

REQUEST FOR TENDER DOCUMENT

REFERENCE NO. 2019-131-P00944

A.M. Cunningham New Gym Addition

100 Wexford Ave. S., Hamilton ON

CLOSING DATE: Thursday, May 2, 2019

CLOSING TIME: On or Before 2:00:00 P.M., Local Time

COMMUNICATIONS NOTICE

All questions or requests for information, instructions or clarifications regarding this Request for Tender (RFT) must be set out in writing through the Bidding System by clicking on the "Submit a Question" button for the specified RFT document. If you encounter problems with the portal, please contact the Procurement representative for this RFT:

Sherry Boxall, CSCMP

Senior Buyer, Procurement and Risk Management Services

sboxall@hwdsb.on.ca

All questions related to this RFT or any clarification must be made no later than seven (7) business days prior to the closing date of this RFT in order that the Board may have sufficient time to respond. The Board cannot guarantee a response to any questions received after this deadline. The Board reserves the right to extend the deadline for questions, if required, regarding this RFT.

Written answers or clarifications to issues of substance will be shared with all Bidders and issued as part of the RFT in the form of an Addendum. All Addenda issued will only be posted on the following website:

hwdsb.bidsandtenders.ca

It is the sole responsibility of each Bidder to monitor the website for any and all Addenda that have been issued for this Request for Tender.

For the purposes of this Tender, Bidders shall not contact anyone in the Board other than the designated contact person listed above. Any unauthorized communications may result in disqualification.

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DEFINITIONS

Capitalized words and phrases used in these Instructions to Bidders, Tender Documents, Specifications, terms of reference and the Form of Tender shall have the following meanings, unless expressly stated otherwise.

- a) "Addendum" means a written instruction and/or clarification issued to the Tender Documents. The term addenda is to mean the same as Addendum.
- b) "Alternative" means anything for which Bidders provide a price in a manner that gives the Board options in determining the actual Work of the Contract and may include such items as an optional product, system, installation, method, design and requirement. The Board shall not be obliged to purchase an Alternative when accepting a Tender, but may, at its discretion elect to purchase all, some or none of the Alternatives offered.
- c) "Alternative Price" means the amount stipulated by the Bidder for an Alternative, which can be stated as an addition, a deduction, or no change to the Total Contract Price. The Alternative Price will include all labour, materials, products, services and respective overhead and profit, excluding Value Added Taxes.
- d) "Bidder(s)" means the company and/or company representative authorized to submit a Tender in accordance with the terms and conditions set forth in the document.
- e) "Bidding System" means the electronic system used by the Board for the advertisement of public bid opportunities, and for dissemination of information by or on behalf of the Board.
- f) "Board" means the Hamilton-Wentworth District School Board or HWDSB and includes any of its designated employees, officials or agents who are engaged to represent the Board for this Project.
- g) "Change Order" means a written amendment to the Contract prepared by the Consultant and signed by the Owner and the Contractor stating their agreement upon:
 - (i) A change in the Work;
 - (ii) The method of adjustment or the amount of the adjustment in the Contract price, if any; and
 - (iii) The extent of the adjustment in the Contract time, if any.
- h) "Consultant" means the person or entity engaged by the Owner and identified as such in the Agreement. The Consultant is the Architect, the Engineer or entity licensed to practise in the province or territory of the Place of the Work. The term Consultant means the Consultant or the Consultant's authorized representative.
- i) "Contract" means the undertaking by the parties to perform their respective duties, responsibilities and obligations as prescribed in the Contract Documents and represents the entire agreement between the parties.
- j) "Contract Documents" means those documents listed in Article A-3 of the CCDC 2 – 2008 and amendments agreed upon between the parties.

- k) “Contractor” means the person or entity identified as such in the agreement. The term Contractor means the Contractor or the Contractor’s authorized representative as designated to the Owner in writing.
- l) “Form of Tender” means HWDSB’s form that is supplied as part of the Request for Tender which is to be completed and signed by the Bidder and submitted back to the Board in its entirety.
- m) “Good(s)” means any product of any description required to be installed, supplied, or consumed in order to complete the Work.
- n) “Itemized Price” means the amount stipulated by the Bidder for an item of Work which is to be included in the Total Contract Price.
- o) “Lump Sum Price” means an all-inclusive one price that applies to a single item, or specific Service as set out in the Form of Tender.
- p) “Owner” means the Board or the person or entity identified as such in the Request for Tender, Contract, or Construction Contract. The term Owner means Owner or the Owner’s authorized agent or representative as designated by the Board, but does not include the Consultant.
- q) “Place of the Work” is the designated site or location of the Work identified in the Contract Documents.
- r) “Project” means all the Work required to be completed by the Successful Bidder as contemplated by this Request for Tender.
- s) “Project Manager/Supervisor” means the person designated by the Owner to manage the delivery or performance of the Work to which the Request for Tender relates, or to oversee the Project and/or the Owner’s obligations under the Contract and when there is no such designate appointed by the Owner, the Owner shall be the Project Manager/Supervisor.
- t) “Request for Tender”, “RFT” and “Tender Document” means all of the following documents, and in the event of a conflict between them, each shall enjoy priority against the others (subject to any express term or condition to the contrary) in accordance with the following successive order:
 - (i) construction Contract between the Successful Bidder and Owner;
 - (ii) any Addendum;
 - (iii) any Specifications;
 - (iv) any schedules
 - (v) any Contract drawings;
 - (vi) these instructions to Bidders;
 - (vii) the standard form text of the Form of Tender as prescribed by the Board;
 - (viii) the Tender submission information;

- (ix) any other documents that form a part of the Request for Tender.
- u) “Service(s)” means a service of any description required in order to complete the Work, whether commercial, industrial, trade, or otherwise and includes, without limitation:
 - (i) all professional, technical and artistic services, and the transporting, acquiring, supplying, storing and otherwise dealing in a Good;
 - (ii) all consulting services identified in the Contract and those not identified in the Contract but necessary and prudent, in accordance with industry standards for the Work, to properly and fully complete the Work and perform the undertakings contemplated in the Contract;
 - (iii) all incidentals necessary for proper, diligent and satisfactory execution of a Service and the fulfillment of all other contractual obligations and undertakings of the Successful Bidder under the Contract.
- v) “Specifications” means the portion of the Contract Documents, wherever located and whenever issued, consisting of the written requirements and standards for products, systems, workmanship, quality, and the Services necessary for the performance of the Work.
- w) “Stipulated Price” has the same meaning as “Total Contract Price”.
- x) “Subcontractor” is a person or entity having a direct contract with the Contractor to perform a part or parts of the Services or to supply Goods and/or Services with respect to the Work, at the Place of the Work.
- y) “Successful Bidder” means the Bidder to whom the Owner has awarded the Contract. The Successful Bidder is the person or entity engaged by the Owner and identified as such in the Contract. The Successful Bidder is licensed to operate in the province of Ontario.
- z) “Tender” means a submission made by a Bidder in response to the Request for Tender.
- aa) “Tender Security” means the security submitted by a Bidder with its Tender which provides financial protection to the Board should the Successful Bidder not enter into the Contract or commence the Work following the issuance of a purchase order, and/or not provide the specified security required under the Contract.
- bb) “Total Completion” means completion as defined by the Construction Lien Act.
- cc) “Total Contract Price” means the fully inclusive, all-in total contract price, constituting the aggregate sum of all costs quoted by a Bidder in its Tender with respect to providing all Work, including incidentals, contemplated under the Contract, and unless expressly and specifically agreed in writing by the Owner otherwise, shall be the maximum compensation and consideration receivable by the Successful Bidder under the Contract. Total Contract Price shall include, without limitation;
 - (i) the purchase price for all professional fees, consulting fees, staff time, Subcontractor fees, disbursements, materials, labour costs, service costs, costs for temporary structures and facilities, utility costs, warranty costs, life cycle costs, operating and disposal costs, and all

other items, costs, expenses, allowances, charges and incidentals whatsoever to be provided pursuant to the Request for Tender and anything properly included as a best practice; but

- (ii) excludes any options or alternatives requested in the Contract Documents that the Owner elects not to purchase; and
 - (iii) excludes Value Added Taxes, imposed under the Laws of Ontario and the Laws of Canada applicable therein.
- dd) "Unit Price" means any component price as set out on the Form of Tender.
- ee) "Value Added Taxes" means such sum as shall be levied upon the Total Contract Price by the Federal or any Provincial or Territorial Government and is computed as a percentage of the Total Contract Price and includes the Goods and Services Tax, the Quebec Sales Tax, the Harmonized Sales Tax and any similar tax, the collection and payment of which have been imposed on Bidder by the tax legislation.
- ff) "Work" means the whole of the work, the supply and delivery of a Good, the delivery and performance of any Services, the total construction and related services, material, matters and things required to be completed, supplied, mentioned or referred to in performing executing the work in full in accordance with the requirements set out in the Tender Documents.
- gg) "Working Day" means a day which is not a Saturday, Sunday, public holiday or day when the administrative offices of the Board are closed.

INTRODUCTION AND PROJECT DETAILS

1. PROJECT DESCRIPTION

1. The Board invites qualified Bidders to Tender for the supply of all labour, materials, equipment and services required for the demolition of existing gymnasium, construction of new gymnasium including associated rooms and spaces, construction of new elevator and the revitalization of the existing playground in accordance with the drawings and specifications prepared by the Consultant, Invizij Architects Inc.

2. PROJECT SCOPE OF WORK

1. Project Scope includes includes the supply of all labour, materials, equipment and services required to complete the work in accordance with the drawings and specifications prepared by the Consultant, Invizij Architects Inc and their sub-consultants.

3. WORKING HOURS

1. To comply to the requirements of the City of Hamilton by-law.
2. All disruptive and noisy work within occupied spaces must be scheduled before or after school hours. Excessively noisy and disruptive work near occupied spaces should be scheduled before or after school hours. A.M. Cunningham Elementary School hours are between 8:30am – 3:10pm. These hours coincide with the classroom bell and supervision times.

4. PROJECT SCHEDULE

1. The Successful Bidder will adhere to section GC 3.5 in regard to milestone dates set below.
2. The following are Project milestone dates:

a) Tender Issued	Tuesday, April 16, 2019
b) Site Walkthrough at 3:30 PM	Tuesday, April 23, 2019
c) Closing for Questions	Wednesday, April 24, 2019
d) Tender Closing	Thursday, May 2, 2019
e) Anticipated Construction Commencement	Monday, May 6, 2019
f) Substantial Performance	Friday, October 18, 2019
g) Total Completion	Friday, November 22, 2019

5. SITE WALKTHROUGH

1. There is a site walkthrough scheduled for Tuesday, April 23, 2019 at 3:30 PM sharp located at 100 Wexford Ave. S., Hamilton ON. Bidders are to sign in with the school office staff and meet the project supervisor outside the office to sign the site walkthrough attendance sheet, if applicable.

2. Although the Board will not be obligated to accommodate any additional requests for a hosted walkthrough, the Board reserves the right to schedule an additional walkthrough if extenuating circumstances apply. The Board shall be the sole judge of such circumstances.
3. The Board has the right to cancel or reschedule the scheduled site walkthrough.
4. Regardless of attendance, all Bidders are expected to understand the scope of Work and the site conditions and to have thoroughly familiarized themselves with all pertinent conditions before delivery of their Tender.

INSTRUCTIONS TO BIDDERS

1. TENDER DOCUMENTS

1. The following documents form the basis of this Tender and shall be considered by Bidders:
 - a) Instructions to Bidders
 - b) Form of Tender and any attached reference
 - c) Supplementary Conditions
 - d) Specifications
 - e) Schedules
 - f) Drawings
 - g) Appendices and Tender specific documentation
 - h) all Addenda
2. Upon receipt of Tender Documents, verify the documents are complete; notify the individual identified on the communication notice page should the documents be incomplete. Owner takes no responsibility for, and Bidders hereby release Owner from any costs, losses or damages sustained by any Bidder arising from any incomplete documents.
3. The Tender Documents for this Project are available hwdsb.bidsandtender.ca

2. PRE-QUALIFICATIONS

1. The Board has undertaken a pre-qualification process, RFPQ 2019-123SB, for categories of Contractors. Only bids received from the successful, pre-qualified Contractors will be considered.
 - a) Contractors, Category 1
 - i) Bestco Construction Ltd.
 - ii) Brouwer Construction (1981) Ltd.
 - iii) DeFaveri Group Contracting Inc.
 - iv) Garritano Bros Ltd.
 - v) GEN-PRO
 - vi) M.J. Dixon Construction Limited
 - vii) Manorcore Group Inc.
 - viii) Merit Contractors Niagara
 - ix) Pre-Eng Contracting Ltd.
 - x) Quad Pro Construction

- xi) Starfleet Construction
 - xii) STM Construction Ltd.
 - xiii) Tambro Construction Ltd.
 - xiv) Torcom Construction Inc.
 - xv) T.R. Hinan Contractors Inc.
 - xvi) TRP Construction General Contractors
2. The Board has undertaken pre-qualification processes for categories of Subcontractors listed below. The following pre-approved subcontractors is preferred by HWDSB to be carried by the Contractor, however, if they are not readily available to provide a competitive quotation, the Contractor may propose the services of a non-listed, qualified Subcontractor. HWDSB reserves the right to review the proposed Subcontractor and approve or decline the use of that Subcontractor for the work in question.
- a) Cabling Subcontractors
 - i) Ainsworth Inc. - Leslie LaRosa (leslie.larosa@ainsworth.com)
 - ii) Meti Telecommunication Installation Inc. - Tom Murphy (meti@metiinc.com)
 - iii) Ramcom Communications Inc. - Stephen Stipac (stipacs@ramcom.ca)
 - iv) Marcomm (Toronto) Inc. - Adam Lucia (adam.lucia@Telecon.ca)
 - b) AV & Projector Install Subcontractors
 - i) Stokoe Communications Group Inc. - Dave Stokoe (dstokoe@stokom.com)
 - ii) Mountain Audio - Scott Reid (scott@mountainaudio.ca)
 - iii) Ramcom Communications Inc. - Stephen Stipac (stipacs@ramcom.ca)
 - iv) 3TECH Inc. - Scott Wainwright (Scott@3tec.ca)

3. SUBMISSION REQUIREMENTS

1. Bidders shall have a vendor account with “bidsandtenders” (hwdsb.bidsandtenders.ca) and must be registered as a plan taker for this Request for Tender. If a Bidder has obtained the RFT document(s) from a third party, the onus is on the Bidder to create a vendor account and register as a plan taker for the bid opportunity. Failure to comply will result in the submission being rejected.
2. Tenders must be submitted in a sealed envelope or package and addressed and delivered to:
 - Manager of Procurement and Risk Management
 - Hamilton Wentworth District School Board
 - Main Lobby Reception Desk
 - 20 Education Court
 - Hamilton, Ontario, L9A 0B9

On Thursday, May 2, 2019 on or before 2:00:00 p.m. (local);

3. Tenders will be received only at the reception desk, on or before the closing date and time specified in the Tender or as may be otherwise provided by Addendum. It is the sole responsibility of the Bidder to ensure their Tender is received at the indicated location no later than the closing date and time. The Board's reception time clock shall be deemed to be the official indicator of local time. Any Tender received after the deadline will be rejected and returned unopened or destroyed unopened.
4. Every Tender shall be appropriately identified using the Tender submission label provided with the Tender Documents. Tenders submitted by fax, email or other telegraphic means will not be accepted.
5. If Bidders choose to submit their Tender via courier, the courier envelope/package shall have the reference number and title of Project on the outside. The Tender envelope, labeled as instructed in the instruction to bidder, must be sealed and located inside the courier envelope/package. Regardless of the method of delivery chosen, it is the Bidder's responsibility to ensure its Tender is received by the Board before the closing date and time.
6. Submit one original signed copy of the Form of Tender and all appendices as furnished by the Board, completed in full, in ink or mechanical device, with signature in longhand. Signatures shall be those of the authorized officers of the Bidder. Incorporated companies can affix their corporate seal under the hands of their authorized officers.
7. The Tender must not be restricted by any conditions or qualifications added to the Tender in the form of a covering letter or alterations to the Form of Tender and/or appendices provided; any such conditions or qualifications will render the Tender non-compliant and ineligible for acceptance.
8. Each instance of erasures, overwriting, strike-outs or white-outs must be initialed by an authorized company representative of the Bidder.
9. Prior to the submission of the Total Contract Price, all Bidders shall carefully examine the Tender Documents or the Contract Documents and fully inform themselves of the existing conditions and limitations of the Work. If there exists doubt in the Bidder's mind as to the intent of any information shown on the Tender Documents or Contract Documents, the Bidder must request clarification from the Owner representative through the process identified on the communications notice prior to submission of the Tender.
10. It is the sole responsibility of each Bidder to submit a complete Tender in accordance with these instructions, the Form of Tender, appendices, the specifications and the special provisions.
11. Any costs incurred in the preparation and submission of a Form of Tender are solely the responsibility of the Bidder.
12. Upon the closing date and time of this Tender, all Tenders submitted will be irrevocable by the Bidder and will remain open for acceptance for a minimum period of 90 days.

