documents, the Contractor shall give at least 48 hours' advance written notice of the date of commencement of such work to the person, company, partnership, corporation, board, or commission so affected.

.05

In the case of a spill as defined in section 91 of the Environmental Protection Act (Ontario) and any successor legislation, or any damage to, or interference with any Utilities, pole lines, pipe lines, conduits, farm tiles, or other public or privately owned works or property, the Contractor shall immediately notify the Owner and the Contract Administrator of the location and details of such spill, damage or interference. In the case of spills, the Contractor shall also, immediately, report the spill to the Ministry of the Environment (Ontario).

7.12 **.01**

Obstructions

Except as otherwise noted in the Contract Documents, the Contractor assumes all the risks and responsibilities arising out of any obstruction encountered in the performance of the Work and any traffic conditions, including traffic conditions on any Highway or road giving access to the Working Area caused by such obstructions, and the Contractor shall not make any claim against the Owner for any loss, damage or expense occasioned thereby.

.02

Where the obstruction is a Utility or other man-made object, the Contractor shall not be required to assume the risks and responsibilities arising out of such obstruction, unless the location of the obstruction is shown on the plans or described in the Contract Documents and the location so shown is within the tolerance specified in paragraph GC 2.01.01(a) or unless the presence and location of the obstruction has otherwise been made known to the Contractor or could have been determined by the visual site investigation made by the Contractor in accordance with the Contract Documents.

.03

During the course of the Contract, it is the Contractor's responsibility to consult with Utility companies or other appropriate authorities for further information in regard to the exact location of these Utilities, to exercise the necessary care in construction operations, and to take such other precautions as are necessary to safeguard the Utilities from damage.

Section 5 – General Conditions of Contract

GC

- 7.13 Limitations of Operations**
.01 Except for such work as may be required by the Contract Administrator to maintain the Work in a safe and satisfactory condition, the Contractor shall not carry on operations under the Contract Documents on days other than Working Days without permission in writing from the Contract Administrator, unless otherwise required by the Contract Documents.
- .02 The Contractor shall cooperate and coordinate the Work with other contractors, Utility companies and the Owner and they shall be allowed access to their work or plant at all reasonable times.
- 7.14 Cleaning Up Before Acceptance**
.01 Upon attaining Substantial Performance of the Work, the Contractor shall remove any surplus materials, tools, construction machinery and Equipment not required for the performance of the remaining Work. The Contractor shall also remove all temporary works and debris other than that caused by the Owner, and leave the Work and Working Area clean and suitable for occupancy by the Owner unless otherwise specified.
- .02 Notwithstanding any other terms or conditions set out herein, the Contract Administrator shall not be under any obligation to issue a Completion Certificate until such time as the Contractor has removed all surplus materials, tools, construction machinery, debris and Equipment from the Working Area.
- 7.15 Warranty**
.01 The Contractor shall be responsible for the proper performance of the Work only to the extent that the design and specifications permit such performance.
- .02 Subject to the previous paragraph, the Contractor shall correct promptly, at no additional cost to the Owner, defects or deficiencies in the Work that appear, prior to and during the period of 24 months after the date of Substantial Performance or such longer or shorter periods as may be specified elsewhere in the Contract Documents for certain Equipment, Materials or components of Work. The Contract Administrator shall promptly give the Contractor written notice of observed defects or deficiencies.
- .03 The Contractor shall correct or pay for damage resulting from corrections made under the requirements of paragraph GC 7.15.02

