**\*\*RIOCAN TEMPLATE CONTRACT\*\***

**2285136 ONTARIO LIMITED**  
**as Owner**

**-and -**

**[CONTRACTOR]  
as General Contractor**

**Stipulated Price construction Contract**

**[Name of the Project]**

**[DATE]**

This Stipulated Price Construction Contract is based on the standard form the CCDC 2-2020 Stipulated Price Contract as amended by RioCan’s standard amendments. A comparison between this Contract and the standard form is available on request. Parties are advised to purchase a digital seal from CCDC to demonstrate payment for the use of copyright.

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**STIPULATED PRICE CONSTRUCTION CONTRACT**

**This Stipulated Price Construction Contract is** made on [**DATE**] by and between:

**2285136 ONTARIO LIMITED**  
**(**the “**Owner**”**)**

-and-

**[CONTRACTOR]  
(**the “**Contractor**”**)**

CONTEXT

1. The Owner is the owner of lands and premises located at [**ADDRESS**] (the “Place of the Work”), as more particularly described in Schedule 1 (Place of the Work).
2. The Owner plans to design and construct [**Description of Project**], as more particularly described in Schedule 2 (Description of the Project).
3. The Owner wishes to engage the Contractor to perform the construction work for the Project as set out in this Contract.

The Owner and the Contractor agree as follows:

1. THE WORK

The Contractor shall:

* 1. perform the Work required by the Contract Documents for the Project at the Place of the Work;
  2. do and fulfill everything indicated by the Contract Documents, and
  3. commence the Work by **[Commencement Date]** in the year and, subject to adjustment in Contract Time as provided for in the Contract Documents, attain Ready-for-Takeover, by **[Ready-for-Takeover Date]**.

1. AGREEMENTS AND AMENDMENTS
   1. The Contract supersedes all prior negotiations, representations or agreements, either written or oral, relating in any manner to the Work, including the bid documents that are not expressly listed in Article A-3 of the Agreement – CONTRACT DOCUMENTS.
   2. The Contract may be amended only as provided in the Contract Documents.
2. CONTRACT DOCUMENTS
   1. The following are the Contract Documents referred to in Article A-1 of the Agreement – THE WORK:

* Agreement between Owner and Contractor
* Definitions
* General Conditions
* Schedules to the Agreement

|  |  |  |
| --- | --- | --- |
| Schedule 1 | - | Place of the Work |
| Schedule 2 | - | Description of Project |
| Schedule 3 | - | Construction Schedule |
| Schedule 4 | - | Insurance Requirements |
| Schedule 5 | - | Drawings and Specifications |
| Schedule 6 | - | Personnel and Rates |
| Schedule 7 | - | Procurement Documents |
| Schedule 8 | - | Close-Out Procedures |
| Schedule 9 | - | Construction Management Plan |
| Schedule 10 | - | Owner Policies |
| Schedule 11 | - | Special Conditions |

**[NOTE TO USER: (Insert here, attaching additional pages if required, a list identifying all other Contract Documents e.g. supplementary or special project-specific conditions; Division 01 of the Specifications – GENERAL REQUIREMENTS; Project information that the Contractor may rely upon; technical Specifications, giving a list of contents with section numbers and titles, number of pages and date; material finishing schedules; Drawings, giving drawing number, title, date, revision date or mark; addenda, giving title, number, date; time schedule).]**

* 1. If permitted under the applicable Construction Act, and if the Special Conditions provide for more than one improvement to be made under the Contract, and such improvements are to be made to lands that are not contiguous, then each such improvement is deemed to be made and performed under a separate contract for the purposes determining Substantial Performance of the Work and completion of the Contract, and for any other purpose under the applicable Construction Act, and the relevant provisions of this Contract will be deemed amended accordingly.
  2. Paragraph 3.2 will apply to all of the Contractor’s contracts with its Subcontractors and Suppliers working on each such improvement on a pass through basis. The Contractor shall include in all of its contracts with Subcontractors and Suppliers (and ensue the same is included in all subcontracts of every tier), as applicable, notice of such deeming of separate contracts for such purposes, and shall ensure that it separates the Work and the supply of Products for each such improvement.

1. CONTRACT PRICE
   1. Unless otherwise set out in the Special Conditions, the Contract Price, which excludes Value Added Taxes, is $**[CONTRACT PRICE]**.
   2. Value Added Taxes (of %) payable by the Owner to the Contractor are $ **[TOTAL VALUE ADDED TAXES]**.
   3. Total amount payable by the Owner to the Contractor for the Work is $**[CONTRACT PRICE + VALUE ADDED TAXES]**.
   4. These amounts shall be subject to adjustments as provided in the Contract Documents.
   5. All amounts are in Canadian funds.
2. A-5 PAYMENT
   1. Subject to the provisions of the Contract Documents, Payment Legislation and the Special Conditions, and in accordance with legislation and statutory regulations respecting holdback percentages, the Owner shall:
      1. make progress payments to the Contractor on account of the Contract Price when due in the amount certified by the Consultant unless otherwise prescribed by Payment Legislation together with such Value Added Taxes as may be applicable to such payments; and
      2. upon Substantial Performance of the Work, pay to the Contractor the unpaid balance of the holdback amount when due together with such Value Added Taxes as may be applicable to such payment, and
      3. upon the issuance of the final certificate for payment, pay to the Contractor the unpaid balance of the Contract Price when due together with such Value Added Taxes as may be applicable to such payment.
   2. 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 at the greater of one per cent per annum above the bank rate and the minimum rate required under the Construction Act on such unpaid amounts shall also become due and payable until payment. Such interest shall be compounded on a monthly basis. The bank rate shall be the rate established by the Bank of Canada as the minimum rate at which the Bank of Canada makes short term advances to the chartered banks.
      2. Interest shall apply at the rate and in the manner prescribed by Section 5.3.1 of this Agreement on the amount of any claim advanced and for which the Contractor is thereafter entitled to payment, either pursuant to Part 9 of the General Conditions – Dispute Resolution, or otherwise, from the date the amount would have been due and payable under the Contract, had it not been in dispute, until the date it is paid.
3. RECEIPT OF AND ADDRESSES FOR NOTICES IN WRITING
   1. Notices in Writing will be addressed to the recipient at the address set out in paragraph 6.5.
   2. The delivery of a Notice in Writing will be by hand, by courier, by prepaid first class mail, or by other form of electronic communication during the transmission of which no indication of failure of receipt is communicated to the sender.
   3. A Notice in Writing delivered by one party in accordance with this Contract will be deemed to have been received by the other party on the date of delivery if delivered by hand or courier, or if sent by mail it will be deemed to have been received five calendar days after the date on which it was mailed, provided that if either such day is not a Working Day, then the Notice in Writing will be deemed to have been received on the Working Day next following such day.
   4. A Notice in Writing sent by any form of electronic communication will be deemed to have been received on the date of its transmission provided that if such day is not a Working Day or if it is received after the end of normal business hours on the date of its transmission at the place of receipt, then it will be deemed to have been received at the opening of business at the place of receipt on the first Working Day next following the transmission thereof.
   5. An address for a party may be changed by Notice in Writing to the other party setting out the new address in accordance with this Article.

**Owner**

**2285136 Ontario Limited**

[**Address**]

[**Contact**]

**Contractor**

[**Contractor**]

[**Address**]

[**Contact**]

**Consultant**

[**Consultant**]

[**Address**]

[**Contact**]

* 1. In addition to the addresses, requirements and timelines set out in paragraph 6.5, the following applies:
     1. for the purposes of the prompt payment provisions under the applicable Payment Legislation, if any, and for the purposes of Part 5 of the Agreement – PAYMENT,
        1. applications for payment and Proper Invoices will be considered given or delivered by the Contractor to the Owner when they are received by the Owner through the Owner’s online procurement systems/portal/software, or as otherwise provided for by the Owner in a Notice in Writing delivered to the Contractor; and
        2. notices of non-payment will be considered to have been given or delivered by the Owner to the Contractor when they have been sent by the Owner and such sending can be verified; and
     2. for the purposes of adjudication or any notices of a dispute under the applicable Construction Act, any notices, communications or delivery of documents to be given under the applicable Construction Act will:
        1. in the case of the Owner, be given by the Contractor to the individuals and locations indicated in the Owner’s Notice in Writing delivered to the Contractor prior to the commencement of the Work, with a copy to: Vice-President, Tenant Construction, RioCan Management, 2300 Yonge Street, Suite 500, Toronto, Ontario, M4P 1E4, together with an e-mail copy to: constructionnotices@riocan.com; and
        2. in the case of the Contractor, be given by the Owner to individuals and locations indicated in the Contractor’s bid submission.