13. Failure to comply with the requirements of these instructions to bidders may cause a Tender to be declared invalid and such Tender may be rejected, at the sole and unfettered discretion of the Board.
14. In the event the Board office is closed due to inclement weather, or any reason, on the closing date of this bid, the closing date will be changed to the next business day. The closing time will remain the same.

4. CONTRACT SECURITY

1. TENDER SECURITY

- a) Each Bidder shall submit an original Tender Security from a licensed Canadian Surety Company authorized to do business in the Province of Ontario in the amount of ten percent (10%) of the Total Contract Price.
- b) The Tender Security shall remain in force for ninety (90) days to complete Tender acceptance, and the Tender Security shall be forfeited to the Board if the Bidder refuses to enter into the Contract for the performance of the Work if so requested by the Board during this period. Retention and use of the Tender Security, as outlined above, shall not be deemed a penalty but as consideration to the Board for inviting and considering the Tender and as part payment for sustained damages and costs incurred by the Board, which shall be deemed to be the difference between the Tender price of this Bidder and the Tender Price of the next lowest Tender acceptable to the Board.
- c) The term of the Tender Security shall be for a minimum period of ninety (90) days after the closing date set for the Tender. Any Tender security submitted with less than the ninety (90) day term shall be rejected.
- d) A Tender submitted without the required original Tender Security in the appropriate amount identified above shall be rejected.
- e) The Tender Security of the unsuccessful Bidders will be returned and/or destroyed upon the award or cancellation of the Project by the Board.

2. AGREEMENT TO BOND

- a) Each Bidder shall submit an original Agreement to Bond from a licensed Canadian Surety Company authorized to do business in the Province of Ontario.
- b) The Agreement to Bond of the unsuccessful Bidders will be returned and or destroyed upon the award or cancellation of the Project by the Board.
- c) The Agreement to Bond shall remain in force for ninety (90) days to complete Tender acceptance.

3. PERFORMANCE BOND

- a) Each Bidder shall submit an original Performance Bond as approved by the Canadian Construction Association from a licensed Canadian Surety Company authorized to do

business in the Province of Ontario in the amount of fifty percent (50%) of the Contract Price, according to the terms and conditions acceptable to the Board and the Consultant and in the form required under the *Construction Act R.S.O. 1990, c. C.30, as amended*.

- b) The Successful Bidder shall furnish the Contract security to the Board, prior to the execution of the Contract, within ten (10) business days of being notified that its Tender has been accepted.
- c) The Bidder shall include the cost of such performance bond in the Tender Submission.
- d) The Successful Bidder shall provide to the Board such original bond with the submission of the signed Contract and shall be in accordance with the CCDC approved bond forms.

4. LABOUR AND MATERIAL PAYMENT BOND

- a) Each Bidder shall submit an original Labour and Material Payment Bond from a licensed Canadian Surety Company authorized to do business in the Province of Ontario in the amount of fifty percent (50%) of the Contract Price, stating that the Board will not be held responsible if payment to Subcontractors, as certified due by the Consultant, is not made by the Contractor when due and in the form required under the *Construction Act R.S.O. 1990, c. C.30, as amended*.
- b) The Bidder shall include the cost of such bond in the Tender Submission.
- c) The Successful Bidder shall provide to the Board such original bond with the submission of the signed Contract and shall be in accordance with the CCDC approved bond forms.
- d) The Successful Bidder shall furnish the Contract security to the Board, prior to the execution of the Contract, within ten (10) business days of being notified that its Tender has been accepted.

GENERAL INFORMATION

1. INDEMINITY AND INSURANCE

1. The Successful Bidder agrees to indemnify and save harmless the Board from all actions, suits, claims and demands, costs and damages arising by reason of injury or death to any person or any property resulting from the provision of services under this Contract.
2. The Successful Bidder must provide documentation from the Bidder's insurer, verifying the insurance coverage will be provided in accordance with the requirements of Tender Documents.

2. ADDENDA

1. The Board reserves the right at any time prior to the award of the Contract, to make changes and/or revisions that are considered altering the intent of this Tender. Any changes and/or revisions will be issued as an Addendum
2. The Board, in consultation with the Consultant, will review all questions and issue written instructions in the form of an Addendum, which will become part of the Contract Documents. All addenda must be acknowledged on the Form of Tender.
3. The closing date of the Request for Tender may be extended as deemed appropriate by the Board.
4. It is a Bidder's sole responsibility to ensure that it has accounted for all Addenda or other notices of change or alteration of the Tender in their submission and in any price proposed therein.
5. The Board shall not be liable for any expense, cost, loss or damage incurred or suffered by any Bidder as a result of the publication of an Addendum or other notice.

3. SUBSTITUTIONS

1. If a Bidder wants to suggest a substitution, they must submit the request to the Board for evaluation as per the Tender Documents and communication notice page.
2. Bidders who request substitution shall also include complete details about the substitution including specifications, modifications, and revisions to other work for each substitution to enable the Board and the Consultant to determine the acceptability of such substitution.
3. The Board at its sole and unfettered discretion reserves the right to accept or reject substitution.

4. SUB CONTRACTORS

1. Unless otherwise stipulated in this Tender or any addenda thereto, the Bidder shall indicate the names and addresses of all nominated Subcontractors that it proposes to use in the provision of services and/or Work contemplated by this Tender.
2. The Board reserves the right to reject any Subcontractor so nominated, without penalty or liability to the Board of any kind whatsoever.

3. No change shall be made to the list of nominated Subcontractors after the closing time of the Tender, without the prior written approval of the Board, and only on such terms and conditions as the Board, in the exercise of an absolute discretion, may require.
4. Any Bidder requesting the Board's consideration of a change of Subcontractor shall be responsible for all costs of the Board to review, investigate and approve if acceptable such change, including but not limited to, all of the Board's internal staff costs and all legal, financial and Consultant costs.
5. Once final approval of Subcontractors is obtained, no change will be permitted by the Successful Bidder without prior written approval by the Board and Consultant.

5. WITHDRAWAL OF TENDER

1. A Bidder may withdraw a Tender at any time prior to the closing time for the Tender, by delivering a request to that effect to the address specified for the deposit of Tenders. A withdrawal request shall be in writing on company letterhead, signed by the Bidder or authorized representative of the Bidder, received and acknowledged by the Procurement and Risk Management Department prior to the closing time.
2. Adjustments by telephone to a Tender already submitted will not be considered. A Bidder desiring to make adjustments to a Tender must withdraw the Tender and/or supersede it with a later Tender prior to the specified closing deadline.

6. ACCEPTANCE OR REJECTION

1. Tenders shall remain open to acceptance for a period of ninety (90) calendar days commencing on and including the date set for receipt of Tenders, and the Board may at any time within this period accept any of the Tenders received.
2. The Board reserves the right to accept or reject any and all Tenders and to accept any part of any one Tender. The Board may request further clarification of a Tender from the Bidder. While the Board is not obligated to consider Tenders which do not strictly comply with its requirements, it nevertheless reserves the right to do so, and specifically reserves the right to waive formalities and accept Tenders that the Board deems to be substantially compliant.
3. Notwithstanding anything herein to the contrary, if any Tender contains technical errors or omissions which the Board, in its sole and unfettered discretion deems to be minor, the said Bidder may be asked by the Board to acknowledge and/or clarify those minor technical errors or omissions prior to the award of the Contract.
4. If more than one substantially compliant Tender is received where the Total Contract Price are identical, the Bidder with the lowest overall separate prices that are accepted by the Owner will be selected. If no separate prices exist or are accepted, the Owner, in the presence of the identical Bidders, will flip a coin to determine the award.
5. No Tender shall be deemed to be accepted by the Board until the Successful Bidder receives a notice, in writing, of the acceptance and has produced the original bonding, insurance and

requirements of the Tender Documents. Upon issuance of Contract and subsequent purchase order(s), the Tender Documents shall serve as a binding Contract between the Successful Bidder and the Board.

6. The Bidders agree that in submitting a Tender, in reply to this document, that they recognize the Board as the sole arbitrator in the selection or rejection of a Bidder, and that they waive any and all rights to challenge the Board's decision in any manner before any organization or court.
7. The Board and the Consultant shall not be responsible for any liabilities, costs, expenses, loss or damage incurred, sustained or suffered by any Bidder, prior or subsequent to, or by reason of the acceptance or the non-acceptance by the Board of any Tender or by reason of any delay in the acceptance of a Tender. Tenders are subject to a formal Contract being prepared and executed.

7. EXECUTION OF A CONTRACT AND BOARD'S PURCHASE ORDER

1. The Successful Bidder shall execute a CCDC 2 2008 Stipulated Price Contract in writing with the Board within ten (10) days of being notified, in writing, by the Board, of the acceptance of the Tender. In the event that the Successful Bidder fails to execute a Contract within the said period, the Board, at its sole and unfettered discretion, may rescind the selection of that Bidder and make an offer to next lowest compliant Bidder or reject all Tenders. If a Tender Security was requested as part of the Tender and the Successful Bidder fails to execute a Contract, the Bidder may be required to forfeit their Tender Security to the Board and thereafter the Contract between such Bidder and the Board shall be forthwith terminated, forfeited and ended.
2. A purchase order accepting a Tender will be issued by the Board to the Successful Bidder following the execution of the Contract.

8. WORKER'S COMPENSATION

1. The Successful Bidder shall at all times pay, or cause to be paid, any assessment or compensation required to be paid pursuant to the Workplace Safety Insurance Board Act, and upon failure to do so, the Board may pay such assessment or compensation to the Workplace Safety Insurance Board and shall deduct or collect such expenses pursuant to the provisions of this Contract. The Successful Bidder shall, at the time of entering into the Contract with the Board, and every six months thereafter, provide a Certificate of Good Standing from the Workplace Safety Insurance Board proving that all assessment or compensations have been paid and that the Successful Bidder and any Subcontractors have complied with the requirements of the Workplace Safety Insurance Board and are in good standing with the Board.

9. HEALTH AND SAFETY REQUIREMENTS

1. Employees of the Successful Bidder shall ensure that they comply with the Occupational Health & Safety Act and Regulations for Industrial Establishments.
2. The Ministry of Education and Training and the Ministry of Health provide regulations specifying which substances/products are not acceptable. If applicable, the Successful Bidder shall supply

Material Safety Data Sheets providing the Board with the breakdown of components for any products used in Board facilities with every shipment.

10.ACCESSIBILTiy FOR ONTARIANS WITH DISABILITIES ACT (AODA)

1. Pursuant to Section 6 of Ontario Regulation 429/07 ("Regulation"), Accessibility Standards for Customer Service made under the Accessibility for Ontarians with Disabilities Act, 2005, the successful bidder shall ensure that all of its employees, agents, volunteers, or others for whom it is at law responsible, receive training about the provision of the goods and services contemplated herein to persons with disabilities. Such training shall be provided in accordance with Section 6 of the Regulation and shall include, without limitation, a review of the purposes of the Act and the requirements of the Regulation, as well as instruction regarding all matters set out in Section 6 of the Regulation. Where requested by the Board, the successful bidder shall provide written proof that all employees have been trained as required under the act as well as any documentation regarding training policies, practices and procedures.

11.RESERVED RIGHTS OF THE BOARD

1. The Board shall have the following reserved rights and privileges, which may be exercised or waived in its absolute discretion:
 - a) Make public the names of any or all Bidders;
 - b) Request written clarification or the submission of supplementary written information from any Bidder and incorporate such clarification or supplementary written information into the Bidder's Tender, at the Board's discretion, provided that clarification or submission of supplementary written information shall not be an opportunity for the Bidder to correct errors in its Tender or to change or enhance the Bidder's Tender in any material manner;
 - c) Disqualify any Bidder whose Tender contains misrepresentations or any other inaccurate or misleading information, or whose Tender is determined to be non-compliant with the requirements of the Request for Tender;
 - d) The Board may reject any Tender, the lowest priced Tender or all Tenders, or may cancel the Tender and require the submission of new Tenders for any reason within its absolute discretion
2. The Board reserves the right to accept any Tender that best meets the overall needs of the Board, and is not obligated to accept a Tender with the lowest price.
3. The Board may reject any Tender submitted by a Bidder or cancel the Contract awarded to that Bidder without penalty, where any information provided by the Bidder in its Tender or as part of any competitive process is determined to be false or otherwise misleading in any material respect.
4. The Board reserves the right not to proceed with a Tender in its entirety or to proceed with only part of it without any obligation or liability to any Bidder.

5. The Board reserves the right to cancel this Request For Tender process at any stage and issue a new Request For Tender for the same or similar requirements, including where:
 - a) the Board determines it would be in the best interest of the Board not to award a Contract;
 - b) the Tender prices exceed the Tender prices received by the Board for previously supplied similar Work;
 - c) the Tender prices exceed the funds available for the Work; or
 - d) the funding for Work has been revoked, modified, or has not been approved;
 - e) and where the Board cancels this Tender, the Board may do so without providing reasons, and the Board may thereafter issue a new Request for Tender, request for qualifications, sole source or do nothing; make changes, including substantial changes, to this Request For Tender provided that those changes are issued by way of addenda in the manner set out in this Request For Tender;
 - f) accept or reject a Tender if only one Tender is submitted;
 - g) select any Bidder other than the Bidder whose Tender reflects the lowest cost to the Board;

12.CONFIDENTIALITY

1. Hamilton-Wentworth District School Board is governed by the Municipal Freedom of Information and Protection of Privacy Act, R.S.O. 1990, c. M.56 (“MFIPPA”). By submitting a Tender, including any personal information requested in the RFT, Bidders agree to the use of that information by HWDSB for the evaluation process, for any audit of this procurement process, and for contract management purposes.
2. Once submitted to the Board, information you provide in your Tender is subject to MFIPPA and, in the event of a Freedom of Information (FOI) access request, must be disclosed. Bidders are permitted to specifically identify any protected confidential information in their Tender. Pursuant to Section 10 of MFIPPA, Third Party Information, protected confidential information consists of information that reveals a trade secret or scientific, technical, commercial, financial, proprietary or similar confidential information that, if disclosed, could reasonably be expected to cause the Bidder harm. Complete Tenders are not to be identified as confidential. In the event that HWDSB receives a request for access to all or part of a Tender, HWDSB will deliver the relevant notice to the affected Bidder pursuant to MFIPPA Section 21.
3. If Bidders have any questions in this regard, please consult HWDSB’s Privacy Officer at 905-527-5092 x2303

13.CONFIDENTIAL INFORMATION OF THE BOARD

1. All information provided by or obtained from the Board in any form in connection with this Request for Tender either before or after the issuance of this Request for Tender:
 - a) is the sole property of the Board and must be treated as confidential;

- b) is not to be used for any purpose other than replying to this Request for Tender and the performance of the Contract;
- c) must not be disclosed without prior written authorization from the Board; and
- d) shall be returned by the Bidders to the Board immediately upon the request of the Board.