Section 5 – General Conditions of Contract

<u>GC #</u>	
7.16 .01	Contractor's Workers The Contractor shall employ only orderly, competent and skillful workers to do the Work and whenever the Contract Administrator shall inform the Contractor in writing that any worker or workers involved in the Work are, in the opinion of the Contract Administrator, incompetent, or disorderly, such worker or workers shall be removed from the Work and shall not again be employed on the Work without the consent in writing of the Contract Administrator.
7.17 .01	Resident or property owner complaints or claims The Contractor shall immediately upon becoming aware of a complaint or claim made by a resident or property owner, inform the Contract Administrator.
7.18 .01	Contractor's responsibility for drainage The Contractor shall keep all portions of the Work well, properly and efficiently drained, to at least the same degree as that of the existing drainage conditions, during construction and until the Work is completed. The Contractor shall be solely responsible for all damages caused by, or resulting from, water backing up or flowing over, under, through, from, on or along any part of the Work or which any of his or her operations may cause to flow elsewhere and shall bear such costs, make such provisions and provide such indemnity as required in the Contract Documents.
7.19 .01	Blasting The Contractor shall not carry out any blasting operation except with the written consent of the Contract Administrator, provided that any consent so granted shall not, under any circumstances, relieve the Contractor of the liabilities and obligations assumed by him under this Contract.
.02	The Contractor shall comply with all laws, regulations and directions of the Contract Administrator, respecting the handling, storage and use of explosives.

Section 5 – General Conditions of Contract

Paragraph GC 8.0 Measurement and Payment

<u>GC #</u>	
8.01	Measurement
8.01.01	Quantities
.01	The Contract Administrator shall make an Estimate once a month, in writing, of the quantity of Work performed. The first Estimate shall be the quantity of Work performed since the Contractor commenced the Contract, and every subsequent Estimate, except the final one, shall be of the quantity of Work performed since the preceding Estimate was made. The Contract Administrator shall provide the copy of each Estimate to the Contractor within 15 Days of the last day of the period covered by the Estimate.
.02	Progress Payments based on Estimates shall be construed and held to be approximate. The final quantities for the issuance of the Completion Certificate shall be based on the Actual Measurement of the Work completed.
8.01.02	Variations in Tender Call
.01	Where it appears that the quantity of Work to be done and/or Material to be supplied by the Contractor under a unit price Tender Call item will exceed or be less than the Tender Call quantity, the Contractor shall proceed to do the Work and/or supply the Material required to complete the Tender Call item and payment will be made for the actual amount of Work done and/or Materials supplied at the unit prices stated in the Tender Call except as provided below: <ul style="list-style-type: none">a) In the case of a Major Item where the quantity of Work performed and/or Material supplied by the Contractor exceeds the tender quantity by more than 30%, the City shall have the right, in its sole discretion, to require that the portion of the Work performed and/or Material supplied which exceeds 130% of the tender quantity be paid as Work on a Time and Material Basis, in accordance with GC 8.02.04.
8.02	Payment
8.02.01	Payment for Work
.01	Payment for the Work shall be full compensation for all labour, Equipment and Material required in its performance, including, but not limited to, Hand Tools, supplies and other incidentals.
.02	Payment for Work not specifically detailed as part of any one item and without specified details of payment shall be deemed to be included in the items with which it is associated.

Section 5 – General Conditions of Contract

GC

8.02.02
.01

Advance Payments for Material

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 Material to a site approved by the Contract Administrator and the Contractor shall, in advance of receipt of the shipment of the Material, arrange for adequate and proper storage facilities.
- b) The value of aggregates, processed and stockpiled, shall be assessed by the following procedure:
 - i. Sources Other Than Commercial
 - (1) Granular 'A', 'B' and 'M' shall be assessed at the rate of 60% of the Contract Price.
 - (2) Coarse and fine aggregates for hot mix asphaltic concrete, surface treatment and Portland cement concrete shall be assessed at the rate of 25% of the Contract Price for each aggregate stockpiled.
 - ii. Commercial Sources
Payment for separated coarse and fine aggregates shall be considered at the above rate when such materials are stockpiled at a commercial source where further processing is to be carried out before incorporating such materials into a final product. Advance payments for other materials located at a commercial source shall not be made.
- c) Payment for all other materials, unless otherwise specified elsewhere in the Contract, shall be based on the invoice Price, and the Contractor shall submit proof of cost to the Contract Administrator before payment will be made by the Owner.
- d) The payment for all Materials shall be prorated against the appropriate tender item by paying for sufficient units of the item to cover the value of the Material. Such payment shall not exceed 80% of the Contract Price for the item.
- e) All Materials for which the Contractor wishes to receive advance payment shall be placed in the designated storage location immediately upon receipt of the material and shall thenceforth be held by the Contractor in trust for the Owner as collateral security for any monies advanced by the Owner and for the due completion of the Work. The Contractor shall not exercise any act of ownership inconsistent with such security, or remove any Material from the storage locations, except for inclusion in the Work, without the consent, in writing, of the Contract Administrator.
- f) Such Materials shall remain at the risk of the Contractor who shall be responsible for any loss, damage, theft, improper use or destruction of the material however caused.