**[NOTE TO USER: If it is intended that a specific individual must receive the notice, that individual’s name shall be indicated.]**

1. LANGUAGE OF THE CONTRACT
   1. When the Contract Documents are prepared in both the English and French languages, it is agreed that in the event of any apparent discrepancy between the English and French versions, the English language shall prevail.
   2. This Agreement is drawn in English at the request of the parties hereto. La présente convention est rédigée en anglais à la demande des parties.
2. SUCCESSION
   1. The Contract shall enure to the benefit of and be binding upon the parties hereto, their respective heirs, legal representatives, successors, and assigns.

**In witness whereof** the parties hereto have executed this Agreement by the hands of their duly authorized representatives.

SIGNED AND DELIVERED   
in the presence of:

|  |  |  |
| --- | --- | --- |
| **WITNESS** |  | **[RIOCAN ENTITY]** |
|  |  |  |
|  |  | name of owner |
|  |  |  |
|  |  |  |
|  |  |  |
| signature |  | signature |
|  |  |  |
|  |  |  |
|  |  |  |
| name of person signing |  | name and title of person signing |
|  |  |  |
|  |  |  |
| **WITNESS** |  | **[CONTRACTOR]** |
|  |  |  |
|  |  | name of Contractor |
|  |  |  |
|  |  |  |
|  |  |  |
| signature |  | signature |
|  |  |  |
|  |  |  |
|  |  |  |
| name of person signing |  | name and title of person signing |
|  |  |  |
|  |  |  |

DEFINITIONS

The following Definitions shall apply to all Contract Documents.

“**Abnormal Weather Conditions**” has the meaning set out in GC 6.5.3.

“**Applicable Law**” means all public laws, statutes, ordinances, codes, acts, orders, by-laws, rules, regulations, Governmental Consents, binding policies and guidelines, and requirements of all Governmental Authorities, which now or hereafter, may be applicable to and enforceable against the Work or any part thereof, including those relating to employment, zoning, building, life/safety, environment and health

“**Change Directive**” means an instruction or an authorization (including a field instruction) for a change, which is signed by the Consultant and is issued at the Project site in order to prevent a delay, and is subsequently documented as a Change Order.

“**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:

* a change in the Work;
* the method of adjustment or the amount of the adjustment in the Contract Price, if any; and
* the extent of the adjustment in the Contract Time, if any.

“**Construction Act**” means the construction or lien legislation applicable to the Work or the Place of the Work.

“**Construction Equipment**” means all machinery and equipment, either operated or not operated, that is required for preparing, fabricating, conveying, erecting, or otherwise performing the Work but is not incorporated into the Work.

“**Construction Management Plan**” means the construction management plan developed by the Contractor and approved by the Owner, as set out in Schedule 9 (Construction Management Plan).

“**Construction Schedule**” means the schedule for the performances of the Work from the date of this Agreement through to total completion of the Work as approved by the Owner from time to time, the preliminary version of which is attached as Schedule 3 (Construction Schedule).

“**Consultant**” means the person or entity engaged by the Owner and identified as such in the context of 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.

“**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.

“**Contract Documents**” mean those documents listed in Article A-3 of the Agreement – CONTRACT DOCUMENTS and amendments agreed upon between the parties.

“**Contract Price**” means the amount stipulated in Article A-4 of the Agreement – CONTRACT PRICE.

“**Contract Time**” means the time from commencement of the Work to the date of Ready-for-Takeover as stipulated in paragraph 1.3 of Article A-1 of the Agreement – THE WORK .

“**Contractor**” means the person or entity identified as such in the context of the Agreement.

“**Drawings**” mean the graphic and pictorial portions of the Contract Documents, wherever located and whenever issued, showing the design, location and dimensions of the Work, generally including plans, elevations, sections, details, and diagrams, the current versions of which Drawings are listed in Schedule 5 (Drawings and Specifications).

“**Governmental Authority**” means any government, parliament, legislature, regulatory authority, utility, agency, commission, board, court or instrumentality of Canada, the province or the city or any subdivision thereof having jurisdiction over the Owner, the Project or the Place of the Work.

“**Governmental Consent**” means any license, right, permit, franchise, privilege, registration, direction, decree, consent, order, permission, approval, or authority to be issued or provided by, or written contract between the Owner and a Governmental Authority.

“**H&S Constructor**” means “constructor”, “prime contractor, “principal contractor” or equivalent under occupational health and safety legislation applicable in the Place of the Work, and is the Contractor unless otherwise agreed in writing by the Owner and the Contractor, or if otherwise determined by the Governmental Authority that administers the OHSA.

“**Notice in Writing**” means, where identified in the Contract Documents, a written communication between the parties or between them and the Consultant that is transmitted in accordance with the provisions of Article A-6 of the Agreement – RECEIPT OF AND ADDRESSES FOR NOTICES IN WRITING.

“**OHSA**” means the occupational health and safety laws, rules, and regulations (including public orders issued thereunder) applicable to the Work and the Place of the Work.

“**Owner**” means the person or entity identified as such in the Agreement.

“**Owner’s Representative**” means any firm or individual engaged by the Owner to monitor the Project on its behalf or to represent it in any other capacity during the construction of the Project as indicated in the Owner’s Notice in Writing to the Contractor, unless the Owner otherwise notifies the Contractor of a change in the Owner’s Representative.

“**Other Contractor**” means a contractor, other than the Contractor or a Subcontractor, engaged by the Owner for the Project.

“**Payment Legislation**” means such legislation in effect at the Place of the Work which governs payment under construction contracts.

“**Person**” has the meaning including any individual, company, corporation, partnership, firm, trust, sole proprietorship, government or government agency, authority or entity howsoever designated or constituted.

“**Place of the Work**” means the designated site or location of the Work identified in the Contract Documents.

“**Procurement Documents**” mean the procurement, tender or bid documents issued by or on behalf of the Owner for this Contract, and include any related request for qualifications, instructions to bidders, request for proposal or bids, or similar tender documents, and any related addenda, which are attached as Schedule 7 (Procurement Documents).

“**Product**” or “**Products**” means material, machinery, equipment, and fixtures forming part of the Work, but does not include Construction Equipment.

“**Project**” has the meaning set out in the Context of the Agreement, and includes the total construction contemplated of which the Work may be the whole or a part.

“**Project Materials**” has the meaning assigned to that term in paragraph 1.1.10 of GC 1.1 – CONTRACT DOCUMENTS.

“**Proper Invoice**” means an application for payment containing the information that is required for the application for payment to constitute a “proper invoice” under the Payment Legislation and this Contract, including the following:

* + - 1. all of the information specified to be included in a proper invoice as set out in the Payment Legislation, and including:
         1. the Contractor’s name and address;
         2. the date of the application for payment and the period during which the Work was performed;
         3. information identifying the authority, whether in the Contract or otherwise, under which the Work was performed;
         4. a description, including quantity where appropriate, of the Work performed and Products supplied;
         5. the amount payable for the Work performed, and the payment terms; and
         6. the name, title, telephone number and mailing address of the person to whom payment is to be sent;
      2. an original Statutory Declaration;
      3. the total amount of expenditures to date and the total estimated expenditures to be made for the remaining balance of the Work;
      4. satisfactory evidence of good standing under worker’s compensation legislation applicable to the Place of the Work, as evidenced by a clearance, good standing or similar certificate issued by the applicable worker’s compensation authority prior to the release of any monthly progress payment;
      5. any certificates, inspection reports, or data resulting from commissioning and testing required under the Contract Documents confirming the satisfactory completion of such commissioning and testing for completed portions of the Work, if applicable to the application for payment; and
      6. any additional information that the Owner or the Consultant may reasonably require.

“**Ready-for-Takeover**” shall have been attained when the conditions set out in paragraph 12.1.1 of GC 12.1 – READY-FOR-TAKEOVER have been met, as verified by the Consultant pursuant to paragraph 12.1.4.2 of GC 12.1 – READY-FOR-TAKEOVER.