14.RECORD AND REPUTATION

1. Without limiting or restricting any other right or privilege of the Board, and regardless of whether or not a Tender or Bidder otherwise satisfies the requirements of a RFT, the Board may reject summarily a Tender from any person where:
 - a) the commercial relationship between the Board and the Bidder has been impaired by the prior and/or current act(s), or omission(s) of such Bidder;
 - b) the Bidder is or has been engaged, either directly or indirectly, in a legal action against the Board, its elected or appointed officials and/or employees in relation to
 - (i) any contract or service; or
 - (ii) any matter arising from the Board's exercise of its powers, duties or functions.
2. The Bidder who has breached any applicable laws or who has engaged in conduct prohibited by this Request for Tender, including where there is any evidence that the Bidder or any of its employees or agents colluded with any other Bidder, its employees or agents in the preparation of the Tender;
3. The Bidder has, or the principals of a Bidder have, previously breached a contract with the Board, or has otherwise failed to perform such Contract to the reasonable satisfaction of the Board, the Bidder has been charged or convicted of an offence in respect of a contract with the Board, or the Bidder reveals a conflict of interest or unfair advantage in its Tender or a conflict of interest or evidence of any unfair advantage is brought to the attention of the Board;
4. In determining whether or not to reject;
 - a) In determining whether or not to reject a Tender under this section, the Board may consider whether the litigation is likely to affect the Bidder's ability to work with the Board, and/or whether the Board's experience with the Bidder indicates that the Board is likely to incur increased staff and legal costs in the administration of the Contract if it is awarded to the Bidder.
 - b) For the purposes of subsection (1), the prior acts or omissions of a Bidder shall also include the prior acts or omissions of: an officer, a director, a majority or controlling shareholder, or a member of the Bidder, if a corporation; a partner of the Bidder, if a partnership; any corporation to which the Bidder is an affiliate of or successor to, or an officer, a director or a majority or controlling shareholder of such corporation; and any person with whom that the Bidder is not at arm's length within the meaning of the Income Tax Act (Canada).

15.VENDOR PERFORMANCE EVALUATION

1. By submitting a Tender in respect of these Contracts, the Bidder understands that the Board may use a vendor performance evaluation method and that their performance will be documented, held on file, and updated as appropriate. This evaluation will be available for review with the Contractor, and recommendations will be put forward as to the Contractor's overall suitability of future Board Projects.

16.TENDER PROTEST PROCEDURE

1. In the event that a Bidder wishes to review the decision of the Board in respect of any material aspect of the Request for Tender process, the Bidder shall submit a protest in writing to the Board to the attention of the Manager of Procurement and Risk Management Services within ten (10) days of the closing date of the Tender.
2. Any protest in writing shall include the following:
 - a) a specific identification of the provision and/or procurement procedure that is alleged to have been breached;
 - b) a specific description of each act alleged to have breached the procurement process;
 - c) a precise statement of the relevant facts;
 - d) an identification of the issues to be resolved;
 - e) the Bidder's arguments and supporting documentation;
 - f) the Bidder's requested remedy.

17.ENTITLEMENT TO A DEBRIEFING

1. In accordance with the Broader Public Sector Procurement Directive, unsuccessful Bidders are entitled to a debriefing, during which they will be provided with feedback regarding their submission. In order to be debriefed, unsuccessful Bidders must contact the Owner representative identified on the communications notice page in writing to request a debriefing within sixty (60) days from the date of the notification of award.

18.INVOICING

1. The Successful Bidder shall comply to the following invoicing instructions;
 - a) All taxes are extra and shall be shown separately on each invoice in accordance with Canadian and Provincial Government regulations.
 - b) All invoices shall clearly indicate HST registration number, purchase order number, project number description of Project, location and project supervisor name.
 - c) Complete an invoice package which includes the following;
 - (i) Clearly identified invoice as described in 18. (1) b).

- (ii) Consultant certification of payment
 - (iii) Valid WSIB certificate
 - (iv) Original Statutory Declaration
- d) A complete original hard copy invoice package is to be sent to the assigned project supervisor for approval and a digital copy of the complete invoice package is to be sent to ap@hwdsb.on.ca
2. The Board intends to pay all invoices via electronic funds transfer (EFT) and the payment terms of an approved complete invoice package is net 30. If not already set up to receive EFT payments from the Board, contact Procurement and Risk Management Services at purchasing@hwdsb.on.ca requesting EFT setup documentation.

FORM OF TENDER

From (Bidder): _____
Company Name

Street Address

City, Province and postal code

Phone Number

Email Address

To (Owner): Hamilton- Wentworth District School Board
20 Education Court
Hamilton, Ontario L9A 0B9

We, the undersigned, having examined the Tender Documents for the above-named Project, including Addendum number(s) _____, and having visited the Place of the Work, hereby offer to perform the Work in accordance with the Tender Documents, for the Stipulated Price of:

\$ _____
Amount in figures

Above price is

- a) in Canadian dollars,
- b) excluding Value Added Taxes
- c) includes all identified cash allowance(s) in the amount of \$ 80,000.00

We, the undersigned, declare that:

- a) We have arrived at the Tender without collusion with any competitor,
- b) All Form of Tender supplements called for by the Tender Documents from an integral part of this Tender,

Signature:

LEGAL NAME OF BIDDER

DATE

AUTHORIZED SIGNATURE OF BIDDER & TITLE
I have the authority to bind the Bidder

PRINTED NAME



APPENDIX A - ALTERNATIVE PRICES AND/OR ITEMIZED PRICING

Bidders must submit to the Board at the time of closing, with the Form of Tender, this completed Form of Alternative Prices and/or Itemized Pricing.

Alternative Prices

THIS SECTION INTENTIONALLY LEFT BLANK.

Itemized Prices

THIS SECTION INTENTIONALLY LEFT BLANK.

We, the undersigned, declare that:

- a) We have arrived at the Tender without collusion with any competitor,
- b) All Form of Tender supplements called for by the Tender Documents from an integral part of this Tender,

Signature:

LEGAL NAME OF BIDDER

DATE

AUTHORIZED SIGNATURE OF BIDDER & TITLE
I have the authority to bind the Bidder

PRINTED NAME

APPENDIX B - LIST OF SUBCONTRACTORS

Bidders must submit to the Board at the time of closing, with the Form of Tender, this completed appendix B. The Bidder shall make an entry against each possible sub-trade listed either by naming the proposed Subcontractor, not applicable or by entering "by own forces", whichever applies. No blank spaces are to be left.

<u>SUBTRADE</u>	<u>PROPOSED SUBCONTRACTOR</u>
Balancing	_____
Concrete Work	_____
Controls	_____
Data Cabling	_____
Demolition	_____
Door Hardware	_____
Electrical	_____
Elevator	_____
Excavation and Backfilling	_____
Fencing	_____
Fire Alarm	_____
Flooring	_____
Flooring (Gym Sports Flooring)	_____
Gym Divider Curtain	_____
Gym Equipment	_____
Landscaping	_____
Masonry	_____
Mechanical	_____
Metal Fabrication	_____
Painting	_____
Paving	_____
Roofing	_____

SUBTRADE

Rough Carpentry

Security

Structural Steel

Utilities and Site Services

Vertical Platform Lift

Waterproofing

PROPOSED SUBCONTRACTOR

SUBMISSION LABEL

IMPORTANT: This envelope template will be used for returning Submissions

From: _____

Contact: _____

Telephone: _____

Deliver to: Manager of Procurement and Risk Management
Hamilton-Wentworth District School Board
20 Education Court
Hamilton, ON L9A 0B9
Main Lobby Reception Desk
Tender Box

Sealed Document for:

Reference No.: RFT 2019-131-P00944

Description: A.M. Cunningham New Gym Addition

Closing Date and Time: Thursday, May 2, 2019 on or before 2:00:00 p.m.

FOR OFFICE USE ONLY
Place Time Stamp Label Here

SUPPLEMENTARY CONDITIONS

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

AGREEMENT BETWEEN OWNER AND CONTRACTOR

ARTICLE A-3 – CONTRACT DOCUMENTS

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

- Supplementary General Conditions
- Schedules to Contract
- *Drawings*
- *Specifications*
- Performance Bond
- Labour and Material Payment Bond

ARTICLE A-5 – PAYMENT

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

5.3.1 Delete paragraph 5.3.1 in its entirety and replace it with the following:

5.3 Interest

- .1 Should either party fail to make payments as they become due under the terms of the Contract or in an award by arbitration or court, interest shall also become due and payable on such unpaid amounts at 1.5% above the prime rate. Such interest shall be compounded on a monthly basis. The prime rate shall be the rate of interest quoted by the Bank of Canada for prime business loans, as it may change from time to time.

ARTICLE A-9 – CONFLICT OF INTEREST

Add new Article A-9 – Conflict of Interest:

- 9.1 The *Contractor*, all of the *Subcontractors* and *Suppliers* and any of their respective advisors, partners, directors, officers, employees, agents, and volunteers shall not engage in any activity or provide any services where such activity or the provision of such services creates a conflict of interest (actually or potentially, in the sole opinion of the

Owner) with the provision of the *Work* pursuant to the *Contract*. The *Contractor* acknowledges and agrees that a conflict of interest, as described in this Article A-9, includes, but is not limited to, the use of *Confidential Information* where the *Owner* has not specifically authorized such use.

- 9.2 The *Contractor* shall disclose to the *Owner*, in writing, without delay, any actual or potential situation that may be reasonably interpreted as either a conflict of interest or a potential conflict of interest, including the retention of any *Subcontractor* or *Supplier* that is directly or indirectly affiliated with or related to the *Contractor*.

- 9.3 The *Contractor* covenants and agrees that it will not hire or retain the services of any employee or previous employee of the *Owner* where to do so constitutes a breach by such employee or previous employee of the *Owner's* conflict of interest policy, as it may be amended from time to time, until after completion of the *Work* under the *Contract*.

- 9.4 It is of the essence of the *Contract* that the *Owner* shall not have direct or indirect liability to any *Subcontractor* or *Supplier*, and that the *Owner* relies on the maintenance of an arm's-length relationship between the *Contractor* and its *Subcontractors* and *Suppliers*. Consistent with this fundamental term of the *Contract*, the *Contractor* will not enter into any agreement or understanding with any *Subcontractor* or *Supplier*, whether as part of any contract or any written or oral collateral agreement, pursuant to which the parties thereto agree to cooperate in the presentation of a claim for payment against the *Owner*, directly or through the *Contractor*, where such claim is, in whole or in part, in respect of a disputed claim by the *Subcontractor* or *Supplier* against the *Contractor*, where the payment to the *Subcontractor* or *Supplier* by the *Contractor* is agreed to be conditional or contingent on the ability to recover those amounts or a portion thereof from the *Owner*, failing which the *Contractor* shall be saved harmless from all or a portion of those claims. The *Contractor* acknowledges that any such agreement would undermine the required arm's-length relationship and constitute a conflict of interest. For greater certainty, the *Contractor* shall only be entitled to advance claims against the *Owner* for amounts pertaining to *Subcontractor* or *Supplier* claims where the *Contractor* has actually paid or unconditionally acknowledged liability for those claims or where those claims are the subject of litigation or binding arbitration between the *Subcontractor* or *Supplier* and the *Contractor* has been found liable for those claims.

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

DEFINITIONS

Add the following new definitions:

27. Confidential Information

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

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

28. Construction Schedule

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

29. Force Majeure

Force Majeure means any cause, beyond the *Contractor's* control, other than bankruptcy or insolvency, which prevents the performance by the *Contractor* of any of its obligations under the *Contract* and the event of *Force Majeure* was not caused by the *Contractor's* default or active commission or omission and could not be avoided or mitigated by the exercise of reasonable effort or foresight by the *Contractor*. *Force Majeure* includes *Labour Disputes*, fire, unusual delay by common carriers or unavoidable casualties, civil disturbance, acts, orders, legislation, regulations or directives of any government or other public authority, acts of a public enemy, war, riot, sabotage, blockage, embargo, lightning, earthquake, or acts of God.

30. Install

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

31. **Labour Dispute**

Labour Dispute means any lawful or unlawful labour problems, work stoppage, labour disruption, strike, job action, slow down, lock-outs, picketing, refusal to work or continue to work, refusal to supply materials, cessation or work or other labour controversy which does, or might, affect the *Work*.

32. **Overhead**

Overhead means all site and head office operations and facilities, all site and head office administration and supervision; all duties and taxes for permits and licenses required by the authorities having jurisdiction at the *Place of the Work*; all requirements of Division 1, including but not limited to submittals, warranty, quality control, insurance and bonding; calculations, testing and inspections; meals and accommodations; and, tools, expendables and clean-up costs.

33. **Request for Information/RFI**

Request for Information or *RFI* means written documentation sent by the *Contractor* to the *Owner* or to the *Owner's* representative or the *Consultant* requesting written clarification(s) and/or interpretation(s) of the *Drawings* and/or *Specifications*, *Contract* requirements and/or other pertinent information required to complete the *Work* of the *Contract* without applying for a change or changes to the *Work*.

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

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

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

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

GENERAL CONDITIONS OF THE STIPULATED PRICE CONTRACT

1.1 Where a General Condition or paragraph of the General Conditions of the *Contract* is deleted by these amendments, the numbering of the remaining General Conditions or paragraphs shall remain unchanged, unless stated otherwise herein, and the numbering of the deleted item will be retained, unused.

GC 1.1 CONTRACT DOCUMENTS

.1 Add the following to the end of paragraph 1.1.6:

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

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

- .2 Amend paragraph 1.1.7.1 by adding “Amendments to CCDC 2 – 2008” before “the Agreement between the Owner and the Contractor” and deleting the reference to “Supplementary Conditions”.
- .3 Add new paragraphs 1.1.7.5, 1.1.7.6, 1.1.7.7, 1.1.7.8, 1.1.7.9 and 1.1.7.10 as follows:
 - 1.1.7.5 noted materials and annotations on the *Drawings* shall govern over the graphic representation of the *Drawings*.
 - 1.1.7.6 finishes in the room finish schedules shall govern over those shown on the *Drawings*.
 - 1.1.7.7 Schedules of Division 01 – General Requirements of the *Specifications* shall form part of and be read in conjunction with the technical specification section as listed in the table of contents of the *Specifications*.
 - 1.1.7.8 architectural drawings shall have precedence over structural, plumbing, mechanical, electrical and landscape drawings insofar as outlining, determining and interpreting conflicts over the required design intent of all architectural layouts and architectural elements of construction, it being understood that the integrity and installation of the systems designed by the *Consultant* or its sub-*Consultants* are to remain with each of the applicable drawing disciplines.
 - 1.1.7.9 fixturing drawings provided by the *Owner*, *if any*, shall have precedence over architectural drawings insofar as outlining, determining and interpreting conflicts over the required design intent of all architectural layouts.
 - 1.1.7.10 should reference standards contained in the *Specifications* conflict with the *Specifications*, the *Specifications* shall govern. Should reference

standards and *Specifications* conflict with each other or if certain requirements of the *Specifications* conflict with other requirements of the *Specifications*, the more stringent requirements shall govern.

- .4 Delete paragraph 1.1.8 in its entirety and substitute as follows:
 - 1.1.8 The *Consultant*, on behalf of the *Owner* shall provide the *Contractor* without charge, three (3) copies of the *Contract Documents*, exclusive of those required by jurisdictional authorities and the executed *Contract Documents*. Additional copies can be purchased by the *Contractor* at the *Consultant's* cost of reproduction, handling and sales tax.
- .5 Add new paragraph 1.1.11 as follows:
 - 1.1.11 The *Contract Documents* shall be signed in triplicate (3) by the *Owner* and the *Contractor*, and each of the *Contractor*, the *Owner* and the *Consultant* shall retain one set of signed and sealed (if required by the governing law of the *Contract*) *Contract Documents*.

GC 1.3 RIGHTS AND REMEDIES

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

“Except with respect to the requirements set out in paragraphs 2.2.13, 6.4.1, 6.5.4, 6.6.1 and 8.2.2, no...”

GC 1.4 ASSIGNMENT

- .1 Delete paragraph 1.4.1 in its entirety and replace with the following:
 - 1.4.1 The *Contractor* shall not assign the *Contract*, or any portion thereof, without the prior written consent of the *Owner*, which consent may be unreasonably withheld. The *Owner* shall be entitled to assign the *Contract* to a corporation, partnership or other entity (the “Assignee”). Upon the assumption by the Assignee of the *Owner's* obligations under the *Contract*, the *Owner* shall be released from its obligations under the *Contract*.

GC 1.5 EXAMINATION OF DOCUMENTS AND SITE

- .1 Add new GC 1.5 – EXAMINATION OF DOCUMENTS AND SITE as follows:
 - 1.5.1 The *Contractor* declares and represents that in tendering for the *Work*, and in entering into a *Contract* with the *Owner* for the performance of the *Work*, it has either investigated for itself the character of the *Work* to be done and all local conditions, including the location of any utility which can be determined from the records or other information available at the offices of any person, partnership, corporation, including a municipal corporation and any board or commission thereof having jurisdiction or

control over the utility that might affect its tender or its acceptance of the *Work*, or that, not having so investigated, the *Contractor* has assumed and does hereby assume all risk of conditions now existing or arising in the course of the *Work* which might or could make the *Work*, or any items thereof more expensive in character, or more onerous to fulfil, than was contemplated or known when the tender was made or the *Contract* signed.