.02

Where the Owner makes advance payments subject to the conditions listed in paragraph GC 8.02.02.01, such payment shall not constitute acceptance of the Material by the Owner. Acceptance shall only be determined when the Material meets the requirements of the appropriate specifications.

Section 5 – General Conditions of Contract

GC

8.02.03 Certification and Payment

8.02.03.01 Progress Payment Certificate

.01 The Contract Administrator shall issue a Progress Payment Certificate in accordance with the Contract Documents and paragraph GC 8.01.01, Quantities.

.02 The Progress Payment Certificate shall show,

- a) the quantities of Work performed;
- b) the value of Work performed;
- c) any advanced payment for Material;
- d) the amount of statutory holdback, liens, Owner's set-off;
- e) the amount of any applicable taxes; and
- f) the amount due the Contractor.

.03 One copy of the Progress Payment Certificate shall be sent to the Contractor.

.04 Payment shall be made within 30 Days of the approval of the Progress Payment Certificate by the Contract Administrator.

8.02.03.02 Certification of Subcontract Completion

.01 Before Substantial Performance, the Contractor may notify the Contract Administrator, in writing that a subcontract is completed satisfactorily to the Contractor and ask that the Contract Administrator certify the completion of such subcontract.

.02 The Contract Administrator shall issue a Certificate of Subcontract Completion if the subcontract has been completed in a form satisfactory to the Contract Administrator, and all required inspection and testing of the works covered by the subcontract have been carried out and the results are satisfactory to the Contract Administrator.

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

8.02.03.03 Subcontract Statutory Holdback Release Certificate and Payment

.01 Following receipt of the Certificate of Subcontract Completion, the Owner may release and pay the Contractor the statutory holdback retained in respect of the subcontract. Such release shall be made 46 Days after the date the subcontract was certified complete and providing the Contractor submits the following to the Contract Administrator:

- a) a document satisfactory to the Contract Administrator that shall release the Owner from all further claims relating to the subcontract, qualified by stated exceptions such as holdback monies;

Section 5 – General Conditions of Contract

<u>GC #</u>	
	<ul style="list-style-type: none">b) evidence satisfactory to the Contract Administrator 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; andd) a copy of the contract between the Contractor and the Subcontractor and a satisfactory statement showing the total amount due the Subcontractor from the Contractor.
.02	Paragraph GC 8.02.03.03.01(d) shall apply to Lump Sum Items only and then only when the Contract Administrator specifically requests it.
.03	Upon receipt of the statutory holdback, the Contractor shall forthwith give the Subcontractor the payment due under the subcontract.
.04	Release of statutory holdback by the Owner in respect of a subcontract shall not relieve the Contractor, or the Contractor's Surety, of any of their responsibilities.
8.02.03.04	Certification of Substantial Performance
.01	Upon application by the Contractor and when the Contract Administrator has verified that the Contract has been substantially performed, the Contract Administrator shall issue a Certificate of Substantial Performance.
.02	The Contract Administrator shall set out in the Certificate of Substantial Performance the date on which the Contract was substantially performed and within 7 Days after signing the said certificate the Contract Administrator shall provide a copy to the Contractor.
.03	Upon receipt of a copy of the Certificate of Substantial Performance, the Contractor shall forthwith, as required by Section 32(1) paragraph 5 of the Construction Lien Act, R.S.O. 1990, c.C.30, as amended, publish a copy of the certificate in a construction trade newspaper. Such publication shall include placement in the Daily Commercial News.
.04	Where the Contractor fails to publish a copy of the Certificate of Substantial Performance as required above within 7 Days after receiving a copy of the certificate signed by the Contract Administrator, the Owner may publish a copy of the certificate at the Contractor's expense.
.05	Except as otherwise provided for in Section 31 of the Construction Lien Act, the 45-day lien period prior to the release of holdback as referred to in paragraph GC 8.02.03.05, Substantial Performance Payment and Statutory Holdback Release Payment Certificates, shall commence from the date of publication of the Certificate of Substantial Performance as provided for above.