“**Schedule Remediation Plan”** means a plan as to matters that may reasonably be expected to cause a delay in the Contract Time that need to be addressed by the Contractor and how these matters will be addressed to ensure that Ready-for-Takeover will occur within the time scheduled for same, and full completion of the Work will occur within the Contract Time or as soon thereafter as possible. Any Schedule Remediation Plan shall include:

.1 a report identifying the reasons for the delay;

.2 a report demonstrating that the Ready-for-Takeover and full completion of the Work will occur within the Contract Time notwithstanding such missed milestones, or a plan showing that the steps that are to be taken by the Contractor to eliminate or reduce the delay; and

.3 a detailed explanation of the measures to be implemented by the Contractor to either: (a) ensure that the progress of the Work is brought back on schedule and, to the extent necessary, a revised scheduled Ready-for-Takeover and Contract Time to be approved by the Owner (such approval not to be unreasonably withheld or delayed); or (b) mitigate the extent of the delay.

“**Shop Drawings**” are drawings, diagrams, illustrations, schedules, performance charts, brochures, Product data, and other data which the Contractor provides to illustrate details of portions of the Work.

“**Special Conditions**” means the special terms and conditions specific to the Project and set out in Schedule 11 (Special Conditions).

“**Specifications**” mean 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, the current versions of which Specifications are listed in Schedule 5 (Drawings and Specifications).

“**Statutory Declaration**” means the form to be delivered by the Contractor upon applications for progress payment, release of holdback and final payment is attached to this Contract as Exhibit 1 (Statutory Declarations).

“**Subcontractor**” means a person or entity having a direct contract with the Contractor to perform a part or parts of the Work at the Place of the Work.

“**Substantial Performance of the Work**” has the meaning defined in the lien legislation applicable to the Place of the Work.

“**Supplemental Instruction**” means an instruction, not involving adjustment in the Contract Price or Contract Time, in the form of Specifications, Drawings, schedules, samples, models, or written instructions, consistent with the intent of the Contract Documents. It is to be issued by the Consultant to supplement the Contract Documents as required for the performance of the Work.

“**Supplier**” means a person or entity having a direct contract with the Contractor to supply Products.

“**Temporary Work**” means temporary supports, structures, facilities, services, and other temporary items, excluding Construction Equipment, required for the execution of the Work but not incorporated into the Work.

“**Value Added Taxes**” means such sum as shall be levied upon the Contract Price by the Federal or any Provincial or Territorial Government and is computed as a percentage of the Contract Price and includes the Goods and Services Tax, the Québec Sales Tax, the Harmonized Sales Tax, and any similar tax, the collection and payment of which have been imposed on the Contractor by tax legislation.

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

“**Working Day**” means a day other than a Saturday, Sunday, statutory holiday, or statutory vacation day that is observed by the construction industry in the area of the Place of the Work.

GENERAL CONDITIONS

1. GENERAL PROVISIONS
   1. CONTRACT DOCUMENTS
      1. The intent of the Contract Documents is to include the labour, Products and services necessary for the performance of the Work by the Contractor in accordance with these documents. It is not intended, however, that the Contractor shall supply products or perform work not consistent with, not covered by, or not properly inferable from the Contract Documents.
      2. The Contract Documents are complementary, and what is required by one shall be as binding as if required by all. Performance by the Contractor shall be required only to the extent consistent with the Contract Documents.
      3. The Contractor shall review the Contract Documents for the purpose of facilitating co-ordination and execution of the Work by the Contractor.
      4. The Contractor is not responsible for errors, omissions or inconsistencies in the Contract Documents. If there are perceived errors, omissions or inconsistencies discovered by or made known to the Contractor, the Contractor shall promptly report to the Consultant and shall not proceed with the work affected until the Contractor has received corrected or additional information from the Consultant.
      5. If there is a conflict between the Contract Documents, the following shall apply:
         1. pre-existing constructed works (if any) take precedence over drawing dimensions and details. Prior to fabrication of any item dependent upon accurate dimensions or details of any pre-existing constructed works, the Contractor shall take field measurements of such pre-existing constructed works;
         2. figured dimensions shown on a drawing shall govern even though they may differ from dimensions scaled on the same drawing;
         3. drawings of a later date shall govern over those of an earlier date;
         4. detailed drawings shall govern over general drawings; and
         5. specifications, finish schedules, legends, and general notes shall govern over drawings and the order of priority of the foregoing, from highest to lowest, shall be:
            1. Specifications;
            2. finish schedules;
            3. legends; and
            4. general notes.
         6. The order of priority of documents, from highest to lowest, shall be:
            1. the Agreement between the Owner and the Contractor;
            2. the Definitions;
            3. the General Conditions; and
            4. the Procurement Documents.

Where certain Work is shown on the Drawings, but is not described in the Specifications, the Contractor shall include such work in the Contract Price in accordance with a reasonable standard of acceptance based on projects of a similar nature or type. Prior to executing the Work, the Contractor shall draw the matter to the attention of the Consultant.

* + 1. Nothing contained in the Contract Documents shall create any contractual relationship between:
       1. the Owner and a Subcontractor, a Supplier, or their agent, employee, or other person performing any portion of the Work; and
       2. the Consultant and the Contractor, a Subcontractor, a Supplier, or their agent, employee, or other person performing any portion of the Work.
    2. Words and abbreviations which have well known technical or trade meanings are used in the Contract Documents in accordance with such recognized meanings.
    3. References in the Contract Documents to the singular shall be considered to include the plural as the context requires.
    4. Neither the organization of the Specifications nor the arrangement of Drawings shall control the Contractor in dividing the work among Subcontractors and Suppliers.
    5. All Drawings and Specifications, computations, sketches, test data, survey results, models, photographs, renderings and other materials prepared by the Contractor in connection with the performance of its obligations under this Agreement (the “**Project Materials**”) shall be the property of the Owner. The Contractor hereby undertakes not to design any other project containing designs which are similar in any material respects with the Project. The Contractor hereby releases the copyright in the Drawings and Specifications and any copyright it might have in any models, plans, designs and copies thereof relating to the Project (to the extent that the same may be used in the Project in favour of the Owner).
    6. If this Agreement is terminated, the Contractor shall promptly deliver to the Owner a complete set of all Project Materials in the Contractor’s possession, including all design documents prepared or obtained by the Contractor together with any predesign, conceptual design or other studies prepared by the Contractor. If the Contractor fails to comply with its obligations under this paragraph, the owner shall be entitled, in addition to any other remedies to which it may be entitled, to appropriate equitable relief, including the remedy of specific performance as money damages will be an inadequate remedy with respect to the receipt of such Project Materials by the Owner.
    7. The Consultant shall furnish to the Contractor without charge, one reproducible set of Drawings and two copies of the Specifications, exclusive of those required by jurisdictional authorities and the executed Contract Documents.
  1. LAW OF THE CONTRACT
     1. The law of the Place of the Work shall govern the interpretation of the Contract.
  2. RIGHTS AND REMEDIES
     1. Except as expressly provided in the Contract Documents, the duties and obligations imposed by the Contract Documents and the rights and remedies available thereunder shall be in addition to and not a limitation of any duties, obligations, rights, and remedies otherwise imposed or available by law.
     2. No action or failure to act by the Owner, the Consultant or the Contractor shall constitute a waiver of any right or duty afforded any of them under the Contract, nor shall any such action or failure to act constitute an approval of or acquiescence in any breach thereunder, except as may be specifically agreed in writing.
  3. ASSIGNMENT
     1. The Contractor shall not assign the Contract or a portion thereof without the written consent of the Owner, which consent may be arbitrarily withheld for any reason which the Owner, in its uncontrolled discretion, considers sufficient. For greater certainty, the consent of the Contractor will not be required for an assignment by the Owner to an affiliated or related entity. No assignment of the Contract or a portion thereof will relieve the Owner or the Contractor from any obligation under the Contract.
  4. CONFIDENTIALITY
     1. The Owner and the Contractor shall keep confidential all matters respecting technical, commercial and legal issues relating to or arising out of the Work or the performance of the Contract and shall not, without the prior written consent of the other party, disclose such matters, except in strict confidence, to its professional advisors.
     2. The matters that are subject to the confidentiality requirements of this GC 1.5 – CONFIDENTIALITY shall not include information that: (i) has become generally available to the public other than as a result of a disclosure by the other party or any of its representatives; (ii) was available to the other party or its representatives on a non-confidential basis before the date of this Agreement; or (iii) becomes available to the other party or its representatives on a non-confidential basis from a Person other than the first-mentioned party or any of its representatives who is not, to the knowledge of such other party or its representatives, otherwise bound by confidentiality obligations to such first-mentioned party in respect of such information or otherwise prohibited from transmitting the information to the other party or its representatives.
  5. OWNER’S REPRESENTATIVE
     1. The Owner shall designate an Owner’s Representative authorized to act on the Owner’s behalf and shall specify in written notice to the Contractor any limits on the representative’s authority.
     2. Subject to any notified limitations in authority, the Contractor may rely upon any written instructions or directions provided by the Owner’s Representative.
     3. The Owner’s Representative shall take all reasonable steps to be accessible to the Contractor during performance of the Contract and shall render any necessary decisions or instructions promptly to avoid delay in the performance of the Contract.