- 1.5.2 The *Contractor* also declares that in tendering for the *Work* and in entering into this *Contract*, the *Contractor* did not and does not rely upon information furnished by the *Owner* or any of its agents or servants respecting the nature or confirmation of the ground at the site of the *Work*, or the location, character, quality or quantity of the materials to be removed or to be employed in the construction of *Work*, or the character of the construction machinery and equipment or facilities needed to perform the *Work*, or the general and local performance of the work under the *Contract* and expressly waives and releases the *Owner* from all claims with respect to the said information with respect to the *Work*.

GC 1.6 TIME IS OF THE ESSENCE OF THE CONTRACT

- .1 Add new GC 1.6 - TIME IS OF THE ESSENCE OF THE CONTRACT as follows:
 - 1.6.1 All time limits stated in the *Contract Documents* are of the essence of the *Contract*.

GC 2.2 ROLE OF THE CONSULTANT

- .1 Delete the words “Except with respect to GC 5.1 – FINANCING INFORMATION REQUIRED OF THE OWNER” in paragraph 2.2.7.
- .2 Amend paragraph 2.2.13 by the addition of the following to the end of that paragraph:

If, in the opinion of the *Contractor*, the *Supplemental Instruction* involves an adjustment in the *Contract Price* or in the *Contract Time*, it shall, within ten (10) *Working Days* of receipt of a *Supplemental Instruction*, provide the *Consultant* with a notice in writing to that effect. Failure to provide written notification within the time stipulated in this paragraph 2.2.13 shall be deemed an acceptance of the *Supplemental Instruction* by the *Contractor*, without any adjustment in the *Contract Price* or *Contract Time*.
- .3 Add new paragraph 2.2.1.9 as follows:
 - 2.2.19 The *Consultant* or the *Owner*, acting reasonably, may from time to time require the *Contractor* to remove from the *Project* any personnel of the *Contractor*, including project managers, superintendents or *Subcontractors*. Such persons shall be replaced by the *Contractor* in a

timely fashion to the satisfaction of the *Consultant* or the *Owner*, as the case may be, at no cost to the *Owner*.

GC 2.3 REVIEW AND INSPECTION OF THE WORK

- .1 Amend paragraph 2.3.2 by adding the words “and *Owner*” after the words “*Consultant*” in the second and third lines.
- .2 Delete paragraph 2.3.3 in its entirety and replace it with the following:
 - 2.3.3 The *Contractor* shall furnish promptly two copies to the *Consultant* and one copy to the *Owner* of all certificates and inspection reports relating to the *Work*.
- .3 Insert the word “review” after the word “inspections” in the first line of paragraph 2.3.4.
- .4 In the first line after “*Consultant*”, add “or the *Owner*” in paragraph 2.3.5.
- .5 Add new paragraph 2.3.8 as follows:
 - 2.3.8 The *Consultant* will conduct periodic reviews of the *Work* in progress, to determine general conformance with the requirements of the *Contract Documents*. Such reviews, or lack thereof, shall not give rise to any claims by the *Contractor* in connection with construction means, methods, techniques, sequences and procedures, nor in connection with construction safety at the *Place of Work*, responsibility for which belongs exclusively to the *Contractor*.

GC 2.4 DEFECTIVE WORK

- .1 Amend GC 2.4.1 by inserting “, the *Owner* and/or its agent” in the first sentence following “rejected by the *Consultant*”.
- .2 Add new paragraph 2.4.1.1 as follows:
 - 2.4.1.1 The *Contractor* shall rectify, in a manner acceptable to the *Owner* and the *Consultant*, all defective work and deficiencies throughout the *Work*, whether or not they are specifically identified by the *Consultant*.
- .3 Add new paragraph 2.4.1.2 as follows:
 - 2.4.1.2 The *Contractor* shall prioritize the correction of any defective work, which, in the sole discretion of the *Owner*, adversely affects the day to day operations of the *Owner* or which, in the sole discretion of the *Consultant*, adversely affects the progress of the *Work*.
- .4 Delete paragraph 2.4.2 in its entirety and replace it with the following:
 - 2.4.2 The *Contractor* shall promptly pay the *Owner* for costs incurred by the *Owner*, the *Owner’s* own forces or the *Owner’s* other contractors, for

work destroyed or damaged or any alterations necessitated by the *Contractor's* removal, replacement or re-execution of defective work. The *Owner* may request that the *Contractor* rectify any such deficiencies to other contractors' work, at the *Contractor's* expense.

.5 Add new paragraph 2.4.4 as follows:

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

GC 3.1 CONTROL OF THE WORK

.1 Add a new paragraph 3.1.3 as follows:

3.1.3 Prior to commencing individual procurement, fabrication and construction activities, the *Contractor* shall verify at the *Place of the Work*, all relevant measurements and levels necessary for proper and complete fabrication, assembly and installation of the *Work* and shall further carefully compare such field measurements and conditions with the requirements of the *Contract Documents*. Where dimensions are not included or exact locations are not apparent, the *Contractor* shall immediately notify the *Consultant* in writing and obtain written instructions from the *Consultant* before proceedings with any part of the affected *Work*.

.2 Add a new paragraph 3.1.4 as follows:

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

GC 3.2 CONSTRUCTION BY OWNER OR OTHER CONTRACTORS

.1 Delete paragraph 3.2.2.1 in its entirety.

.2 Delete paragraph 3.2.2.2 in its entirety.

.3 Delete paragraph 3.2.2.3 in its entirety.

.4 Delete paragraph 3.2.2.4 in its entirety.

.5 Delete paragraph 3.2.3.2 and replace it with the following:

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

.6 Add new paragraph 3.2.3.4 as follows:

3.2.3.4 Subject to GC 9.4 CONSTRUCTION SAFETY, for the *Owner’s* own forces and for other contractors, assume overall responsibility for compliance with all aspects of the applicable health and safety legislation in force at the *Place of the Work*, including all of the responsibilities of the “constructor”, pursuant to the *Occupational Health and Safety Act* (Ontario).

GC 3.4 DOCUMENT REVIEW

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

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

.2 Add new paragraph 3.4.2. as follows:

3.4.2 If, at any time, the *Contractor* finds errors, inconsistencies, or omissions in the *Contract Documents* or has any doubt as to the meaning or intent of any part thereof, including laying out of the *Work*, the *Contractor* shall immediately notify the *Consultant*, and request instructions, a *Supplemental Instruction*, *Change Order*, or *Change Directive*, as the case may require, and the *Contractor* shall not proceed with the work affected until the *Contractor* has received such instructions, a *Supplemental Instruction*, *Change Order* or *Change Directive*. Neither the *Owner* nor the

Consultant will be responsible for the consequences of any action of the *Contractor* based on oral instructions.

- .3 Add new paragraph 3.4.3 as follows:
 - 3.4.3 Errors, inconsistencies and/or omissions in the *Drawings* and/or *Specifications* which do not allow completion of the *Work* of the *Contract* shall be brought to the *Consultant’s* attention prior to the execution of the *Contract* by means of an *RFI*.

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

GC 3.5 CONSTRUCTION SCHEDULE

- .1 Delete paragraph 3.5.1 in its entirety and replace with the following:
 - 3.5.1 The *Contractor* shall:
 - .1 within twenty (20) calendar days of receiving written confirmation of the award of the *Contract*, prepare and submit to the *Owner* and the *Consultant* for their review and acceptance, a construction schedule in the format indicated below that indicates the timing of the activities of the *Work* and provides sufficient detail of the critical events and their inter-relationship to demonstrate the *Work* will be performed in conformity with the *Contract Time* and in accordance with the *Contract Documents*. Such schedule is to include a delivery schedule for *Products* whose delivery is critical to the schedule for the *Work* or are required by the *Contract* to be included in a *Products* delivery schedule. The *Contractor* shall employ construction scheduling software, being the latest version of “Microsoft Project”, that permits the progress of the *Work* to be monitored in relation to the critical path established in the schedule. The *Contractor* shall provide the schedule and any successor or revised schedules in both electronic format and hard copy. Once accepted by the *Owner* and the *Consultant*, the construction

schedule submitted by the *Contractor* shall become the baseline construction schedule; and,

- .2 provide the expertise and resources, such resources including manpower and equipment, as are necessary to maintain progress under the accepted baseline construction schedule or revised schedule accepted by the *Owner* pursuant to GC 3.5 CONSTRUCTION SCHEDULE; and,
- .3 monitor the progress of the *Work* on a weekly basis relative to the baseline construction schedule, or any revised schedule accepted by the *Owner* pursuant to GC 3.5 CONSTRUCTION SCHEDULE, update and submit to the *Consultant* and *Owner* the electronic and hard copy schedule on a monthly basis, at a minimum, or as required by the *Consultant* and advise the *Consultant* and the *Owner* weekly in writing of any variation from the baseline or slippage in the schedule; and,
- .4 subject to the provisions of GC 6.5 DELAYS, provide overtime work without change to the *Contract Price* if such work is deemed necessary to meet the schedule; and,
- .5 ensure that the *Contract Price* shall include all costs required to phase or stage the *Work*.

.2 Add new paragraph 3.5.2 as follows:

3.5.2 If, at any time, it should appear to the *Owner* or the *Consultant* that the actual progress of the *Work* is behind schedule or is likely to become behind schedule, or if the *Contractor* has given notice of such to the *Owner* or the *Consultant* pursuant to subparagraph 3.5.1.3, the *Contractor* shall, either at the request of the *Owner* or the *Consultant*, or following giving notice pursuant to subparagraph 3.5.1.3, take appropriate steps to cause the actual progress of the *Work* to conform to the schedule or minimize the resulting delay. Within five (5) calendar days of the request by the *Owner* or the *Consultant* or the notice being given pursuant to subparagraph 3.5.1.3, the *Contractor* shall produce and present to the *Owner* and the *Consultant* a plan demonstrating how the *Contractor* will achieve the recovery of the last accepted schedule.

.3 Add new paragraph 3.5.3 as follows:

3.5.3 The *Contractor* is responsible for performing the *Work* within the *Contract Time*. Any schedule submissions revised from the accepted baseline construction schedule or revised schedule accepted by the *Owner* pursuant to GC 3.5 CONSTRUCTION SCHEDULE, during

construction are not deemed to be approved extensions to the *Contract Time*. All extensions to the *Contract Time* must be made in accordance with the *Contract Documents*.

GC 3.6 SUPERVISION

- .1 Delete paragraph 3.6.1 in its entirety and replace with the following:
 - 3.6.1 The *Contractor* shall employ a competent full-time superintendent, acceptable to the *Owner* and *Consultant*, who shall be in full time attendance at the *Place of Work* while the *Work* is being performed. The superintendent shall not be changed by the *Contractor* without valid reason which shall be provided in writing and shall not be changed without prior consultation with and agreement by the *Owner* and the *Consultant*. The *Contractor* shall replace the superintendent within 7 *Working Days* of the *Owner's* written notification, if the superintendent's performance is not acceptable to the *Owner*. The *Contractor* shall provide the *Owner* and the *Consultant* with the names, addresses and telephone numbers of the superintendent referred to in this paragraph 3.6.1 and other responsible persons who may be contacted for emergency and other reasons during non-working hours.

- .2 Delete paragraph 3.6.2 in its entirety and replace with the following:
 - 3.6.2 The superintendent, and any project manager appointed by the *Contractor*, shall represent the *Contractor* at the *Place of Work* and shall have full authority to act on written instructions given by the *Consultant* and/or the *Owner*. Instructions given to the superintendent or the project manager shall be deemed to have been given to the *Contractor* and both the superintendent and any project manager shall have full authority to act on behalf of the *Contractor* and bind the *Contractor* in matters related to the *Contract*.

- .3 Add new paragraph 3.6.3 as follows:
 - 3.6.3 The *Owner* may, at any time during the course of the *Work*, request the replacement of the appointed representative(s). Immediately upon receipt of the request, the *Contractor* shall make arrangements to appoint an acceptable replacement, which is approved by the *Owner*.

- .4 Add new paragraph 3.6.4 as follows:
 - 3.6.4 The supervisory staff assigned to the *Project* shall also be fully competent to implement efficiently all requirements for scheduling, coordination, field engineering, reviews, inspections and submittals defined in the *Specifications*, and have minimum 5 years documented "Superintendent/Project Management" experience.

- .5 Add new paragraph 3.6.5 as follows:
 - 3.6.5 The *Consultant and Owner* shall reserve the right to review the record of experience and credentials of supervisory staff assigned to the *Project* prior to commencement of the *Work*.
- .6 Add new paragraph 3.6.6 as follows:
 - 3.6.6 A superintendent assigned to the *Work* shall be “Gold Seal Certified” as per the Canadian Construction Association; or a superintendent that can demonstrate the requisite experience and success related to the *Project* to the sole satisfaction of the *Owner*.

GC 3.7 SUBCONTRACTORS AND SUPPLIERS

- .1 In paragraph 3.7.1.1 add to the end of the second line “including any warranties and service agreements which extend beyond the term of the *Contract*.”
- .2 In subparagraph 3.7.1.2 after the words “the *Contract Documents*” insert the words “including any required surety bonding”.
- .3 Delete paragraph 3.7.2 in its entirety and replace with the following:
 - 3.7.2 Substitution of any *Subcontractor* and/or *Suppliers* after submission of the *Contractor’s* bid will not be accepted unless a valid reason is given in writing to and approved by the *Owner*, whose approval may be arbitrarily withheld. The reason for substitution must be provided to the *Owner* and to the original *Subcontractor* and/or *Supplier* and the *Subcontractor* and/or *Supplier* shall be given the opportunity to reply to the *Contractor* and *Owner*. The *Contractor* shall be fully aware of the capability of each *Subcontractor* and/or *Supplier* included in its bid, including but not limited to technical ability, financial stability and ability to maintain the proposed construction schedule.
- .4 Change the word “shall” to “may” in the second line of paragraph 3.7.4.
- .5 Add new paragraph 3.7.7 as follows:
 - 3.7.7 Where provided in the *Contract*, the *Owner* may assign to the *Contractor*, and the *Contractor* agrees to accept, any contract procured by the *Owner* for *Work* or services required on the *Project* that has been pre-tendered or pre-negotiated by the *Owner*, and upon such assignment, the *Owner* shall have no further liability to any party for such contract.
- .6 Add new paragraph 3.7.8 as follows:
 - 3.7.8 The *Contractor* covenants that each subcontract or supply contract which the *Contractor* enters into for the purpose of performing the *Work* shall expressly provide for the assignment thereof to the *Owner* (at the option

of the *Owner*) and the assumption by the *Owner* of the obligations of the *Contractor* thereunder, upon the termination of the *Contract* and upon written notice by the *Owner* to the other parties to such subcontracts or supply contracts, without the imposition of further terms or conditions; provided, however, that until the *Owner* has given such notice, nothing herein contained shall be deemed to create any contractual or other liability upon the *Owner* for the performance of obligations under such subcontracts or supply contracts and the *Contractor* shall be fully responsible for all of its obligations and liabilities (if any) under such subcontracts and supply contracts.

GC 3.8 LABOUR AND PRODUCTS

- .1 Delete paragraph 3.8.2 and substitute with the following:
 - 3.8.2 *Products* provided shall be new and shall conform to all current applicable specifications of the Canadian Standards Association, Canadian Standards Board or General Standards Board, ASTM, Ontario Building Code, Ontario Fire Code, fire safety standards, and all governmental authorities and regulatory agencies having jurisdiction at the *Place of the Work*, unless otherwise specified. *Products* which are not specified shall be of a quality consistent with those specified and their use acceptable to the *Consultant*. *Products* brought on to the *Place of the Work* by the *Contractor* shall be deemed to be the property of the *Owner*, but the *Owner* shall be under no liability for loss thereof or damage thereto arising from any cause whatsoever. The said *Products* shall be at the sole risk of the *Contractor*. Workmanship shall be, in every respect, first class and the *Work* shall be performed in accordance with the best modern industry practice.

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

- .3 Add new paragraphs 3.8.4, 3.8.5, 3.8.6, 3.8.7, 3.8.8, 3.8.9 and 3.8.10 as follows:
 - 3.8.4 Upon receipt of a written notice from the *Consultant*, the *Contractor* shall immediately dismiss, from the *Place of the Work*, workers and labourers whose *Work* is unsatisfactory to the *Consultant* or who are considered by the *Consultant* to be unskilled or otherwise objectionable.