Section 5 – General Conditions of Contract

GC

- 8.02.03.05 Substantial Performance Payment and Substantial Performance Statutory Holdback Release Payment Certificates**
- .01 When the Contract Administrator issues the Certificate of Substantial Performance, the Contract Administrator shall also issue the Substantial Performance Payment Certificate and the Substantial Performance Statutory Holdback Release Payment Certificate or where appropriate, a combined payment certificate.
- .02 The Substantial Performance Payment Certificate shall show,
a) the value of Work performed to the date of Substantial Performance;
b) the value of outstanding or incomplete Work;
c) the amount of the statutory holdback, allowing for any previous releases of statutory holdback to the Contractor in respect of completed subcontracts and deliveries of pre-selected equipment;
d) the amount of maintenance security required; and
e) the amount due the Contractor.
- .03 Subject to paragraph GC 8.02.03.05.05, payment of the amount certified shall be made within 30 Days of the date of issuance of the Substantial Performance Payment Certificate.
- .04 The Substantial Performance Statutory Holdback Release Payment Certificate shall be a payment certificate releasing to the Contractor the statutory holdback due in respect of Work performed up to the date of Substantial Performance. 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) 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 paragraph GC 3.14, Claims, Negotiations, Mediation;
b) 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;
c) a satisfactory Certificate of Clearance from the Workplace Safety and Insurance Board; and
d) proof of publication of the Certificate of Substantial Performance.
- .05 Despite anything to the contrary in the Contract Documents, the Owner shall be entitled to reduce the amount of the Statutory Holdback paid to the Contractor to account for any amounts that may be owed by the Contractor to the Owner

Section 5 – General Conditions of Contract

GC

8.02.03.06

Certification of Completion

.01

Upon application by the Contractor and when the Contract Administrator has verified that the Contract has reached Completion, the Contract Administrator shall issue a Completion Certificate.

.02

The Contract Administrator shall set out in the Completion Certificate the date of Completion and, within 7 Days of signing the said certificate, the Contract Administrator shall provide a copy to the Contractor.

8.02.03.07

Completion Payment and Completion Statutory Holdback Release Payment Certificates

.01

When the Contract Administrator issues the Completion Certificate, the Contract Administrator shall also issue the Completion Payment Certificate and the Completion Statutory Holdback Release Payment Certificate or where appropriate, a combined payment certificate:

.02

The Completion Payment Certificate shall show,

- a) measurement and value of Work at Completion;
- b) the amount of the further statutory holdback based on the value of further work completed over and above the value of work completed shown in the Substantial Performance Payment Certificate referred to above; and
- c) the amount due the Contractor.

.03

The Completion Statutory Holdback Release Payment Certificate shall be a payment certificate releasing to the Contractor the further statutory holdback. Payment of such statutory holdback shall be due 46 Days after the date of Completion of the Work as established by the Completion Certificate but subject to the provisions of the Construction Lien Act and the submission by the Contractor of the following documents:

- a) 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;
- b) a statutory declaration in a form satisfactory to the Contract Administrator that all liabilities incurred by the Contractor and the Contractor's Subcontractors in carrying out the Contract have been discharged, qualified by stated exceptions where appropriate; and
- c) a satisfactory Certificate of Clearance from the Workplace Safety and Insurance Board.

8.02.03.08

Owner's Set-off

.01

Pursuant to Section 12 of the Construction Lien Act, the Owner may retain from monies owing to the Contractor under this Contract Document an amount sufficient to cover any outstanding or disputed liabilities including the cost to remedy deficiencies, the reduction in value of substandard portions of the Work, claims for damages by third parties that have not been determined in writing by the Contractor's insurer, undetermined claims by the Owner

Section 5 – General Conditions of Contract

GC

under paragraph GC 8.01.02.01,a), any assessment due the Workplace Safety and Insurance Board and any monies to be paid to workers in accordance with paragraph GC 8.02.06, Payment of Workers.