1. ADMINISTRATION OF THE CONTRACT
   1. AUTHORITY OF THE CONSULTANT
      1. The Consultant will have authority to act on behalf of the Owner only to the extent provided in the Contract Documents, unless otherwise modified by written agreement as provided in paragraph 2.1.1.
      2. The duties, responsibilities and limitations of authority of the Consultant as set out in the Contract Documents shall be modified or extended only with the written consent of the Owner, the Consultant and the Contractor.
   2. ROLE OF THE CONSULTANT
      1. The Consultant will provide administration of the Contract as described in the Contract Documents.
      2. The Consultant will visit the Place of the Work at intervals appropriate to the progress of construction to become familiar with the progress and quality of the work and to determine if the Work is proceeding in general conformity with the Contract Documents.
      3. If the Owner and the Consultant agree, the Consultant will provide at the Place of the Work, one or more project representatives to assist in carrying out the Consultant’s responsibilities. The duties, responsibilities and limitations of authority of such project representatives shall be as set out in writing to the Contractor.
      4. Based on the Consultant’s observations and evaluation of the Contractor’s applications for payment, the Consultant will determine the amounts owing to the Contractor under the Contract and will issue certificates for payment as provided in Article A-5 of the Agreement – PAYMENT, GC 5.3 – PAYMENT and GC 5.5 – FINAL PAYMENT.
      5. The Consultant will not be responsible for and will not have control, charge or supervision of construction means, methods, techniques, sequences, or procedures, or for safety precautions and programs required in connection with the Work in accordance with the applicable construction safety legislation, other regulations or general construction practice. The Consultant will not be responsible for the Contractor’s failure to perform the Work in accordance with the Contract Documents.
      6. The Consultant will be, in the first instance, the interpreter of the requirements of the Contract Documents and shall make findings as to the performance thereunder by both parties to the Contract.
      7. Matters in question relating to the performance of the Work or the interpretation of the Contract Documents shall be initially referred in writing to the Consultant by the party raising the question for interpretations and findings and copied to the other party.
      8. Interpretations and findings of the Consultant shall be consistent with the intent of the Contract Documents. In making such interpretations and findings the Consultant will not show partiality to either the Owner or the Contractor.
      9. The Consultant’s interpretations and findings will be given in writing to the parties within a reasonable time.
      10. With respect to claims for a change in Contract Price, the Consultant will make findings as set out in GC 6.6 – CLAIMS FOR A CHANGE IN CONTRACT PRICE.
      11. The Consultant will have authority to reject work which in the Consultant’s opinion does not conform to the requirements of the Contract Documents. Whenever the Consultant considers it necessary or advisable, the Consultant will have authority to require inspection or testing of work, whether or not such work is fabricated, installed or completed. However, neither the authority of the Consultant to act nor any decision either to exercise or not to exercise such authority shall give rise to any duty or responsibility of the Consultant to the Contractor, Subcontractors, Suppliers, or their agents, employees, or other persons performing any of the Work.
      12. During the progress of the Work the Consultant will furnish Supplemental Instructions to the Contractor with reasonable promptness or in accordance with a schedule for such instructions agreed to by the Consultant and the Contractor.
      13. The Consultant will review and take appropriate action upon Shop Drawings, samples and other submittals by the Contractor, in accordance with the Contract Documents.
      14. The Consultant will prepare Change Orders and Change Directives as provided in GC 6.2 – CHANGE ORDER and GC 6.3 – CHANGE DIRECTIVE.
      15. The Consultant will conduct reviews of the Work to determine the date of Substantial Performance of the Work and verify that Ready-for-Takeover has been attained.
      16. All certificates issued by the Consultant will be to the best of the Consultant’s knowledge, information and belief. By issuing any certificate, the Consultant does not guarantee the Work is correct or complete.
      17. The Consultant will receive and review written warranties and related documents required by the Contract and provided by the Contractor and will forward such warranties and documents to the Owner for the Owner’s acceptance.
      18. If the Consultant’s engagement is terminated, the Owner shall immediately engage a Consultant against whom the Contractor makes no reasonable objection and whose duties and responsibilities under the Contract Documents will be that of the former Consultant.
      19. In any written or printed notice to the Contractor in respect of general, special, or other repairs, or of any work of any nature required to be done under any of the provisions of the Contract, or of any other matter, it shall not be obligatory upon the Consultant to specify minutely or in detail everything required, nor to specify by measurement the exact extent thereof, or the precise spot or spots where the work or material may be defective or faulty or where any of the requirements of the Specifications have not been observed; but a reference in such notice to the clause or clauses bearing upon the matter, and a description of the locality in general terms, and sufficiently clear, in the opinion of the Consultant, to indicate where the defect or trouble exists, shall be deemed to be, and shall be, ample notice.
   3. REVIEW AND INSPECTION OF THE WORK
      1. The Owner and the Consultant shall have access to the Work at all times. The Contractor shall provide sufficient, safe and proper facilities at all times for the review of the Work by the Consultant and the inspection of the Work by authorized agencies. If parts of the Work are in preparation at locations other than the Place of the Work, the Owner and the Consultant shall be given access to such work whenever it is in progress.
      2. If work is designated for tests, inspections or approvals in the Contract Documents, by the Consultant’s instructions, or by the laws or ordinances of the Place of the Work, the Contractor shall give the Consultant reasonable notification of when the work will be ready for review and inspection. The Contractor shall arrange for and shall give the Consultant reasonable notification of the date and time of inspections by other authorities.
      3. The Contractor shall furnish promptly to the Consultant two copies of certificates and inspection reports relating to the Work.
      4. If the Contractor covers, or permits to be covered, work that has been designated for special tests, inspections or approvals before such special tests, inspections or approvals are made, given or completed, the Contractor shall, if so directed, uncover such work, have the inspections or tests satisfactorily completed, and make good covering work at the Contractor’s expense.
      5. The Consultant may order any portion or portions of the Work to be examined to confirm that such work is in accordance with the requirements of the Contract Documents. If the work is not in accordance with the requirements of the Contract Documents, the Contractor shall correct the work and pay the cost of examination and correction. If the work is in accordance with the requirements of the Contract Documents, the Owner shall pay the cost of examination and restoration.
      6. The Contractor shall pay the cost of making any test or inspection, including the cost of samples required for such test or inspection, if such test or inspection is designated in the Contract Documents to be performed by the Contractor or is required by the laws or ordinances applicable to the Place of the Work.
      7. The Contractor shall pay the cost of samples required for any test or inspection to be performed by others if such test or inspection is designated in the Contract Documents.
      8. On a bi-weekly basis, or as otherwise requested by the Owner, acting reasonably, the Contractor, the Consultant, and the Owner shall meet to discuss progress of the Work and verify certificates for payment as described in paragraph 2.2.4 of GC 2.2 – RULE OF THE CONSULTANT.
   4. DEFECTIVE WORK
      1. The Contractor shall promptly correct defective work that has been rejected by the Consultant as failing to conform to the Contract Documents whether or not the defective work was incorporated in the Work or the defect is the result of poor workmanship, use of defective products or damage through carelessness or other act or omission of the Contractor.
      2. The Contractor shall make good promptly Other Contractors’ work destroyed or damaged by such corrections at the Contractor’s expense.
      3. If in the opinion of the Consultant it is not expedient to correct defective work or work not performed as provided in the Contract Documents, the Owner may deduct from the amount otherwise due to the Contractor the difference in value between the work as performed and that called for by the Contract Documents. If the Owner and the Contractor do not agree on the difference in value, they shall refer the matter to the Consultant for a finding.
2. EXECUTION OF THE WORK
   1. CONTROL OF THE WORK
      1. The Contractor shall have total control of the Work and shall effectively direct and supervise the Work so as to ensure conformity with the Contract Documents.
      2. The Contractor shall be solely responsible for construction means, methods, techniques, sequences, and procedures and for co­ordinating the various parts of the Work under the Contract.
      3. Time is of the essence of this Contract. The Contractor shall commence the Work on the date first set out in paragraph 1.3 of Article A-1 of the Agreement – THE WORK and proceed with the Work in an orderly fashion so as to ensure that the Work is complete by the second date set out in paragraph 1.3 of Article A-1 of the Agreement – THE WORK.
      4. The Contractor shall keep the Owner and the Consultant informed of the progress of the Work, on a regular basis (at least weekly) and at any reasonable time the Owner may request. The Contractor shall at all times perform the Work in accordance with the Contract Time.
      5. The Contractor is solely responsible for the quality of the work and shall undertake any quality control activities specified in the Contract Documents or, if none are specified, as may be reasonably required to ensure such quality.
      6. The Contractor shall at all times perform the Work required hereunder as diligently and expeditiously as is consistent with the highest professional standards and the orderly progress of the Work, and in accordance with the Contract Time and any revisions thereto, in order to maintain the desired development and Construction Schedule for the Project (including any Schedule Remediation Plan, if applicable), and in order not to delay the Work or any Project. The Contractor shall at all times provide sufficient personnel to accomplish its Work within the time limits required by the Owner.
      7. The Contractor agrees that, notwithstanding anything to the contrary contained in the Contract, it shall fully comply with any policies or procedures of the Owner which are relevant to any activity of the Contractor to be performed under the Contract, provided that they have been made available to the Contractor. The Contractor further agrees that it will use reasonable efforts to inquire from the Owner if such policies or procedures exist for any activity of the Contractor to be performed under the Contract. The Owner agrees that it will use reasonable efforts to communicate to the Contractor policies or procedures it may have, relevant to any such activity.
      8. The Construction Manager shall, at all times, abide by the terms and conditions set out under the Construction Management Plan, and use its best efforts to ensure that the Subcontractors are also abiding by the Construction Management Plan, and all relevant terms of this Contract. The Construction Management Plan may only be amended or replaced with the written approval of the Owner.
   2. CONSTRUCTION BY THE OWNER OR OTHER CONTRACTORS
      1. The Owner reserves the right to award separate contracts in connection with other parts of the Project to Other Contractors and to perform work with own forces.
      2. When separate contracts are awarded for other parts of the Project, or when work is performed by the Owner’s own forces, the Owner shall:
         1. provide for the co-ordination of the activities and work of Other Contractors and the Owner’s own forces with the Work of the Contract;
         2. ensure that insurance coverage is provided to the same requirements as are called for in GC 11.1 – INSURANCE and co-ordinate such insurance with the insurance coverage of the Contractor as it affects the Work; and
         3. take all reasonable precautions to avoid labour disputes or other disputes on the Project arising from the work of Other Contractors or the Owner’s own forces.
      3. When separate contracts are awarded for other parts of the Project, or when work is performed by the Owner’s own forces, the Contractor shall:
         1. afford the Owner and Other Contractors reasonable opportunity to store their products and execute their work;
         2. co-ordinate and schedule the Work with the work of Other Contractors or the Owner’s own forces that are identified in the Contract Documents;
         3. participate with Other Contractors and the Owner in reviewing their construction schedules when directed to do so. Failure by the Contractor to so report shall invalidate any claims against the Owner by reason of the deficiencies in the work of Other Contractors or Owner’s own forces; and
         4. report promptly to the Consultant in writing any apparent deficiencies in the work of Other Contractors or of the Owner’s own forces, where such work affects the proper execution of any portion of the Work, prior to proceeding with that portion of the Work.
      4. Where a change in the Work is required as a result of the co-ordination and integration of the work of Other Contractors or Owner’s own forces with the Work, the changes shall be authorized and valued as provided in GC 6.1 – OWNER’S RIGHT TO MAKE CHANGES, GC 6.2 – CHANGE ORDER and GC 6.3 – CHANGE DIRECTIVE.
      5. Disputes and other matters in question between the Contractor and Other Contractors shall be dealt with as provided in Part 8 of the General Conditions – DISPUTE RESOLUTION provided the Other Contractors have reciprocal obligations. The Contractor shall be deemed to have consented to arbitration of any dispute with any Other Contractor whose contract with the Owner contains a similar agreement to arbitrate. In the absence of Other Contractors having reciprocal obligations, disputes and other matters in question initiated by the Contractor against Other Contractors will be considered disputes and other matters in question between the Contractor and the Owner.