 - 3.8.5 The *Contractor* shall cooperate with the *Owner* and its representatives and shall take all reasonable and necessary actions to maintain stable and harmonious labour relations with respect to the *Work* at the *Place of the Work*, including cooperation to attempt to avoid *Work* stoppages, trade union jurisdictional disputes and other *Labour Disputes*. Any costs arising from labour disputes shall be at the sole expense of the *Contractor*.

- 3.8.7 The cost for overtime required beyond the normal *Working Day* to complete individual construction operations of a continuous nature, such as pouring or finishing of concrete or similar work, or *Work* that the *Contractor* elects to perform at overtime rates without the *Owner* requesting it, shall not be chargeable to the *Owner*.
- 3.8.8 All manufactured *Products* which are identified by their proprietary names or by part or catalogue number in the *Specifications* shall be used by the *Contractor*. No substitutes for such specified *Products* shall be used without the written approval of the *Owner* and the *Consultant*. Substitutes will only be considered by the *Consultant* when submitted in sufficient time to permit proper review and investigation. When requesting approval for the use of substitutes, the *Contractor* shall include in its submission any proposed change in the *Contract Price*. The *Contractor* shall use all proprietary *Products* in strict accordance with the manufacturer’s directions. Where there is a choice of proprietary *Products* specified for one use, the *Contractor* may select any one of the *Products* so specified for this use.
- 3.3.9 No consideration will be given to claims by the *Contractor* of unsuitability or unavailability of any *Products*, nor to the *Contractor’s* unwillingness to use, or to produce first class work with, any *Products*, or to provide the specified warranties or guarantees.
- 3.8.10 Materials, appliances, equipment and other *Products* are sometimes specified by reference to brand names, proprietary names, trademarks or symbols. In such cases, the name of a manufacturer, distributor, *Supplier* or dealer is sometimes given to assist the *Contractor* to find a source *Supplier*. This shall not relieve the *Contractor* from its responsibility from finding its own source of supply even if the source names no longer supplies the *Product* specified. If the *Contractor* is unable to obtain the specified *Product*, the *Contractor* shall supply a substitute product equal to or better than the specified *Product*, as approved by the *Consultant* with no extra compensation. Should the *Contractor* be unable to obtain a substitute *Product* equal to or superior to the specified *Product* and the *Owner* accepts a different *Product*, the *Contract Price* shall be adjusted accordingly, as approved by the *Consultant*.

GC 3.9 DOCUMENTS AT THE SITE

- .1 Delete paragraph 3.9.1 in its entirety and substitute with the following:
 - 3.9.1 The *Contractor* shall keep one copy of the current *Contract Documents*, *Supplemental Instructions*, contemplated *Change Orders*, *Change Orders*, *Change Directives*, cash allowance disbursement authorizations,

reviewed *Shop Drawings*, submittals, reports and records of meeting at the *Place of the Work*, in good order and available to the *Owner* and *Consultant*.

GC 3.10 SHOP DRAWINGS

- .1 Delete paragraph 3.10.1 in its entirety and replace with the following:
 - 3.10.1 The *Contractor* shall provide shop drawings as described in the *Contract Documents* and as the *Consultant* may reasonably request

- .2 Delete paragraph 3.10.9 in its entirety and substitute the following:
 - 3.10.9 At the time of providing *Shop Drawings*, the *Contractor* shall advise the *Consultant* in writing of any deviations in *Shop Drawings* from the requirements of the *Contract Documents*. The *Consultant* shall indicate the acceptance of such deviation expressly in writing. Where manufacturers’ literature is submitted in lieu of scaled drawings, it shall be clearly marked in ink, to indicate the specific items for which review is requested.

- .3 Add new paragraphs 3.10.13, 3.10.14, 3.10.15, 3.10.16, 3.10.17 and 3.10.18 as follows:
 - 3.10.13 Reviewed *Shop Drawings* shall not authorize a change in the *Contract Price* and/or the *Contract Time*.

 - 3.10.14 The *Contractor* shall prepare a *Shop Drawings* schedule acceptable to the *Owner* and the *Consultant* prior to the first application for payment. A draft of the proposed *Shop Drawings* schedule shall be submitted by the *Contractor* to the *Consultant* and the *Owner* for approval. The draft *Shop Drawings* schedule shall clearly indicate the phasing of *Shop Drawings* submissions. The *Contractor* shall periodically re-submit the *Shop Drawings* schedule to correspond to changes in the construction schedule.

 - 3.10.15 Except where the parties have agreed to a different *Shop Drawings* schedule pursuant to paragraph 3.10.3, the *Contractor* shall comply with the requirements for *Shop Drawings* submissions stated in the *Specifications*.

 - 3.10.16 The *Contractor* shall not use the term “by others” on *Shop Drawings* or other submittals. The related trade, *Subcontractor* or *Supplier* shall be stated.

 - 3.10.17 Certain *Specifications* sections require the *Shop Drawings* to bear the seal and signature of a professional engineer. Such professional engineer must be registered in the jurisdiction of the *Place of the Work* and shall have expertise in the area of practice reflected in the *Shop Drawings*.

- 3.10.18 The *Consultant* will review and return *Shop Drawings* and submittals in accordance with the schedule agreed upon in paragraph 3.10.3, The *Contractor* shall allow the *Consultant* a minimum of 14 days to review *Shop Drawings* from the date of receipt. If resubmission of *Shop Drawings* is required, a further 14-day period is required for the *Consultant’s* review.

GC 3.11 USE OF THE WORK

- .1 In the second line of paragraph 3.11.1 between the words “permits” and “or” add “by direction of the *Owner* or *Consultant*”.
- .2 Add new paragraph 3.11.3 as follows:
 - 3.11.3 The *Owner* shall have the right to enter or, if compliant with the Ontario Building Code and notwithstanding 3.1.1, 3.1.2., 3.1.3 and 3.1.4, occupy the *Work* in whole or in part for the purpose of placing fittings and equipment, or for other use before *Substantial Performance of the Work*, if, in the opinion of the *Consultant*, such entry and occupation does not prevent or substantially interfere with the *Contractor* in the performance of the *Contract* within the *Contract Time*. Such entry or occupation shall neither be considered as acceptance of the *Work*, nor in any way relieve the *Contractor* from its responsibility to complete the *Contract*.

GC 3.13 CLEAN UP

- .1 At the end of the paragraph 3.13.1, add the following:

“Remove accumulated waste and debris at least once a week as a minimum or as required by the nature of the *Work*.”
- .2 In paragraph 3.13.2, in the fourth line add the word “Products” between the word “tools” and the words “*Construction Equipment*”.
- .3 In paragraph 3.13.3, in the first and second lines add the word “Products” between the word “tools” and the words “*Construction Equipment*”.
- .4 Add new paragraphs 3.13.4, 3.13.5 ,3.13.6 and 3.13.7 as follows:
 - 3.13.4 In the event that the *Contractor* fails to remove waste and debris as provided in this GC 3.13, then the *Owner* or the *Consultant* may give the *Contractor* twenty-four (24) hours written notice to meet its obligations respecting clean up. Should the *Contractor* fail to meet its obligations pursuant to this GC 3.13 within the twenty-four (24) hour period next following delivery of the notice, the *Owner* may remove such waste and debris and deduct from payments otherwise due to the *Contractor*, the *Owner’s* costs for such clean up, including a reasonable mark-up for administration costs.

- 3.13.5 The *Contractor* shall clean up waste, debris and refuse during and after construction, and maintain the site in a neat and orderly condition on a daily basis. Prior to leaving the site at the end of construction, the *Contractor* shall make good all damage to the building and its components caused by the performance of the *Work* or by any *Subcontractor* or *Supplier*. The *Contractor* shall leave the site in a clean and finished state; remove all equipment and materials; remove all paint, stains, labels, dirt, waste and debris from the *Work*; and touch up all damaged painted areas.
- 3.13.6 Without limitation to or waiver of the *Owner's* other rights and remedies, the *Owner* shall have the right to back charge to the *Contractor* the cost of damage to the site caused by transportation in and out of the site by the *Contractor*, *Subcontractors* or *Suppliers*, if not repaired before final payment.
- 3.13.7 The *Contractor* shall dispose of debris at location and in a manner acceptable to the *Owner*, and authorities having jurisdiction in the area of the *Work* and the disposal area, and cover containers with tarpaulins tied in place to prevent scattering of debris on site and during transport.

GC 3.14 CONTRACTOR STANDARD OF CARE

.1 Add a new General Condition 3.14 – CONTRACTOR STANDARD OF CARE as follows:

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

3.14.2 The *Contractor* further represents, covenants and warrants to the *Owner* that:

- .1 the personnel it assigns to the *Project* are appropriately experienced;
- .2 it has a sufficient staff of qualified and competent personnel to replace any of its appointed representatives, subject to the *Owner's* approval, in the event of death, incapacity, removal or resignation; and
- .3 there are no pending, threatened or anticipated claims, liabilities or contingent liabilities that would have a material effect on the

financial ability of the *Contractor* to perform its work under the *Contract*.

GC 3.15 OCCUPANCY OF THE WORK

.1 Add a new General Condition 3.15—OCCUPANCY OF THE WORK as follows:

3.15.1 The *Owner* reserves the right to take possession of and use for any intended purpose any portion or all of the undelivered portion of the *Project* even though the *Work* may not be substantially performed, provided that such taking possession and use will not interfere, in any material way, with the progress of the *Work*. The taking of possession or use of any such portion of the *Project* shall not be deemed to be the *Owner’s* acknowledgement or acceptance of the *Work* or the *Project*, nor shall it relieve the *Contractor* of any of its obligations under the *Contract*.

GC 4.1 CASH ALLOWANCES

.1 Delete the second sentence in paragraph 4.1.1

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

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

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

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

.4 Add new paragraph 4.1.8 as follows:

4.1.8 The *Owner* reserves the right to call, or to have the *Contractor* call, for competitive bids for portions of the *Work*, which are to be paid for from cash allowances.

.5 Add new paragraph 4.1.9 as follows:

- 4.1.9 Cash allowances cover the net cost to the *Contractor* of services, *Products*, *Construction Equipment*, freight, unloading, handling, storage, installation, provincial sales tax, and other authorized expenses incurred in performing any *Work* stipulated under the cash allowances but does not include any *Value Added Taxes* payable by the *Owner* and the *Contractor*.

GC 5.1 FINANCING INFORMATION REQUIRED OF THE OWNER

- .1 Delete paragraph 5.1.1 in its entirety.
- .2 Delete paragraph 5.1.2 in its entirety.

GC 5.2 APPLICATIONS FOR PROGRESS PAYMENT

- .1 Delete paragraph 5.2.2 in its entirety and substitute the following:

5.2.2 Applications for payment shall be dated as of the last day of each payment period, which is the last day of the month or an alternative day of the month agreed in writing by the parties. The amount claimed shall be for the value, proportionate to the amount of the *Contract*, or work performed and *Products* delivered and incorporated into the *Work* at that date. No amount claimed shall include products delivered and incorporated into the work, unless the products are free and clear of all security interests, liens and other claims of third parties.

Each application for payment, except the first, shall include a statutory declaration, in the CCDC 9A – 2001 form, up to the date of the application for payment, in a form approved by the Consultant. Each application for payment (including the first), shall also include:

- .1 A certificate, issued by the Workplace Safety and Insurance Board, or its successor, verifying that coverage is in force at the time of making the application for payment, and that coverage will remain in force for at least sixty (60) days thereafter.
- .2 A declaration by the *Contractor*, in a form approved by the *Consultant*, verifying that the performance of the *Work* is in compliance with all applicable regulatory requirements respecting environmental protection, fire safety, public safety and occupational health and safety.
- .3 A pre-approved schedule of values, supplied by the *Contractor*, for Divisions 1 through 14 and 31 through 33 inclusive of the *Work*, aggregating the total amount of the *Contract Price*.

- .4 A separate pre-approved schedule of values, supplied by each *Subcontractor*, for Divisions 21 to 28 inclusive of the *Work*, aggregating the total amount of the *Contract Price*.
 - .5 Invoices to support all claims against the cash allowance.
 - .6 An acceptable construction schedule pursuant to GC 3.5.
- .2 Delete existing paragraph 5.2.7. Add new paragraph 5.2.7 as follows:
- 5.2.7 The *Contractor* shall prepare and maintain current as-built drawings which shall consist of the *Drawings* and *Specifications* revised by the *Contractor* during the *Work*, showing changes to the *Drawings* and *Specifications*, which current as-built drawings shall be maintained by the *Contractor* and made available to the *Consultant* for review with each application for progress payment. The *Consultant* shall retain a reasonable amount for the value of the as-built drawings not presented for review. For clarity, As-Built Drawings prepared by the *Contractor* record the location of buried and concealed *Work* and Record Drawings are prepared by the *Consultant* if engaged by *Owner* to do so, to record all changes.
- .4 Add new paragraph 5.2.8 as follows:
- 5.2.8 Prior to each application for payment, the *Contractor* and the *Consultant* shall jointly review the progress of the *Work*.

GC 5.3 PROGRESS PAYMENT

- .1 In the first sentence of paragraph 5.3.1.2, amend as follows: After the words “issue to the *Owner*” delete “and copy to the *Contractor*”. After the words “after the receipt of the” add “complete”.
- .2 Delete subparagraph 5.3.1.3 in its entirety and substitute as follows:
- 5.3.1.3 The *Owner* shall make payment to the *Contractor* on account as provided in Article A-5 of the Agreement – PAYMENT no later than 30 calendar days after the date of a complete certificate of payment is issued by the *Consultant*
- .3 Add new paragraph 5.3.2 as follows:
- 5.3.2 If the *Contractor* fails to provide all documentation as required by GC 5.2 – APPLICATIONS FOR PROGRESS PAYMENT, the *Contractor* or *Owner* shall be entitled to return the application for progress payment to the *Contractor* for completion. The 10 day review period by the *Consultant* and 30 day payment period by the *Owner* will commence upon receipt of a complete application for progress payment.

.4 Add new paragraph 5.3.3 as follows:

5.3.3 Payment will be mailed to the *Contractor*. The payment date shall be the date the cheque is mailed. Delay resulting from mail shall not be used in calculating payment date.

GC 5.4 SUBSTANTIAL PERFORMANCE OF THE WORK

.1 Delete paragraph 5.4.2 in its entirety and substitute the following:

5.4.2 The *Consultant* will review the *Work* to verify the validity of the application and shall promptly, and in any event, no later than 30 calendar days after receipt of the *Contractor’s* complete deficiency list and application, the *Consultant* shall:

.1 prepare a final deficiency list incorporating all items to be completed or corrected. Each item is to have an indicated value for correction or completion. Determination of the value is defined in GC 5.10 – DEFICIENCY HOLDBACK. The final deficiency list complete with values is to be included with the *Consultant’s* draft verification and shall be reviewed with the *Owner* prior to 5.4.2.2.

.2 having completed 5.4.2.1, the *Consultant* shall:

.1 advise the *Contractor* in writing that the *Work* or the designated portion of the *Work* is not substantially performed and give reasons why, or

.2 state the date of *Substantial Performance of the Work* in a certificate and issue a copy of that certificate to each the *Owner* and the *Contractor*.

.2 Delete paragraph 5.4.3 in its entirety and substitute the following:

5.4.3 Following the issuance of the certificate of *Substantial Performance of the Work*, the following shall apply to completing the *Work*:

.1 *Contractor* is to complete the *Work* within sixty (60) calendar days.

.2 No payments will be processed between *Substantial Performance of the Work* and the completion of the *Work*.

.3 The *Owner* reserves the right to contract out any or all unfinished *Work* if it has not been completed within sixty (60) days of *Substantial Performance of the Work* without prejudice to any other right or remedy and without affecting the warranty period.

The cost of completing the *Work* shall be deducted from the *Contract Price*.

.3 Add new paragraphs 5.4.4, 5.4.5 and 5.4.6:

5.4.4 Within the time prescribed by the construction/builder’s lien legislation in force at the *Place of the Work*, or where there is no legislation or no time prescribed, within a reasonable time of receiving a copy of the certificate of *Substantial Performance of the Work* signed by the *Consultant*, the *Contractor* shall take whatever steps are required to publish or post a signed copy of the certificate, as is required by such legislation. If the *Contractor* fails to comply with this provision, the *Owner* may take the required steps pursuant to the legislation and charge the *Contractor* for any costs so incurred.