.02

Where the Owner intends to retain money under paragraph GC 8.02.03.08.01, the Owner shall give the Contractor appropriate notice of such action.

8.02.04

Payment on a Time and Material Basis

8.02.04.01

Definitions

.01

For the purpose of paragraph GC 8.02.04 the following definitions shall apply:

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

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

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

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

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

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

Section 5 – General Conditions of Contract

GC #

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.

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

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

Work on a Time and Material Basis: means a Change in the Work, approved by the Contract Administrator for payment on a Time and Material basis. The Work on a Time and Material Basis shall be subject to all the terms, conditions, specifications and provisions of the Contract Documents.

Working Time: means each period of time during which a unit of Equipment is actively and of necessity engaged on a specific operation and the first 2 hours of each immediately following period during which that 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.

8.02.04.02
.01

Daily Work Records

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

8.02.04.03
.01

Payment for Work

Payment as herein provided shall be full compensation for all labour, Equipment and Material to do the Work on a Time and Material Basis except

Section 5 – General Conditions of Contract

GC

where there is agreement to the contrary prior to the commencement of the Work on a Time and Material Basis. The payment adjustments on a Time and Material basis shall apply to each individual Change Order authorized by the Contract Administrator.

8.02.04.04

Payment for Labour

.01

The Owner shall pay the Contractor for labour employed on each Time and Material project at 135% of the Cost of Labour up to \$3000, then at 120% of any portion of the Cost of Labour in excess of \$3000.

.02

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 Time and Material Basis on the Contract

8.02.04.05

Payment for Material

.01

Where payments are to be made on a Time and Material Basis, the Owner shall pay the Contractor for Material used at 120% of the Cost of Material up to \$3,000, then at 115% of any portion of the Cost of Material in excess of \$3,000.

8.02.04.06

Payment for Equipment

8.02.04.06.01

Working Time

.01

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

- a) Cost \$10,000 or less - no adjustment;
- b) Cost greater than \$10,000 but not exceeding \$20,000 - payment \$10,000 plus 90% of the portion in excess of \$10,000; and
- c) Cost greater than \$20,000 - \$19,000 plus 80% of the portion in excess of \$20,000.

.02

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

.03

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

Section 5 – General Conditions of Contract

GC

8.02.04.06.02 Standby Time

- .01 The Owner shall pay the Contractor for Standby Time of Equipment at 35% of the 127 Rate or 35% of the invoice price whichever is appropriate. The Owner shall pay reasonable costs for Rented Equipment where this is necessarily retained in the Working Area for extended periods agreed to by the Contract Administrator. This shall include Rented Equipment intended for use on other work, but has been idled due to the circumstances giving rise to the Work on a Time and Material Basis.
- .02 In addition, the Owner shall include the Cost of Labour of operators or associated labourers who cannot be otherwise employed during the Standby Time or during the period of idleness caused by the circumstances giving rise to the Work on a Time and Material Basis.
- .03 The Contract Administrator may require Rented Equipment idled by the circumstances giving rise to the Work on a Time and Material Basis to be returned to the lessor until the Work requiring the Equipment can be resumed. The Owner shall pay such costs as result directly from such return.
- .04 When Equipment is transported, solely for the purpose of the Work on a Time and Material Basis, to or from the Working Area on a Time and Material basis, payment shall be made by the Owner only in respect of the transporting units. When Equipment is moved under its own power it shall be deemed to be working. The method of moving Equipment and the rates shall be subject to the approval of the Contract Administrator.

8.02.04.07 Payment for Hand Tools

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

8.02.04.08 Payment for Work By Subcontractors

- .01 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.
- .02 No further markup shall be applied regardless of the extent to which the Work is assigned or sublet to others. If Work is assigned or sublet to an associate, as defined by the Securities Act no markup whatsoever shall be applied

8.02.04.09 Submission of Invoices

- .01 At the start of the Work on a Time and Material Basis, the Contractor shall provide the applicable labour and Equipment rates not already submitted to the Contract Administrator during the course of such Work.
- .02 Separate summaries shall be completed by the Contractor and each such summary shall include the Change Directive or Change Order number and

Section 5 – General Conditions of Contract

GC

covering dates of the Work and shall itemize separately labour, Materials and Equipment. Invoices for Materials, Rented Equipment and other charges incurred by the Contractor on the Work on a Time and Material Basis shall be included with each summary.