      6. Should the Owner, the Consultant, Other Contractors, or anyone employed by them directly or indirectly be responsible for ill- timed work necessitating cutting or remedial work to be performed, the cost of such cutting or remedial work shall be valued as provided in GC 6.1 – OWNER’S RIGHT TO MAKE CHANGES, GC 6.2 – CHANGE ORDER and GC 6.3 – CHANGE DIRECTIVE.
   3. TEMPORARY WORK
      1. The Contractor shall have the sole responsibility for the design, erection, operation, maintenance, and removal of Temporary Work unless otherwise specified in the Contract Documents.
      2. The Contractor shall engage and pay for registered professional engineering personnel skilled in the appropriate disciplines to perform those functions referred to in paragraph 3.3.1 where required by law or by the Contract Documents and in all cases where such Temporary Work is of such a nature that professional engineering skill is required to produce safe and satisfactory results.
      3. Notwithstanding the provisions of GC 3.1 – CONTROL OF THE WORK, paragraphs 3.3.1 and 3.3.2 or provisions to the contrary elsewhere in the Contract Documents where such Contract Documents include designs for Temporary Work or specify a method of construction in whole or in part, such designs or methods of construction shall be considered to be part of the design of the Work and the Contractor shall not be held responsible for that part of the design or the specified method of construction. The Contractor shall, however, be responsible for the execution of such design or specified method of construction in the same manner as for the execution of the Work.
   4. CONSTRUCTION SCHEDULE
      1. The Contractor shall:
         1. prepare and submit to the Owner and the Consultant prior to the first application for payment, a Construction Schedule that indicates the timing of the major activities of the Work and provides sufficient detail of the critical events and their inter­relationship to demonstrate the Work will be performed in conformity with the Contract Time;
         2. monitor the progress of the Work relative to the Construction Schedule and update the Construction Schedule on a weekly basis or as stipulated by the Contract Documents;
         3. provide a copy of the updated Construction Schedule monthly with the Contractor’s monthly progress report; and
         4. advise the Consultant of any revisions required to the Construction Schedule as the result of extensions of the Contract Time as provided in Part 6 of the General Conditions – CHANGES IN THE WORK.
   5. SUPERVISION
      1. The Contractor shall provide all necessary supervision and appoint a competent representative who shall be in attendance at the Place of the Work while the Work is being performed. The Contractor shall engage the key personnel listed in Schedule 6 (Personnel and Rates) to manage, supervise and administer the Work, and to represent the Contractor. Such key personnel and appointed representative shall not be removed or replaced without the approval of the Owner, such approval not to be unreasonably withheld, provided that such key personnel and appointed representative is replaced with personnel of similar qualifications. The Contractor shall give the Owner and the Consultant ten (10) days written notice prior to changing any key personnel or the appointed representative.
      2. The appointed representative shall represent the Contractor at the Place of the Work. Information and instructions provided by the Consultant to the Contractor’s appointed representative shall be deemed to have been received by the Contractor.
   6. SUBCONTRACTORS AND SUPPLIERS
      1. The Contractor shall preserve and protect the rights of the parties under the Contract with respect to work to be performed under subcontract, and shall:
         1. enter into contracts or written agreements with Subcontractors and Suppliers to require them to perform their work as provided in the Contract Documents;
         2. incorporate the applicable terms and conditions of the Contract Documents into all contracts or written agreements with Subcontractors and Suppliers; and
         3. be as fully responsible to the Owner for acts and omissions of Subcontractors, Suppliers and any persons directly or indirectly employed by them as for acts and omissions of persons directly employed by the Contractor.
      2. The Contractor shall indicate in writing, if requested by the Owner, those Subcontractors or Suppliers whose bids have been received by the Contractor which the Contractor would be prepared to accept for the performance of a portion of the Work. Upon obtaining the written approval of the Owner before signing the Contract, the Contractor shall employ those Subcontractors or Suppliers so identified by the Contractor in writing for the performance of that portion of the Work to which their bid applies.
      3. The Owner may, for reasonable cause, at any time before the Owner has signed the Contract, object to the use of a proposed Subcontractor or Supplier and require the Contractor to employ one of the other subcontract bidders.
      4. If the Owner requires the Contractor to change a proposed Subcontractor or Supplier, the Contract Price and Contract Time shall be adjusted by the difference occasioned by such required change.
      5. The Contractor shall not be required to employ as a Subcontractor or Supplier, a person or firm to which the Contractor may reasonably object.
      6. The Owner, through the Consultant, may provide to a Subcontractor or Supplier information as to the percentage of the Subcontractor’s or Supplier’s work which has been certified for payment.
   7. LABOUR AND PRODUCTS
      1. The Contractor shall maintain good order and discipline among the Contractor’s employees engaged on the Work and employ only workers that are skilled in the tasks assigned.
      2. The Contractor shall provide and pay for labour, Products, tools, Construction Equipment, water, heat, light, power, transportation, and other facilities and services necessary for the performance of the Work in accordance with the Contract.
      3. Unless otherwise specified in the Contract Documents, Products provided shall be new. Products which are not specified shall be of a quality consistent with those specified and their use acceptable to the Consultant.
      4. If the Owner specifically requests the Contractor to have work performed at overtime rates in order to complete the Work (or any change in the Work) or any part thereof earlier than the Contractor would otherwise be obliged to finish such Work (or change in the Work) or any part thereof under the Contract Documents, the additional net cost of such overtime (less any savings realized by the Contractor through the earlier completion of the Work) shall be chargeable to the Owner.
   8. SHOP DRAWINGS
      1. The Contractor shall provide Shop Drawings as required in the Contract Documents or as the Consultant may reasonably request. The Contractor shall submit all Drawings in triplicate and in reproducible form. The Contractor shall also provide “as built” Drawings upon completion of the Work.
      2. The Contractor shall provide Shop Drawings to the Consultant to review in accordance with an agreed schedule, or in the absence of an agreed schedule, in orderly sequence and sufficiently in advance so as to cause no delay in the Work or in the work of Other Contractors or the Owner’s own forces.
      3. The Contractor shall review all Shop Drawings before providing them to the Consultant. The Contractor represents by this review that:
         1. the Contractor has determined and verified all field measurements, field construction conditions, Product requirements, catalogue numbers and similar data, or will do so, and
         2. the Contractor has checked and co-ordinated each Shop Drawing with the requirements of the Work and of the Contract Documents.
      4. The Consultant’s review is for conformity to the design concept and for general arrangement only.
      5. At the time of providing Shop Drawings, the Contractor shall expressly advise the Consultant in writing of any deviations in a Shop Drawing from the requirements of the Contract Documents. The Consultant shall indicate the acceptance or rejection of such deviation expressly in writing.
      6. The Consultant’s review shall not relieve the Contractor of responsibility for errors or omissions in the Shop Drawings or for meeting all requirements of the Contract Documents.
      7. The Consultant will review and return Shop Drawings in accordance with the schedule agreed upon, or, in the absence of such schedule, with reasonable promptness so as to cause no delay in the performance of the Work.
   9. DOCUMENT REVIEW
      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 to the best of the Contractor’s knowledge, information and belief. If the Contractor does discover any error, inconsistency or omission in the Contract Documents, the Contractor shall not proceed with the work affected until the Contractor has received corrected or missing information from the Consultant.
   10. OPERATIONAL RISKS
       1. Before starting Work, the Contractor shall inform itself of the exact locations of all utilities and structures, and once the utilities are located, by the applicable utility company, or once the Contractor discovers, or once a reasonably prudent contractor ought to have discovered, the actual location of the utilities, the Contractor shall be liable for damages to them as a result of any act or omission, whether or not the result of negligence, by those for whom it is responsible, except to the extent that such damages are caused by the Owner’s negligence or wilful misconduct. Unless otherwise specified, the Contractor shall temporarily support or relocate such utilities and structures, or temporarily remove them, and restore them, to the satisfaction of the owners of the utilities and structures at the cost of the Owner.
3. ALLOWANCES
   1. CASH ALLOWANCES
      1. The Contract Price includes the cash allowances, if any, stated in the Contract Documents. The scope of the Work or costs included in such cash allowances shall be as described in the Contract Documents.
      2. The Contract Price, and not the cash allowances, includes the Contractor’s overhead and profit in connection with such cash allowances.
      3. Expenditures under cash allowances shall be authorized by the Owner through the Consultant.
      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.
      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.
      6. The value of the Work performed under a cash allowance is eligible to be included in progress payments.
      7. The Contractor and the Consultant shall jointly prepare a schedule that shows when the items called for under cash allowances must be ordered to avoid delaying the progress of the Work.
      8. The Consultant may direct the Contractor to bid work for which payment is made from a cash allowance.
   2. CONTINGENCY ALLOWANCE
      1. The Contract Price includes the contingency allowance, if any, stated in the Contract Documents.
      2. The contingency allowance includes the Contractor’s overhead and profit in connection with such contingency allowance.
      3. Expenditures under the contingency allowance shall be authorized and valued as provided in GC 6.1 – OWNER’S RIGHT TO MAKE CHANGES, GC 6.2 – CHANGE ORDER and GC 6.3 – CHANGE DIRECTIVE.
      4. The Contract Price shall be adjusted by Change Order to provide for any difference between the expenditures authorized under paragraph 4.2.3 and the contingency allowance.
4. PAYMENT
   1. FINANCIAL REPRESENTATIONS
      1. The Owner represents to the Contractor that:
         1. the Owner is validly existing under the laws of the jurisdiction of its formation , and is in good standing with the relevant Governmental Authority under the laws of the jurisdiction of its formation, and has all the requisite power, authority and capacity to own its properties and assets and to carry on its business as it is currently being conducted;
         2. the Owner has all the requisite power, authority and capacity to enter into and perform all of the Owner’s obligations under this Contract, and to do all acts and things, and execute, deliver and perform all other agreements, instruments, undertakings and documents are explicitly or implicitly required by this Contract to be done, executed, delivered or performed by the Owner;
         3. to the Owner’s knowledge, there are no actions, suite, proceedings, or investigations pending or threatened (in writing) against the Owner that could likely result inn material adverse effect with respect o the Owner; and
         4. both before and after giving effect to the transactions and obligations under this Contract, the Owner is able to meet its financial obligations as they become due.
      2. The Contractor represents to the Owner that:
         1. the Contractor is validly existing under the laws of the jurisdiction of its formation, and is in good standing with the relevant Governmental Authority under the laws of the jurisdiction of its formation, and has all the requisite power, authority and capacity to own its properties and assets and to carry on its business as it is currently be conducted;
         2. the Contractor has all requisite power, authority and capacity to enter into and perform all of the Contractor’s obligations under this Contract, and to do all acts and things, and execute, deliver and perform all other agreements, instructions, undertakings and documents as are explicitly or implicitly required by this Contract to be done, executed, delivered or performed by the Contractor;
         3. to the Contractor’s knowledge, there are no actions, suits, proceedings, or investigations pending or threatened (in writing) against the Contractor that could likely result in a material adverse effect with respect to the Contractor; and
         4. both before and after giving effect to the transaction and obligations under this Contract, the Contractor is able to meet its financial obligations as they become due.
   2. APPLICATIONS FOR PAYMENT
      1. Unless otherwise set out in the Special Conditions, on the 25th day of each month during the Contract Time, the Contractor will deliver to the Consultant a draft of the Contractor’s proposed application for payment for all of the Work performed by the Contractor in that month in order to facilitate and expedite payments under GC 5.2 – APPLICATIONS FOR PROGRESS PAYMENT, GC 5.3 – PROGRESS PAYMENT and GC 5.7 – FINAL PAYMENT, including an estimate of the Work to be performed and Products to be delivered at the date of such application for payment but before the end of that month, and including any reports or certificates confirming the satisfactory completion of any commissioning and testing required by the Contract Documents for any completed part of the Work that the Contractor will include in its application for payment.
      2. The Contractor shall review with the Consultant and the Owner, at a scheduled time, the draft application for payment ant the percentage of the Work completed for each item indicated in the schedule of values. This procedure shall be complied with for each draft application for payment.
      3. Nothing in paragraph 5.2.2 is intended to condition, pre-condition, prevent or delay the Contractor’s right to submit its applications for payment in accordance with this Contract and the Payment Legislation.