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

- .1 guarantees;
- .2 warranties;
- .3 certificates;
- .4 final testing and balancing reports, as available;
- .5 distribution system diagrams;
- .6 spare parts;
- .7 maintenance manuals, if not previously submitted to *Consultant* for review of *Work*;
- .8 samples;
- .9 reports and correspondence from authorities having jurisdiction in the *Place of the Work*;
- .10 shop drawings;
- .11 municipal inspection certificates;
- .12 marked-up as-built drawings from the construction trailer.

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

the submittals referred to in this paragraph 5.4.5 are not provided by the *Contractor*.

5.4.6 The *Contractor* shall submit full and complete digital as-built drawings to the *Consultant* within forty-five (45) days of the issuance of the certificate of *Substantial Performance of the Work* and the *Owner* shall be at liberty to withhold, from amounts otherwise payable to the *Contractor*, an amount not to exceed one (1) percent of the *Contract Price* as security for the obligation of the *Contractor* to deliver such digital as built drawings.

GC 5.5 PAYMENT OF HOLDBACK UPON SUBSTANTIAL PERFORMANCE OF THE WORK

- .1 In paragraph 5.5.1.1, add to end of sentence “, and the application by the *Contractor* shall be accompanied by:
 - .1 a certificate, issued by an agency or firm providing workplace safety insurance to the *Contractor*, verifying that coverage is in force at the time of making application for payment, and that coverage will remain in force for at least sixty (60) days thereafter; and,
 - .2 a declaration by the *Contractor*, in a form approved by the *Consultant*, verifying performance of the *Work* in compliance with all applicable regulatory requirements respecting environmental protection, fire safety, public safety and occupational health and safety.
- .2 Add new subparagraph 5.5.1.3 as follows:
 - 5.5.1.3 Submit a statement that no written notices of liens have been received by it
- .3 Amend paragraph 5.5.2 by adding the following sentence to the end of that paragraph:
 A reserve fund shall be retained by the *Owner* to secure the correction of deficiencies and/or warranty claims in an amount reasonable in the circumstances with regard to the value of the *Work*. Included in the reserve fund would be all *Consultant* and *Owner* costs related to the correction of deficiencies and/or warranty claims.
- .4 Delete paragraph 5.5.3 in its entirety.
- .5 Delete paragraph 5.5.5 in its entirety.

GC 5.6 PROGRESSIVE RELEASE OF HOLDBACK

- .1 Delete GC 5.6 in its entirety.

GC 5.7 FINAL PAYMENT

- .1 Delete paragraph 5.7.1 in its entirety and substitute as follows:

5.7.1 When the *Contractor* considers that the *Work* is completed, as defined in the lien legislation applicable to the *Place of the Work* or if such definition does not exist, in accordance with other applicable legislation, industry practice or provisions which may be agreed to between the parties, the *Contractor* shall submit an application for final payment. The *Contractor's* application for final payment shall be accompanied by any documents or materials not yet delivered pursuant to paragraph 5.4.5, together with complete and final as-built drawings and:

- .1 the *Contractor's* written request for release of the deficiency holdback, including a statement that no written notices of lien have been received by it;
- .2 a Statutory Declaration CCDC 9A-2001;
- .3 the evidence of workplace safety compliance required by GC 10.4.1.

The *Work* shall be deemed not to be completed until all of the aforementioned documents have been delivered, and the *Owner* may withhold payment in respect of the delivery of any documents in an amount determined by the *Consultant* in accordance with the provisions of GC 5.8 - WITHHOLDING OF PAYMENT.

- .2 Delete from the first line of paragraph 5.7.2 the words, "calendar days" and substitute the words "*Working Days*".
- .3 Delete from the second line of paragraph 5.7.4 the words, "5 calendar days after the issuance" and substitute the words "30 calendar days after receipt of".

GC 5.8 WITHHOLDING OF PAYMENT

- .1 Delete paragraph 5.8.1 and replace with the following:

5.8.1 If because of conditions reasonably beyond the control of the *Contractor*, there are items of work that cannot be performed, payment in full for that portion of the *Work* which has been performed as certified by the *Consultant* shall not be withheld or delayed by the *Owner* on account thereof, but the *Owner* may withhold, until the remaining portion of the *Work* is finished, only such an amount that the *Consultant* determines is sufficient and reasonable to cover the cost of performing such remaining work.

GC 5.10 DEFICIENCY HOLDBACK

- .1 Add a new General Condition 5.10 as follows:

5.10.1 Notwithstanding any provisions contained in the *Contract Documents* concerning certification and release of monies to the *Contractor*, the *Owner* reserves the right to establish a deficiency holdback, at the time of the review for *Substantial Performance*, based on a 200% dollar value of the deficiencies listed by the *Consultant*. The value of work outstanding for the calculation of *Substantial Performance of the Work* under the *Construction Lien Act* (Ontario) shall utilize the 100% dollar value. No individual deficiency will be valued at less than two hundred dollars (\$200.00). The *Owner* shall retain the entire deficiency holdback amount until completion of all of the deficiencies listed by the *Consultant* to the satisfaction of the *Consultant*.

GC 6.1 OWNER’S RIGHT TO MAKE CHANGES

.1 Add new paragraphs 6.1.3, 6.1.4, 6.1.5, 6.1.6, 6.1.7 and 6.1.8 as follows:

6.1.3 The *Contractor* agrees that changes resulting from construction coordination, including but not limited to, site surface conditions, site coordination, and *Subcontractor and Supplier* coordination are included in the *Contract Price* and the *Contractor* shall be precluded from making any claim for a change in the *Contract Price* as a result of such changes.

6.1.4 Labour costs shall be actual, prevailing rates at the *Place of the Work* paid to workers, plus statutory charges on labour including WSIB, unemployment insurance, Canada pension, vacation pay, hospitalization and medical insurance. The *Contractor* shall provide these rates, when requested by the *Consultant*, for review and/or agreement.

6.1.5 Quotations for changes to the *Work* shall be accompanied by itemized breakdowns together with detailed, substantiating quotations or cost vouchers from *Subcontractors* and *Suppliers*, submitted in a format acceptable to the *Consultant* and including any costs associated with extensions in *Contract Time*.

6.1.6 When both additions and deletions covering related *Work* or substitutions are involved in a change to the *Work*, payment, including *Overhead* and profit, shall be calculated on the basis of the net difference, if any, with respect to that change in the *Work*.

6.1.7 No extension to the *Contract Time* shall be granted for changes in the *Work* unless the *Contractor* can clearly demonstrate that such changes significantly alter the overall construction schedule submitted at the commencement of the *Work*. Extensions of *Contract Time* and all associated costs, if approved pursuant to GC 3.4.2, are to be included in the relevant *Change Order*.

6.1.8 When a change in the *Work* is proposed or required, the *Contractor* shall within 10 calendar days submit to the *Consultant* for review a claim for a change in *Contract Price* and/or *Contract Time*. Should 10 calendar days be insufficient to prepare the submission, the *Contractor* shall within 5 calendar days, advise the *Consultant* in writing of the proposed date of submission of the claim. Claims submitted after the dates prescribed herein will not be considered.

GC 6.2 CHANGE ORDER

.1 Add new paragraph 6.2.3:

The *Contractor* and/or *Subcontractor* may apply mark-ups for overhead and profit to approved changes to the *Contract Price* as follows:

ADD

.1 Combined overhead and profit mark up on *Work* performed by the General *Contractor's* own forces shall not exceed 10%.

.2 Overhead and profit shall not be charged on credits to the *Contract*. Where a change includes both credits and extras, overhead and profit shall apply only to the net extra amount.

.3 General *Contractor's* combined overhead and profit mark up on subcontract work shall not exceed 10%.

.4 Combined overhead and profit markup charged by *Subcontractors* on their own *Work*, shall not exceed 10%.

.5 Subcontractor's combined overhead and profit mark up on subcontract work shall not exceed 5%

.2 Add paragraph 6.2.4 as follows:

"Allowances for overhead and profit shall cover all of the General Contractor's and Subcontractor's administrative and incidental costs relating to a change including, without limitation, costs relating to project managers, superintendents, assistants, watchpersons and administrative personnel, shop drawing production, head office and site office expenses, worker tools, temporary facilities, bonds, insurance, transportation, record drawings, cleanup and disposal of waste materials".

.3 Add new paragraph 6.2.5 as follows:

"Any change order agreed between the parties shall include any resulting change to the Contract Price or Contract Schedule and all of the Contractor's direct or indirect costs resulting from the change order or changes to the Project. The change order shall be full compensation for the amendment to the Work, Project or Schedule. Any change order shall be deemed to be inclusive of all Contractor compensation for any impact that the change may have caused. The Contractor

shall release the Owner from any and all liability, claims, damages, losses or costs related to the change or the change order.

GC 6.3 CHANGE DIRECTIVE

- .1 Delete paragraph 6.3.3 in its entirety.
- .2 Delete and replace paragraph 6.3.6.1 with the following:
6.3.6.1 "Overhead and profit charged on Change Directive items shall be calculated as follows:
 - .1 Combined overhead and profit mark up on Work performed by the General Contractor's own forces shall not exceed 10%.
 - .2 Overhead and profit shall not be charged on credits to the Contract. Where a change includes both credits and extras, overhead and profit shall apply only to the net extra amount.
 - .3 General Contractor's combined overhead and profit mark up on subcontract work shall not exceed 10%.
 - .4 Combined overhead and profit markup charged by Subcontractors on their own Work, shall not exceed 10%.
 - .5 Subcontractor's combined overhead and profit mark up on subcontract work shall not exceed 5%.
- .3 Delete subparagraph 6.3.7.1(1) and replace it with:
"(1) carrying out work, including necessary supervisory services;"
- .4 Delete subparagraph 6.3.7.1(2) and replace it with
"(2) intentionally left blank."
- .5 Amend subparagraph 6.3.7.1(3) so that, as amended it reads:
"(3) engaged in the preparation of Shop Drawings, fabrication drawings, coordination drawings and As-built Drawings: or..."
- .6 Amend subparagraph 6.3.7.1(4) so that, as amended, it reads:
"(4) including clerical staff engaged in processing changes in the Work."

GC 6.4 CONCEALED OR UNKNOWN CONDITIONS

- .1 Delete paragraph 6.4.1 and replace with the following:

6.4.1.1 Prior to the submission of the bid on which the *Contract* was awarded, the *Contractor* confirms that it carefully investigated the *Place of the Work* and carried out such tests and due diligence as it deemed appropriate and, in doing so, applied to that investigation the degree of care and skill required by paragraph 3.14.1.

6.4.1.2 The *Contractor* is deemed to assume all risk of conditions or circumstances now existing or arising in the course of the *Work* which could make the work more expensive or more difficult to perform than was contemplated at the time the *Contract* was executed. No claim by the *Contractor* will be considered by the *Owner* or the *Consultant* in connection with conditions which could reasonably have been ascertained by such investigation or other due diligence undertaken prior to the execution of the *Contract*.

.2 Amend paragraph 6.4.2 by adding a new first sentence as follows:

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

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

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

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

.5 Add new paragraph 6.4.5 as follows:

6.4.5 No claims for additional compensation or for an extension of *Contract Time* shall be allowed if the *Contractor* fails to give *Notice in Writing* to the *Owner* or *Consultant*, as required by paragraph 6.4.2.

GC 6.5 DELAYS

.1 Delete the words after the word “for” in the fourth line of paragraph 6.5.1, and add the words “...reasonable direct costs directly flowing from the delay, but excluding any consequential, indirect or special damages (including, without limitation, loss of profits, loss of opportunity or loss of productivity).”

- .2 Delete the words after the word “for” in the fourth line of paragraph 6.5.2, and add the words “...reasonable direct costs directly flowing from the delay, but excluding any consequential, indirect or special damages (including, without limitation, loss of profits, loss of opportunity or loss of productivity).”
- .3 Delete paragraph 6.5.3 in its entirety and replace with the following:
 - 6.5.3 If the *Contractor* is delayed in the performance of the *Work* by *Force Majeure*, then the *Contract Time* shall be extended for such reasonable time as the *Consultant* may recommend in consultation with the *Contractor*. The extension of time shall not be less than the time lost as a result of the event causing the delay, unless the *Contractor* agrees to a shorter extension. The *Contractor* shall not be entitled to payment for costs incurred by such delays unless such delays result from the actions of the *Owner*.
- .4 Delete paragraph 6.5.4 in its entirety and replace with the following:
 - 6.5.4 No extension or compensation shall be made for delay or impact on the *Work* unless notice in writing of a claim is given to the *Consultant* not later than ten (10) *Working Days* after the commencement of the delays or impact on the *Work*, provided however, that, in the case of a continuing cause of delay or impact on the *Work*, only one notice of claim shall be necessary.
- .5 Add new paragraphs 6.5.6, 6.5.7 and 6.5.8 as follows:
 - 6.5.6 If the *Contractor* is delayed in the performance of the *Work* by an act or omission of the *Contractor* or anyone directly or indirectly employed or engaged by the *Contractor*, or by any cause within the *Contractor’s* control, then the *Contract Time* may be extended for such reasonable time as the *Owner* may decide in consultation with the *Consultant* and the *Contractor*. The *Owner* shall be reimbursed by the *Contractor* for all reasonable costs incurred by the *Owner* as the result of such delay, including, but not limited to, the cost of all additional services required by the *Owner* from the *Consultant* or any sub-consultants, project managers, or others employed or engaged by the *Owner*, and in particular, the costs of the *Consultant’s* services during the period between the date of *Substantial Performance of the Work* stated in Article A-1 herein, as the same may be extended through the provision of these General Conditions, and any later or actual date of *Substantial Performance of the Work* achieved by the *Contractor*. The *Contractor* acknowledges that the *Contract Time* is a material component to the Contract since the *Owner* is required to deliver a completed school site to its stakeholders on a date specific and has relied upon the *Contract Time* as an enticement into this Contract. Reasonable costs and damages

incurred by the *Owner* as a result of the delays identified in this Contract may also include, without limitation, student and staff relocation costs and expenses, communication resources associated labour costs in dealing with *Owner's* staff relocation issues resulting from the delay and any and all other associated, consequential and reputational damages resulting therefrom.

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

6.5.8 No claim for delay shall be made and the *Contract Time* shall not be extended due to climatic conditions or arising from the *Contractor's* efforts to maintain the *Contract* schedule.

GC 6.6 CLAIMS FOR A CHANGE IN THE CONTRACT PRICE

.1 Delete GC 6.6 in its entirety.

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

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

.2 Delete paragraph 7.1.2 in its entirety and replace with the following:

7.1.2 If the *Contractor* should neglect to prosecute the *Work* properly, fails or neglects to maintain the latest schedule provided pursuant to GC 3.5, or otherwise fails to comply with the requirements of the *Contract*, and if the *Consultant* has given a written statement to the *Contractor* that sufficient cause exists to justify such action, the *Owner* may 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 five (5) *Working Days* immediately following the receipt of such notice.

- .3 Add a new subparagraph 7.1.3.4 as follows:
- 7.1.3.4 An “acceptable schedule” as referred to in subparagraph 7.1.3.2. means a schedule approved by the *Consultant* and the *Owner* wherein the default can be corrected within the balance of the *Contract Time* and shall not cause delay to any other aspect of the *Work* or the work of other contractors, and in no event shall it be deemed to give a right to extend the *Contract Time*.
- .4 In paragraph 7.1.4.1, delete sentence and replace with the following:
 Correct such default and deduct the cost, including *Owner’s* expenses, thereof from any payment then or thereafter due the *Contractor*.
- .5 In subparagraph 7.1.5.3 delete the words: “however, if such cost of finishing the *Work* is less than the unpaid balance of the *Contract Price*, the *Owner* shall pay the *Contractor* the difference;”
- .6 Delete paragraph 7.1.6 in its entirety and add new paragraphs 7.1.6, 7.1.7, 7.1.8, 7.1.9 and 7.1.10 as follows:
- 7.1.6 In addition to its right to terminate the Contract set out herein, the *Owner* may terminate this *Contract* at any time for any other reason and without cause upon giving the *Contractor* fifteen (15) *Working Days Notice in Writing* to that effect. In such event, the *Contractor* shall be entitled to be paid for all *Work* performed including reasonable profit, for loss sustained upon *Products* and *Construction Equipment*, and such other damages as the *Contractor* may have sustained as a result of the termination of the *Contract*, but in no event shall the *Contractor* be entitled to be compensated for any loss of profit on unperformed portions of the *Work*, or indirect, special, or consequential damages incurred.
- 7.1.7 The *Owner* may suspend *Work* under this *Contract* at any time for any reason and without cause upon giving the *Contractor Notice in Writing* to that effect. In such event, the *Contractor* shall be entitled to be paid for all *Work* performed to the date of suspension and be compensated for all actual costs incurred arising from the suspension, including reasonable profit, for loss sustained upon *Products* and *Construction Equipment*, and such other damages as the *Contractor* may have sustained as a result of the suspension of the *Work*, but in no event shall the *Contractor* be entitled to be compensated for any indirect, special, or consequential damages incurred. In the event that the suspension continues for more than thirty (30) calendar days, the *Contract* shall be deemed to be terminated and the provisions of paragraph 7.1.6 shall apply.