- .03 Each month the Contract Administrator shall include with the monthly Progress Payment Certificate, the costs of the Work on a Time and Material Basis incurred during the preceding month all in accordance with the contract administrative procedures and the Contractor's invoice of the Work on a Time and Material Basis.
- .04 The final summary required under 8.02.05.09.02 shall be submitted by the Contractor within 60 Days after the completion of the Work on a Time and Material Basis.
- 8.02.04.10 Payment Other Than on a Time and Material Basis**
.01 Paragraph GC 8.02.04 shall not preclude the option of the Contract Administrator and the Contractor negotiating a Lump Sum or Unit Price payment for Changes in the Work.
- 8.02.04.11 Payment Inclusions**
.01 Except where there is agreement in writing to the contrary, the payments described herein shall be accepted by the Contractor as compensation in full for profit and all costs and expenses arising out of the Work including all cost of general supervision, administration and management time spent on the Work and no other payment or allowance shall be made in respect of such Work.
- 8.02.05 Final Acceptance Certificate**
.01 After the acceptance of the Work the Contract Administrator shall issue the Final Acceptance Certificate, or, where applicable, after the Warranty Period has expired. The Contract Administrator shall have no obligation to issue the Final Acceptance Certificate until all known deficiencies have been adjusted or corrected, as the case may be, and the Contractor has discharged all obligations under the Contract Documents.
- 8.02.06 Payment of Workers**
.01 The Contractor shall, in addition to any fringe benefits, pay the workers employed on the Work in accordance with the labour conditions set out in the Contract Documents and at intervals of not less than twice a month.
- .02 The Contractor shall require each Subcontractor doing any part of the Work to pay the workers employed by the Subcontractor on the Work in the same manner as set out in paragraph GC 8.02.06.01.
- .03 Where any person employed by the Contractor or any Subcontractor or other person on the Work is paid less than the amount required to be paid under the Contract Documents, the Owner may set off monies owing to the Contractor to reflect the amount required to be paid under the Contract Documents.

Section 5 – General Conditions of Contract

GC

8.02.07 Records

- .01 The Contractor shall maintain and keep accurate Records relating to the Work, including any Changes in the Work, and claims arising therefrom. Such Records shall be of sufficient detail to support the total cost of the Work, and any Changes in the Work. The Contractor shall preserve all such original Records until 12 months after the Final Acceptance Certificate is issued or until all claims have been settled, whichever is longer. The Contractor shall require that Subcontractors employed by the Contractor preserve all original Records pertaining to the Work, or any Changes in the Work and claims arising therefrom for the same period of time.
- .02 If, in the opinion of the Contract Administrator, Daily Work Records are required, the Contractor's Daily Work Records shall include the labour and Equipment employed and the Material used on any specific portion of the Work. The Daily Work Records shall be reconciled with and signed by the Contractor's representative each day.
- .03 The Owner may inspect and audit the Contractor's Records relating to the Work, and any Changes in the Work at any time during the period of the Contract. The Contractor shall supply certified copies of any part of its Records required whenever requested by the Owner.

8.02.08 Taxes and Duties

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

Section 5 – General Conditions of Contract

GC # _____

8.02.09
.01

Liquidated Damages

It is agreed by the parties to the Contract that if all the Work is not completed within the time specified or any extension thereof 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 hereto agree that the Contractor will pay to the owner Five Hundred Dollars (\$500.00), or as otherwise indicated in the Contract Documents, for liquidated damages for each and every Working Day's delay in finishing the Work beyond the date of completion or number of days prescribed. It is agreed that this amount is an estimate of actual damage to the Owner which will accrue during the period in excess of the prescribed date of Completion, and is not a penalty.

The Owner may deduct any amount under this paragraph from any monies that may be due or payable to the Contractor on any account with respect to the Contract Documents. The liquidated damages payable under this paragraph are in addition to and without prejudice to any other remedy action or other alternative that may be available to the Owner.