      4. The Contractor shall submit its applications for payment to the Consultant and the Owner monthly as the Work progresses no earlier than the 7th calendar day, and no later than the 12th calendar day, after the end of the month to which the application for payment relates. An application for payment delivered after that time period may be treated by the Owner as an application for payment delivered in respect of the next monthly payment period.
      5. The Contractor shall ensure that each application for payment for Work complies with the requirements set out in this Contract, and will include as part of it application for payment of all the documents and information required in this Part 5 – PAYMENT and required for a Proper Invoice, including any reports or certificates confirming the satisfactory completion of any commissioning and testing required under the Contract Documents for any completed part of the Work. The Contractor’s application for payment will indicate any and all changes, updates or revisions made to the draft application for payment submitted under paragraph 5.2.1. The Owner may, in its discretion, reject any application for payment that does not comply with GC 5.2 – APPLICATIONS FOR PROGRESS PAYMENT or GC 5.3 – PROGRESS PAYMENT, or the Owner may withhold up to the full amounts otherwise payable in relation to that application for payment until such application for payment includes all of the documents and information required under this Part 5 – PAYMENT and for a Proper Invoice.
      6. The amount claimed shall be for the value, proportionate to the amount of the Contract, of Work performed and Products delivered to the Place of the Work as of the last day of the payment period.
      7. Before the Contractor submits each application for payment, the Contractor will check the progress of the Work on site to establish the value of the Work performed. If requested by the Consultant or the Owner, the Contractor shall carry out such check with the Consultant or the Owner. It is understood and agreed that no payment shall be claimed for Products stored at the Place of the Work, or elsewhere, unless the Owner shall agree that they have been delivered no earlier than is reasonably required to meet the Construction Schedule.
      8. Each Contractor’s application for payment shall be in a form prescribed by the Owner and shall contain all of the documents and information required for a Proper Invoice.
      9. Each Contractor’s application for payment shall be supported by invoices, payrolls, equipment rental schedules and such other evidence as the Owner or Consultant shall require to support the application for payment and copies thereof shall be supplied to the Owner by the Contractor upon request to the extent required to support the evaluation of the progress of the Work or any payment for work under a Change Order or Change Directive. Except for the Contractor’s first application for payment, each application shall also be accompanied by such evidence as Owner may require establishing payment and satisfaction by the Contractor of all items with respect to the Work for which the Contractor has been previously paid, such as receipts, Statutory Declarations and releases from Subcontractors and Products Suppliers arising out of or in connection with the Work, and statutory declarations from the Contractor, in such form as may be required by Owner. Upon receipt of a written request from the Owner, the Contractor shall also make available to the Owner the Contractor’s files setting forth the addresses of all Subcontractors, labourers and Products Suppliers and the names of all labourers involved in the Work, and Owner shall have the right to make and retain copies of the same.
      10. The Contractor shall submit to the Owner and Consultant at least fourteen (14) days before the first application for payment, a schedule of values of the various parts of the Work, divided so as to facilitate evaluation of applications for payment.
      11. This schedule of values shall be made out in such form and supported by such evidence as to its correctness as the Owner or Consultant may direct and when approved by the Owner and Consultant shall be used as the basis for applications for payment, unless it is found to be in error.
      12. When making application for payment, the Contractor shall submit a statement based upon this schedule of values which statement shall be made out in such form and supported by such evidence as to its correctness as the Owner or Consultant may direct.
   3. PAYMENT
      1. Unless otherwise set out in the Special Conditions, after receipt by the Consultant and the Owner of an application for payment submitted by the Contractor in accordance with GC 5.2 – APPLICATIONS FOR PAYMENT:
         1. the Consultant will issue to the Owner and copy to the Contractor, no later than 10 calendar days after the receipt of the application for payment, a certificate for payment in the amount applied for, or in such other amount as the Consultant determines to be properly due. If the Consultant certifies a different amount, or rejects the application or part thereof, the Owner shall promptly issue a written notice to the Contractor giving reasons for the revision or rejection, such written notice to be in compliance with Payment Legislation; and
         2. the Owner shall make payment to the Contractor on account as provided in Article A-5 of the Agreement – PAYMENT on or before 28 calendar days after the receipt by the Owner and the Consultant of the application for payment, and in any event, in compliance with Payment Legislation.
      2. The submission of the application by the Contractor for a certificate for payment will constitute a representation by the Contractor to the Owner that: (1) the Work has progressed to the point indicated; (2) the quality of the Work is in accordance with the Contract Documents; and (3) the Contractor is entitled to payment under the Contract Documents in the amount certified.
      3. The Consultant or the Owner may decline to approve an application for payment and may withhold a certificate for payment in whole or in part, to the extent necessary to protect the Owner, if in the Consultant’s opinion the Contractor is unable to make representations to the Owner as provided in paragraph 5.3.2 of this GC 5.3 – PAYMENT. The Consultant or the Owner may also decline to approve any application for payment or, because of subsequently discovered evidence, testing or subsequent inspections, the Consultant or the Owner may provide for a withholding of funds to offset a previous payment made pursuant to any certificate for payment previously issued or the Owner may refuse to make payment, to such extent as may be necessary in its opinion to protect the Owner from loss because of:
         1. defective work not remedied;
         2. third party claims filed or reasonable evidence indicating possible filing of such claims;
         3. failure of the Contractor to make payments promptly to Subcontractors, Suppliers or for labour, Products or equipment;
         4. damage to work of Other Contractors; or
         5. unsatisfactory prosecution of the Work by the Contractor or any Subcontractor.
      4. No payment made by the Owner under this Contract nor any partial or entire use or occupancy of the Work by the Owner shall constitute an acceptance of any portion of the Work or any Products which are not in accordance with the requirements of the Contract Documents.
      5. If the Owner has reasonable grounds for believing that any amount included in previous applications for payment of the Contractor or paid to the Contractor by the Owner has not been paid to Subcontractors, Suppliers or other third parties to whom such amounts are due, then the Owner may withhold payment in respect of such amount from the current application until satisfactory evidence of payment is provided to the Owner by the Contractor.
   4. SUBSTANTIAL PERFORMANCE OF THE WORK AND PAYMENT OF HOLDBACK
      1. The Consultant will review the Work to certify or verify the validity of the application for Substantial Performance of the Work and will promptly, and in any event, no later than 20 calendar days after receipt of the Contractors application:
         1. submit an application for payment of the holdback amount containing all of the information and documents required of a Proper Invoice, a complete list of deficiencies and including all final reports and certificates confirming satisfactory completion of all commissioning and testing required by the Contract Documents, to the extent applicable, and all manuals, as-built drawings and other turnover documents required under the Contract Documents; or
         2. state the date of Substantial Performance of the Work or a designated portion of the Work in a certificate and issue a copy of that certificate to each of the Owner and the Contractor.
      2. Notwithstanding the foregoing, if the Contractor has not provided the documents required by the General Conditions by the 30th day after the publication of the certificate of Substantial Performance of the Work (or the completion termination or abandonment of the Work, whichever is earlier), the Owner, at its discretion, shall be entitled to withhold an amount equal to up to the full amount of statutory holdback as security for the Contractor’s delivery of the outstanding document(s) and information upon delivering a Notice in Writing or, if required by Payment Legislation, a notice of non-payment of holdback to the Contractor. In the event of a withholding under this paragraph 5.4.2, the Owner shall pay the withheld amount to the Contractor upon the Contractor’s delivery of such documents and information.
      3. Subject to the requirements of any Payment Legislation and the Special Conditions, all holdback amount prescribed by the applicable lien legislation for the Work shall become due and payable to the Contractor no later than 10 Working Days following the expiration of the holdback period stipulated in the lien legislation applicable to the Place of the Work, subject to the delivery by the Owner of a notice of non-payment under the Payment Legislation.
      4. The Contractor shall submit an application for payment of the lien holdback amount in accordance with GC 5.3 – PAYMENT. The Contractor shall submit, with the written application for a certificate of Substantial Performance of the Work, all guarantees, warranties, and certificates, distribution system diagrams, (any spare parts or materials left over to the Contractor and required by Owner), and any other materials or documentation required to be submitted under the Contract, together with written proof, acceptable to Owner and Consultant, that the Work has been substantially performed in conformity with the requirements of the municipal or governmental authorities and utilities having jurisdiction.
      5. The acceptance by the Contractor of the certificate of Substantial Performance of the Work, or the acceptance of a certificate by a Subcontractor or for any payment due thereunder shall constitute a waiver by either the Contractor, the Subcontractor, or both, as the case may be, of all claims whatsoever against the Owner under this Contract or any trade contract whether for a change in the Contract Price, extension of Contract Time, or otherwise, except those made in writing prior to the Contractor’s application for payment upon Substantial Performance of the Work and still unsettled.
      6. If required by the Special Conditions and permitted by the Payment Legislation, the Owner will pay the Contractor, or directly to its Subcontractors, the statutory holdback for a completed subcontract, or on an annual or phased basis in the manner, and on satisfaction of the conditions, set out in the Special Conditions.
      7. Notwithstanding any progressive release of the holdback, the Contractor shall ensure that such parts of the Work are protected pending the issuance of a final certificate for payment and be responsible for the correction of defects or work not performed regardless of whether or not such was apparent when the holdback was released.
   5. FINAL PAYMENT
      1. When the Contractor considers that the Work is completed (as defined in the applicable Payment Legislation), the Contractor shall submit an application for final payment containing all of the documents and information required under the Contract or for a Proper Invoice and including all final reports and certificates confirming satisfactory completion of all required commissioning and testing, to the extent applicable.
      2. The Consultant will, no later than 10 calendar days after the receipt of an application from the Contractor for final payment, review the Work to verify the validity of the application and when the Consultant finds the Contractor’s application for final payment valid, the Consultant will promptly issue a final certificate for payment to the Owner, with a copy to the Contractor.
      3. If the Consultant rejects the application or part thereof, the Owner will promptly issue a written notice to the Contractor giving reasons for the revision or rejection, such written notice to be in compliance with Payment Legislation.
      4. Subject to the provisions of paragraph 10.4.1 of the GC 10.4 – WORKERS COMPENSATION, the delivery of a notice of non-payment by the Owner (if required under the applicable Payment Legislation), and any lien legislation applicable to the Place of the Work, the Owner shall, no later than 28 calendar days after the issuance of a final certificate for payment, pay the Contractor as provided in Article A-5 of the Agreement – PAYMENT
      5. The Contractor shall submit, with the application for final payment upon total completion, a Statutory Declaration and a written statement that the Work has been performed to the requirements of the Contract Documents, and itemizing approved changes in the Work and Consultant’s written instructions and modifications indicated by the authorities having jurisdiction and such other materials or documentation as may be required to be submitted under the Contract Documents.
   6. DEFERRED WORK
      1. If because of climatic or other conditions reasonably beyond the control of the Contractor, or if the Owner and the Contractor agree that, there are items of work that must be deferred, 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 deferred Work.
   7. NON-CONFORMING WORK
      1. No payment by the Owner under the Contract nor partial or entire use or occupancy of the Work by the Owner shall constitute an acceptance of any portion of the Work or Products which are not in accordance with the requirements of the Contract Documents.
   8. LIENS
      1. Notwithstanding anything else in this Part 5 - PAYMENT, the Owner shall not be obligated to issue a certificate for payment in accordance with the Contract, 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 site;
         2. the Owner has received a written notice of lien, or
         3. the Owner reasonably believes that any party may retain or has retained any right, title or interest to Products or materials in respect of which an application for payment has been made including, without limitation, a claim under the Personal Property Security Act (Ontario) or similar legislation applicable to the Place of the Work, a lien, attachment or secured claim.