- 7.1.8 In the case of either a termination of the *Contract* or a suspension of the *Work* under GC 7.1 - OWNER'S RIGHT TO PERFORM THE WORK, TERMINATE THE CONTRACTOR'S RIGHT TO CONTINUE WITH THE WORK, SUSPEND THE WORK, OR TERMINATE THE CONTRACT or GC 7.2 - CONTRACTOR'S RIGHT TO SUSPEND THE WORK OR TERMINATE THE CONTRACT, the *Contractor* shall use its best commercial efforts to mitigate the financial consequences to the *Owner* arising out of the termination or suspension, as the case may be.
- 7.1.9 Upon the resumption of the *Work* following a suspension under GC 7.1 - OWNER'S RIGHT TO PERFORM THE WORK, TERMINATE THE CONTRACTOR'S RIGHT TO CONTINUE WITH THE WORK, SUSPEND THE WORK OR TERMINATE THE CONTRACT or GC 7.2 - CONTRACTOR'S RIGHT TO SUSPEND THE WORK OR TERMINATE THE CONTRACT, the *Contractor* will endeavour to minimize the delay and financial consequences arising out of the suspension.
- 7.1.10 The *Contractor's* obligations under the *Contract* as to quality, correction, and warranty of the *Work* performed by the *Contractor* up to the time of termination or suspension shall continue after such termination of the *Contract* or suspension of the *Work*.

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

- .1 Delete paragraph 7.2.2 in its entirety.
- .2 Delete subparagraph 7.2.3.1 in its entirety.
- .3 Delete subparagraph 7.2.3.2 in its entirety
- .4 Delete subparagraph 7.2.3.3 in its entirety.
- .5 In subparagraph 7.2.3.4, delete the words "except for GC 5.1 - FINANCING INFORMATION REQUIRED OF THE OWNER".
- .6 Renumber paragraph 7.2.5 as paragraph 7.2.6. Add a new paragraph 7.2.5 as follows:
 - 7.2.5 If the default cannot be corrected within the 5 *Working Days* specified in paragraph 7.2.4, the *Owner* shall be deemed to have cured the default if it:
 - .1 commences correction of the default within the specified time;
 - .2 provides the *Contractor* with an acceptable schedule for such correction; and,
 - .3 completes the correction in accordance with such schedule.
- .7 Delete paragraph 7.2.6 entirely and replace with the following:

7.2.6 If the *Contractor* terminates the *Contract* under the conditions described in GC 7.2 – CONTRACTOR’S RIGHT TO SUSPEND THE WORK OR TERMINATE THE CONTRACT, the *Contractor* shall be entitled to be paid for all *Work* performed to the date of termination, as determined by the *Consultant*. The *Contractor* shall also be entitled to recover the direct costs associated with termination, including the costs of demobilization and losses sustained on *Products* and *Construction Equipment*. The *Contractor* shall not be entitled to any recovery for any special, indirect or consequential losses, including loss of profit.

.8 Add new paragraphs 7.2.7, 7.2.8 and 7.2.9 as follows

7.2.7 The *Contractor* shall not be entitled to give notice of the *Owner’s* default or terminate the *Contract* in the event the *Owner* withholds certificates or payment or both in accordance with the *Contract* because of:

- (a) the *Contractor’s* failure to pay all legitimate claims promptly, or
- (b) the failure of the *Contractor* to discharge construction liens which are registered against the title to the *Place of the Work*.

7.2.8 The *Contractor’s* obligations under the *Contract* as to quality, correction and warranty of the *Work* performed by the *Contractor* up to the effective date of termination shall continue in force and shall survive termination by the *Contractor* in accordance with paragraph 7.2.4.

7.2.9 If the *Contractor* suspends the *Work* or terminates the *Contract* as provided for in GC 7.2 – CONTRACTOR’S RIGHT TO SUSPEND THE WORK OR TERMINATE THE CONTRACT, the *Contractor* shall ensure the site and the *Work* are left in a safe, secure condition as required by authorities having jurisdiction at the *Place of the Work* and the *Contract Documents*.

GC 8.1 AUTHORITY OF THE CONSULTANT

.1 Delete paragraph 8.1.3 in its entirety and substitute as follows:

8.1.3 If a dispute is not resolved promptly, the *Consultant* will give such instruction as in the *Consultant’s* opinion are necessary for the proper performance of the *Work* and to prevent delays pending settlement of the dispute. The parties shall act immediately according to such instructions, it being understood that by doing so neither party will jeopardize any claim the party may have.

GC 8.2 NEGOTIATION, MEDIATION AND ARBITRATION

.1 Amend paragraph 8.2.1 by changing part of the second line from “shall appoint a *Project Mediator*” to “may appoint a *Project Mediator*, except that such an appointment shall only be made if both the *Owner* and the *Contractor* agree.”

- .2 Amend paragraph 8.2.4 by changing part of the second line from “the parties shall request the *Project Mediator*” to “and subject to paragraph 8.2.1 the parties may request the *Project Mediator*”.
- .3 Delete paragraphs 8.2.6, 8.2.7 and 8.2.8 in their entirety.
- .4 Add new paragraph 8.2.6 as follows:
 - 8.2.6 The dispute may be finally resolved by arbitration under the Rules for Arbitration of Construction Disputes as provided in CCDC 40 in effect at the time of bid closing, provided that both the *Contractor* and the *Owner* agree. If the *Contractor* and the *Owner* agree to resolve the dispute by arbitration, the arbitration shall be conducted in the jurisdiction of the *Place of the Work*.

GC 9.1 PROTECTION OF WORK AND PROPERTY

- .1 Delete subparagraph 9.1.1.1 in its entirety and substitute the following:
 - 9.1.1.1 errors in the *Contract Documents* which the *Contractor* could not have discovered applying the standard of care described in paragraph 3.14.1;
- .2 Delete paragraph 9.1.2 in its entirety and substitute as follows:
 - 9.1.2 Before commencing any *Work*, the *Contractor* shall determine the locations of all underground or hidden utilities and structures indicated in or inferable from the *Contract Documents*, or that are inferable from an inspection of the *Place of the Work* exercising the degree of care and skill described in paragraph 3.14.1.
- .3 Add new paragraph 9.1.5 as follows:
 - 9.1.5 With respect to any damage to which paragraphs 9.1.3 or 9.1.4 apply, the *Contractor* shall neither undertake to repair or replace any damage whatsoever to the work of other contractors, or to adjoining property, nor acknowledge that the same was caused or occasioned by the *Contractor*, without first consulting the *Owner* and receiving written instructions as to the course of action to be followed from either the *Owner* or the *Consultant*. Where, however, there is danger to life, the environment, or public safety, the *Contractor* shall take such emergency action as it deems necessary to remove the danger.

GC 9.2 TOXIC AND HAZARDOUS SUBSTANCES

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

- .2 Add the following to paragraph 9.2.6, after the word “responsible” in the second line:

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

- .3 Add the following to paragraph 9.2.8, after the word “responsible” in the second line:

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

- .4 Add new paragraph 9.2.10 as follows:

9.2.10 The *Contractor*, *Subcontractors* and *Suppliers* shall not bring on to the *Place of the Work* any toxic or hazardous substances and materials except as required in order to perform the *Work*. If such toxic or hazardous substances or materials are required, storage in quantities sufficient to allow work to proceed to the end of any current work week only shall be permitted. All such toxic and hazardous materials and substances shall be handled and disposed of only in accordance with all laws and regulations that are applicable at the *Place of the Work*.

- .5 Add new paragraph 9.2.11 as follows:

9.2.11 The *Contractor* shall indemnify and hold harmless the *Owner*, its parent, subsidiaries and affiliates, the *Consultant* and their respective partners, officers, directors, agents and employees from and against any and all liabilities, costs, expenses, and claims resulting from bodily injury, including death, and damage to property of any person, corporation or other body politic, that arises from the use by the *Contractor*, *Subcontractors* and *Suppliers* of any toxic or hazardous substances or materials at the *Place of the Work*.

GC 9.4 CONSTRUCTION SAFETY

- .1 Delete paragraph 9.4.1 in its entirety and substitute as follows:

9.4.1 The *Contractor* shall be solely responsible for construction safety at the *Place of the Work* and for compliance with the rules, regulations, and practices required by the applicable construction health and safety

legislation and shall be responsible for initiating, maintaining and supervising all safety precautions and programs in connection with the performance of the *Work*.

.2 Add new paragraphs 9.4.2, 9.4.3, 9.4.4, 9.4.5, 9.4.6, 9.4.7, 9.4.8, 9.4.9, and 9.4.10 as follows:

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

- .1 the evidence of workplace safety compliance required by GC 10.4.1;
- .2 copies of the *Contractor's* insurance policies having application to the *Project* or certificates of insurance, at the option of the *Owner*;
- .3 documentation setting out the *Contractor's* in-house safety programs;
- .4 copies of any documentation or notices to be filed or delivered to the authorities having jurisdiction for the regulation of occupational health and safety at the *Place of the Work*.

9.4.3 The *Contractor* shall indemnify and save harmless the *Owner*, its agents, trustees, officers, directors, employees, consultants, successors, appointees, and assigns from and against the consequences of any and all safety infractions committed by the *Contractor* under the occupational health and safety legislation in force at the *Place of the Work* including the payment of legal fees and disbursements on a substantial indemnity basis.

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

9.4.5 If the *Owner* is of the reasonable opinion that the *Contractor* has not taken such precautions as are necessary to ensure compliance with the requirements of paragraph 9.4.1, the *Owner* may take any remedial measures which it deems necessary, including stopping the performance of all or any portion of the *Work*, and the *Owner* may use its employees, the *Contractor*, any *Subcontractor* or any other contractors to perform such remedial measures.

- 9.4.6 The *Contractor* shall file any notices or any similar document required pursuant to the *Contract* or the safety regulations in force at the *Place of the Work*. This duty of the *Contractor* will be considered to be included in the *Work* and no separate payment therefore will be made to the *Contractor*.
- 9.4.7 Unless otherwise provided in the *Contract Documents*, the *Contractor* shall develop, maintain and supervise for the duration of the *Work* a comprehensive safety program that will effectively incorporate and implement all required safety precautions. The program shall, at a minimum, respond fully to the applicable safety regulations and general construction practices for the safety of persons or property, including, without limitation, any general safety rules and regulations of the *Owner* and any workers' compensation or occupational health and safety statutes or regulations in force at the *Place of the Work*.
- 9.4.8 The *Contractor* shall provide a copy of the safety program described in paragraph 9.4.7 hereof to the *Consultant* for delivery to the *Owner* prior to the commencement of the *Work*, and shall, ensure, as far as it is reasonably practical to do so, that every employer and worker performing work in respect of the *Project* complies with such program.
- 9.4.9 The *Contractor* shall arrange regular safety meetings, and shall supply and maintain, at its own expense, at its office or other well-known place at the job site, safety equipment necessary to protect the workers and general public against accident or injury as prescribed by the authorities having jurisdiction at the *Place of the Work*, including, without limitation, articles necessary for administering first-aid to any person and an emergency procedure for the immediate removal of any injured person to a hospital or a doctor's care.
- 9.4.10 The *Contractor* shall promptly report in writing to the *Owner* and the *Consultant* all accidents of any sort arising out of or in connection with the performance of the *Work*, whether on or adjacent to the job site, giving full details and statement of witnesses. If death or serious injuries or damages are caused, the accident shall be promptly reported by the *Contractor* to the *Owner* and the *Consultant* by telephone or messenger in addition to any reporting required under the applicable safety regulations.

GC 9.5 MOULD

- .1 Delete subparagraph 9.5.3.3 and replace with the following:
 - 9.5.3.3 extend the *Contract Time* for such reasonable time as the *Consultant* may recommend in consultation with the *Contractor* and the *Owner*. If, in the

opinion of the *Consultant*, the *Contractor* has been delayed in performing the *Work* and/or has incurred additional costs under paragraph 9.5.1.2, the *Owner* shall reimburse the *Contractor* for the reasonable costs incurred as a result of the delay and as a result of taking those steps, and

GC 10.1 TAXES AND DUTIES

- .1 Amend paragraph 10.1.2 by adding the following sentence to the end of the paragraph:
 For greater certainty, the *Contractor* shall not be entitled to any mark-up for overhead or profit on any increase in such taxes and duties and the *Owner* shall not be entitled to any credit relating to mark-up for overhead or profit on any decrease in such taxes. The *Contractor* shall provide a detailed breakdown of additional taxes if requested by the *Owner* in a form satisfactory to the *Owner*.
- .2 Add new paragraph 10.1.3 as follows:
 10.1.3 Where the *Owner* is entitled to an exemption or a recovery of sales taxes, customs duties, excise taxes or *Value Added Taxes* applicable to the *Contract*, the *Contractor* shall, at the request of the *Owner*, assist with the application for any exemption, recovery or refund of all such taxes and duties and all amounts recovered or exemptions obtained shall be for the sole benefit of the *Owner*. The *Contractor* agrees to endorse over to the *Owner* any cheques received from the federal or provincial governments, or any other taxing authority, as may be required to give effect to this paragraph.

GC 10.2 LAWS, NOTICES, PERMITS, AND FEES

- .1 Amend paragraph 10.2.2 by adding the words at the end “The *Contractor* shall pay for, post, deliver and provide all required security deposits, development charges or similar levies required by the municipality, school boards or other public authorities having jurisdiction that are required to be paid at the same time as the issuance of any required permit, consent, approval or similar authorization to proceed with the *Work*.”
- .2 Amend paragraph 10.2.5 by adding the words “Subject to paragraph 3.4” at the beginning of the paragraph. Add the following to the end of the second sentence: “...and no further *Work* on the affected components of the *Contract* shall proceed until these directives have been obtained by the *Contractor* from the *Consultant*.”
- .2 Amend paragraph 10.2.6 by adding the following sentence to the end of the paragraph:
 In the event the *Owner* suffers loss or damage as a result of the *Contractor’s* failure to comply with paragraph 10.2.5 and notwithstanding any limitations described in paragraph 12.1.1, the *Contractor* agrees to indemnify and to hold harmless the *Owner* and the *Consultant* from and against any claims, demands, losses, costs, damages, actions suits or proceedings resulting from such failure by the *Contractor*.

.3 Add new paragraph 10.2.8 as follows:

10.2.8 The *Contractor* shall furnish all certificates that are required or given by the appropriate governmental authorities as evidence that the *Work* as installed conforms with the laws and regulations of authorities having jurisdiction, including certificates of compliance for the *Owner's* occupancy or partial occupancy. The certificates are to be final certificates giving complete clearance of the *Work*, in the event that such governmental authorities furnish such certificates.

GC 10.4 WORKPLACE SAFETY AND INSURANCE

.1 Delete paragraph 10.4.1 and replace with the following:

10.4.1 Prior to commencing the *Work*, and with each and every application for payment thereafter, including the *Contractor's* application for payment of the holdback amount following *Substantial Performance of the Work* and again with the *Contractor's* application for final payment, the *Contractor* shall provide evidence of compliance with workplace safety and insurance legislation in force at the *Place of the Work*, including payments due thereunder.