For clarity, the Owner’s entitlement to withhold payment to the Contractor pursuant to this paragraph 5.8.1 shall be limited to claims for liens registered by the Subcontractors, Suppliers and those for whom the Contractor is otherwise responsible.

1. CHANGES IN THE WORK
   1. OWNER’S RIGHT TO MAKE CHANGES
      1. The Owner, through the Consultant, without invalidating the Contract, may make:
         1. changes in the Work consisting of additions, deletions or other revisions to the Work by Change Order or Change Directive, and
         2. changes to the Contract Time for the Work, or any part thereof, by Change Order.
      2. No Changes in the Work shall proceed without a written Change Order or Change Directive signed by the Owner and no claim for any change in the Contract Price or for any extension or alteration of the Contract Time shall be valid except as shown on the Change Order or Change Directive, as the case may be. This requirement is of the essence and it is the express intention of the parties hereto that any claims for a change in the Contract Price shall be based, and that the Contract Time shall be altered, only upon strict compliance with the requirements of Part 6 - CHANGES IN THE WORK. Accordingly, no course of conduct or dealing between the parties, no express or implied acceptance of alterations or additions to the Work and no claim that the Owner has been unjustly enriched by any alteration or addition to the Work, whether in fact there is any such unjust enrichment or not, shall be the basis of a claim for payment under this Contract or any extension of the Contract Time without a Change Order or Change Directive.
      3. If any change or deviation in, or omission from the Work is made by which the amount of work to be done is decreased, or if the whole or a portion of the work is dispensed with, no compensation is claimable by the Contractor or any Subcontractor for any loss of anticipated profit in respect thereof.
   2. CHANGE ORDER
      1. When a change in the Work is proposed or required, the Consultant will provide the Contractor with a written description of the proposed change in the Work. The Contractor shall promptly present to the Consultant, in a form that can be reasonably evaluated, a method of adjustment or an amount of adjustment for the Contract Price, if any, and the adjustment in the Contract Time, if any, for the proposed change in the Work.
      2. When the Owner and the Contractor agree to the adjustments in the Contract Price and Contract Time or to the method to be used to determine the adjustments, such agreement shall be effective immediately and shall be recorded in a Change Order. The value of the work performed as the result of a Change Order shall be included in the applications for progress payment.
   3. CHANGE DIRECTIVE
      1. If the Owner requires the Contractor to proceed with a change in the Work prior to the Owner and the Contractor agreeing upon the corresponding adjustment in Contract Price and Contract Time, the Owner, through the Consultant, shall issue a Change Directive.
      2. Upon receipt of a Change Directive, the Contractor shall proceed promptly with the change in the Work.
      3. For the purpose of valuing Change Directives, changes in the Work that are not substitutions or otherwise related to each other shall not be grouped together in the same Change Directive.
      4. The adjustment in the Contract Price for a change carried out by way of a Change Directive shall be determined on the basis of the cost of the Contractor’s actual expenditures and savings attributable to the Change Directive, valued in accordance with paragraph 6.3.7 and as follows:
         1. if the change results in a net increase in the Contractor’s cost, the Contract Price shall be increased by the amount of the net increase in the Contractor’s cost, plus the Contractor’s percentage fee on such net increase;
         2. if the change results in a net decrease in the Contractor’s cost, the Contract Price shall be decreased by the amount of the net decrease in the Contractor’s cost, with adjustment for the Contractor’s percentage fee; and
         3. the Contractor’s fee shall be as specified in the Contract Documents or as otherwise agreed by the parties.