GC 11.1 INSURANCE

.1 Delete entirety of general condition and CCDC 41 and replace with the following:

11.1 Without restricting the generality of GC 12 – INDEMNIFICATION, the *Contractor* shall provide, maintain, and pay for the insurance coverages specified in GC 11.1 – INSURANCE. Unless otherwise stipulated, the duration of each insurance policy shall be from the date of commencement of the *Work* until the expiration of the warranty periods set out in the *Contract Documents*. Prior to commencement of the *Work* and upon the placement, renewal, amendment, or extension of all or any part of the insurance, the *Contractor* shall promptly provide the *Owner* with confirmation of coverage and, if required, a certified true copy of the policies certified by an authorized representative of the insurer together with copies of any amending endorsements.

.1 **General Liability Insurance**

General liability insurance shall be in the name of the *Contractor*, with the *Owner* and the *Consultant* named as additional insureds, with limits of not less than \$5,000,000.00 inclusive per occurrence for bodily injury, death, and damage to property, including loss of use thereof, for itself and each of its employees, *Subcontractors* and/or agents. The insurance coverage shall not be less than the insurance required by IBC Form 2100, or its

equivalent replacement, provided that IBC Form 2100 shall contain the latest edition of the relevant CCDC endorsement form. To achieve the desired limit, umbrella, or excess liability insurance may be used. All liability coverage shall be maintained for completed operations hazards from the date of *Substantial Performance of the Work*, as set out in the certificate of *Substantial Performance of the Work*, on an ongoing basis for a period of 6 years following *Substantial Performance of the Work*. Where the *Contractor* maintains a single, blanket policy, the addition of the *Owner* and the *Consultant* is limited to liability arising out of the *Project* and all operations necessary or incidental thereto. The policy shall be endorsed to provide the *Owner* with not less than 30 days' notice, in writing, in advance of any cancellation and of change or amendment restricting coverage.

.2 Automobile Liability Insurance

Automobile liability insurance in respect of licensed vehicles shall limits of not less than \$2,000,000.00 inclusive per occurrence for bodily injury, death and damage to property, covering all licensed vehicles *owned* or leased by the *Contractor*, and endorsed to provide the *Owner* with not less than 30 days' notice, in writing, in advance of any cancellation, change or amendment restricting coverage. Where the policy has been issued pursuant to a government-operated automobile insurance system, the *Contractor* shall provide the *Owner* with confirmation of automobile insurance coverage for all automobiles registered in the name of the *Contractor*.

.3 .4 Property and Boiler and Machinery Insurance

(1) Builder's Risk property insurance shall be in the name of the *Contractor* with the *Owner* and the *Consultant* named as additional insureds. The policy shall insure against all risks of direct physical loss or damage to the property insured which shall include all property included in the *Work*, whether owned by the *Contractor* or the owner or owned by others, so long as the property forms part of the *Work*. The property insured also includes all materials and supplies necessary to complete the work, whether installed in the work temporarily or permanently, in storage on the project site, or in transit to the project site, as well as temporary buildings, scaffolding, falsework forms, hoardings, excavation, site

preparation and similar work. The insurance shall be for not less than the sum of the amount of the contract price and the full value of products that are specified to be provided by the owner for incorporation into the work, if applicable, with the deductible of \$10,000.00 payable by the *Contractor*. The insurance shall include the foregoing and, otherwise, shall not be less than the insurance required by IBC Form 4042 or its equivalent replacement provided that the IBC Form 4042 shall include the latest addition of the relevant CCDC endorsement form. The coverage shall be based on a completed value form and shall be maintained continuously until ten (10) days after the date of the final certificate of payment.

- (2) Boiler and machinery insurance shall be in the name of the *Contractor*, with the *Owner* and the *Consultant* named as additional insureds, for not less than the replacement value of the boilers, pressure vessels and other insurable objects forming part of the *Work*. The insurance provided shall not be less than the insurance provided by the "Comprehensive Boiler and Machinery Form" and shall be maintained continuously from commencement of use or operation of the property insured and until 10 days after the date of the final certificate for payment.
- (3) The policies shall allow for partial or total use or occupancy of the *Work*.
- (4) The policies shall provide that, in the case of a loss or damage, payment shall be made to the *Owner* and the *Contractor* as their respective interests may appear. The *Contractor* shall act on behalf of the *Owner* for the purpose of adjusting the amount of such loss or damage payment with the insurers. When the extent of the loss or damage is determined, the *Contractor* shall proceed to restore the *Work*. Loss or damage shall not affect the rights and obligations of either party under the *Contract* except that the *Contractor* shall be entitled to such reasonable extension of the *Contract Time*, relative to the extent of the loss or damage, as determined by the *Owner*, in its sole discretion.
- (5) The *Contractor* shall be entitled to receive from the *Owner*, in addition to the amount due under the *Contract*, the amount at which the *Owner's* interest in restoration of the *Work* has been appraised, such

amount to be paid as the restoration of the *Work* proceeds and as provided in GC 5.2 – APPLICATIONS FOR PROGRESS PAYMENT and GC 5.3 – PROGRESS PAYMENT. In addition, the *Contractor* shall be entitled to receive from the payments made by the insurer the amount of the *Contractor’s* interest in the restoration of the *Work*.

- (6) In the case of loss or damage to the *Work* arising from the work of other contractors, or the *Owner’s* own forces, the *Owner*, in accordance with the *Owner’s* obligations under paragraph 3.2.2.4 of GC 3.2 – CONSTRUCTION BY OWNER OR OTHER CONTRACTORS, shall pay the *Contractor* the cost of restoring the *Work* as the restoration of the *Work* proceeds and as provided in GC 5.2 – APPLICATIONS FOR PROGRESS PAYMENT and GC 5.3 – PROGRESS PAYMENT.

.5 Contractors’ Equipment Insurance

“All risks” contractors’ equipment insurance covering construction machinery and equipment used by the *Contractor* for the performance of the *Work*, excluding boiler insurance, shall be in a form acceptable to the *Owner* and shall not allow subrogation claims by the insurer against the *Owner*. The policies shall be endorsed to provide the *Owner* with not less than 30 days’ notice, in writing, in advance of cancellation, change or amendment restricting coverage. Subject to satisfactory proof of financial capability by the *Contractor* for self-insurance of his equipment, the *Owner* agrees to waive the equipment insurance requirement.

11.1.2 The *Contractor* shall be responsible for deductible amounts under the policies except where such amounts may be excluded from the *Contractor’s* responsibility by the terms of GC 9.1 - PROTECTION OF WORK AND PROPERTY and GC 9.2 - DAMAGES AND MUTUAL RESPONSIBILITY.

11.1.3 Where the full insurable value of the *Work* is substantially less than the *Contract Price*, the *Owner* may reduce the amount of insurance required to waive the course of construction insurance requirement.

11.1.4 If the *Contractor* fails to provide or maintain insurance as required by the *Contract Documents*, then the *Owner* shall have the right to provide and maintain such insurance and provide evidence of same to the *Contractor*. The *Contractor* shall pay the costs thereof to the *Owner* on demand, or

the *Owner* may deduct the amount that is due or may become due to the *Contractor*.

- 11.1.5 All required insurance policies shall be with insurers licensed to underwrite insurance in the jurisdiction of the *Place of the Work*.

GC 11.2 CONTRACT SECURITY

- .1 Delete paragraph 11.2.1 in its entirety and substitute new paragraph 11.2.1

11.2.1 The Contractor shall, prior to commencement of the Work, provide to the Owner:

- .1 a performance bond, in the form set out in the Contract Documents, in an amount equal to 50% of the Contract Price, covering the performance of the Contract including the Contractor’s requirements with respect to the correction of deficiencies and the fulfillment of all warranties; and
- .2 a labour and material payment bond, in the form set out in the Contract Documents, in an amount equal to 50% of the Contract Price covering payment for labour, Product, or both.

- .2 In paragraph 11.2.2, delete paragraph after the word “provided” and replace with the following:

Such bonds shall be issued by a duly licensed surety company, which has been approved by the *Owner*, authorized to transact a business of suretyship in Ontario and shall be maintained in good standing until the fulfillment of the *Contract*, including all warranty and maintenance periods set out in the *Contract Documents*, whether or not such period of time exceeds any stated limitation period prescribed by law.

- .3 Add new paragraph 11.2.3 as follows:

11.2.3 It is the intention of the parties that the performance bond shall be applicable to all of the *Contractor’s* obligations in the *Contract Document* and, wherever a performance bond is provided with language which conflicts with this intention, it shall be deemed to be amended to comply. The *Contractor* represents and warrants to the *Owner* that it has provided its surety with a copy of the *Contract Documents* prior to the issuance of such bonds.

GC 12.1 INDEMNIFICATION

- .1 Delete General Condition 12.1 – INDEMNIFICATION in its entirety and substitute as follows:

12.1.1 The *Contractor* shall indemnify and hold harmless the *Owner*, its parent, subsidiaries and affiliates, the *Consultant* and their respective partners,

trustees, officers, directors, agents and employees from and against any and all claims, liabilities, expenses, demands, losses, damages, actions, costs, suits, or proceedings (hereinafter called “claims”), whether in respect of claims suffered by the *Owner* or in respect of claims by third parties, that directly or indirectly arise out of, or are attributable to, the acts or omissions of the *Contractor*, its employees, agents, *Subcontractors*, *Suppliers* or any other persons for whom it is in law responsible (including, without limitation, claims that directly or indirectly arise out of, or are attributable to, loss of use or damage to the *Work*, the *Owner’s* property or equipment, the *Contractor’s* property or equipment or equipment or property adjacent to the *Place of the Work* or death or injury to the *Contractor’s* personnel).

12.1.2 The provisions of GC 12.1 - INDEMNIFICATION shall survive the termination of the *Contract*, howsoever caused and no payment or partial payment, no issuance of a final certificate of payment and no occupancy in whole or in part of the *Work* shall constitute a waiver or release of any of the provisions of GC 12.1.

GC 12.2 WAIVER OF CLAIMS

- .1 In the fourth line of paragraph 12.2.1, add the words “claims for delay pursuant to GC 6.5 DELAYS” after the word “limitation”. Add the words “(collectively “Claims”)” after “*Substantial Performance of the Work*” in the sixth line.
- .2 In paragraph 12.2.1.1, change the word “claims” to “Claims” and change the word “claim” to “Claim”.
- .3 In paragraph 12.2.1.2, change the word “claims” to “Claims”.
- .4 Delete paragraph 12.2.1.3 in its entirety.
- .5 In paragraph 12.2.1.4, change the word “claims” to “Claims”.
- .6 In paragraph 12.2.2, change the words “in paragraphs 12.2.1.2 and 12.2.1.3” to “in paragraph 12.2.1.2”. Change the word “claims” to “Claims” in both instances and change the word “claim” to “Claim”.
- .7 Delete paragraph 12.2.3 in its entirety.
- .8 Delete paragraph 12.2.4 in its entirety.
- .9 Delete paragraph 12.2.5 in its entirety.
- .10 In paragraph 12.2.6, change the word “claim” to “Claim” in all instances in the paragraph.
- .11 In paragraph 12.2.7, change “The party” to “The *Contractor*”. Change the word “claim” to “Claim” in all instances in the paragraph.

- .12 In paragraph 12.2.8, change “under paragraphs 12.2.1 or 12.2.3” to “under paragraph 12.2.1”. Change both instances of the words “the party” to “the *Contractor*”. Change the word “claim” to “Claim” in all instances in the paragraph.
- .13 Delete paragraph 12.2.9 in its entirety.
- .14 Delete paragraph 12.2.10 in its entirety.

GC 12.3 WARRANTY

- .1 Delete from the first line of paragraph 12.3.2 the word, “The” and substitute the words “Subject to paragraph 3.4.1, the...”
- .2 Add new paragraphs 12.3.7 to 12.3.12 as follows:
 - 12.3.7 Where required by the *Contract Documents*, the *Contractor* shall provide a maintenance bond as security for the performance of the *Contractor’s* obligations as set out in GC 12.3 WARRANTY.
 - 12.3.8 The *Contractor* shall provide fully and properly completed and signed copies of all warranties and guarantees required by the *Contract Documents*, containing:
 - .1 the proper name of the *Owner*;
 - .2 the proper name and address of the *Project*;
 - .3 the date the warranty commences, which shall be at the “date of *Substantial Performance of the Work*” unless otherwise agreed upon by the *Consultant* in writing.
 - .4 a clear definition of what is being warranted and/or guaranteed as required by the *Contract Documents*; and
 - .5 the signature and seal (if required by the governing law of the *Contract*) of the company issuing the warranty, countersigned by the *Contractor*.
 - 12.3.9 Should any *Work* be repaired or replaced during the time period for which it is covered by the specified warranty, a new warranty shall be provided under the same conditions and for the same period as specified herein before. The new warranty shall commence at the completion of the repair or replacement.
 - 12.3.10 The *Contractor* shall ensure that its *Subcontractors* are bound to the requirements of GC 12.3 – WARRANTY for the *Subcontractor’s* portion of the *Work*.
 - 12.3.11 The *Contractor* shall ensure that all warranties, guarantees or other obligations for *Work*, services or *Products* performed or supplied by any

Subcontractor, Supplier or other person in connection with the *Work* are obtained and available for the direct benefit of the *Owner*. In the alternative, the *Contractor* shall assign to the *Owner* all warranties, guarantees or other obligations for *Work, services or Products* performed or supplied by any *Subcontractor, Supplier* or other person in connection with the *Work* and such assignment shall be with the consent of the assigning party, where required by law, or by the terms of that party's contract. Such assignment shall be in addition to, and shall in no way limit, the warranty rights of the *Owner* under the *Contract Documents*.

12.3.12 The *Contractor* shall commence or correct any deficiency within 2 Working Days after receiving a notice from the *Owner* or the *Consultant*, and shall complete the *Work* as expeditiously as possible, except in the case where the deficiency prevents maintaining security or where basic systems essential to the ongoing business of the *Owner* and/or its tenants cannot be maintained operational as designed. In those circumstances all necessary corrections and/or installations of temporary replacements shall be carried out immediately as an emergency service. Should the *Contractor* fail to provide this emergency service within 8 hours of a request being made during the normal business hours of the *Contractor*, the *Owner* is authorized, notwithstanding GC 3.1, to carry out all necessary repairs or replacements at the *Contractor's* expense.

PART 13 OTHER PROVISIONS

.1 Add new Part 13 OTHER PROVISIONS as follows:

GC 13.1 OWNERSHIP OF MATERIALS

13.1.1 Unless otherwise specified, all materials existing at the *Place of the Work* at the time of execution of the *Contract* shall remain the property of the *Owner*. All *Work* and *Products* delivered to the *Place of the Work* by the *Contractor* shall be the property of the *Owner*. The *Contractor* shall remove all surplus or rejected materials as its property when notified in writing to do so by the *Consultant*. Notwithstanding that ownership of the *Work* and *Products* may vest in the *Owner*, the risk of all *Work* and *Products* shall remain with the *Contractor* until the *Work* and *Products* are accepted and assumed by the *Owner* as otherwise set out in the *Contract*.

GC 13.2 CONSTRUCTION LIENS

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

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

13.2.2 In the event that the *Contractor* fails to conform with the requirements of paragraph 13.2.1, the *Owner* may fulfil those requirements without *Notice in Writing* to the *Contractor* and set off and deduct from any amount owing to the *Contractor*, all costs and associated expenses, including the costs of posting security and all legal fees and disbursements associated with discharging or vacating the claim for lien or certificate of action and defending the action. If there is no amount owing by the *Owner* to the *Contractor*, then the *Contractor* shall reimburse the *Owner* for all of the said costs and associated expenses.

13.2.3 Notwithstanding any other provision in the *Contract*, the *Consultant* shall not be obligated to issue a certificate and the *Owner* shall not be obligated to make payment to the *Contractor* if, at the time such certificate or payment was otherwise due:

- .1 a claim for lien has been registered against the *Project* lands, or
- .2 if the *Owner* or mortgagee of the *Project* lands has received written notice of a lien, or
- .3 the *Owner* or *Consultant* reasonably believe that any party has purported to retain title to *Products* or materials in respect of which an application for payment has been made.

13.2.4 Without limiting the foregoing, the *Contractor* shall, if requested by the *Owner*, defend, indemnify and save the *Owner* harmless from the amount of all such claims and the costs of defending any and all actions commenced against the *Owner* pursuant to the construction/builder’s lien legislation in force at the *Place of the Work*, including the legal costs of the *Owner*, unless the lien was a direct result of a breach of the *Contract* by the *Owner* or the non-payment by the *Owner* of a valid charge or claim under the *Contract*.

END OF AMENDMENTS TO CCDC 2 - 2008