Upon receipt of a Change Directive, the Contractor shall provide the Owner a non binding written estimate of the costs associated with the related change in the Work within two (2) days of receiving any such Change Directive.

* + 1. The cost of performing the work attributable to the Change Directive shall be limited to the actual cost of the following in as much as it contributes directly to the implementation of the Change Directive, except to the extent such costs are incurred as a result of the negligent acts or omissions of the Contractor or its Subcontractors:

Labour

* + - 1. rates that are listed in Schedule 6 – (Personnel and Rates) or as agreed by the Owner and the Contractor including wages, benefits, compensation, contributions, assessments, or taxes incurred for such items as employment insurance, provincial or territorial health insurance, workers’ compensation, and Canada or Quebec Pension Plan for:
         1. trade labour in the direct employ of the Contractor;
         2. the Contractor’s personnel when stationed at the field office;
         3. the Contractor’s personnel engaged at shops or on the road, in expediting the production or transportation of materials or equipment; and
         4. the Contractor’s office personnel engaged in a technical capacity, or other personnel identified in Schedule 6 (Personnel and Rates) for the time spent in the performance of the Work;

Products, Construction Equipment and Temporary Work

* + - 1. cost of all Products including cost of transportation thereof;
      2. in the absence of agreed rates, cost less salvage value of Construction Equipment, Temporary Work and tools, exclusive of hand tools under $1,000 owned by the Contractor;
      3. rental cost of Construction Equipment, Temporary Work and tools, exclusive of hand tools under $1,000;
      4. cost of all equipment and services required for the Contractor’s field office;

Subcontract

* + - 1. subcontract amounts of Subcontractor with pricing mechanism approved by the Owner;

Others

* + - 1. travel and subsistence expenses of the Contractor’s personnel described in paragraph 6.3.7.1;
      2. deposits lost provided that they are not caused by negligent acts or omissions of the Contractor;
      3. cost of quality assurance such as independent inspection and testing services;
      4. charges levied by authorities having jurisdiction at the Place of the Work;
      5. royalties, patent license fees, and damages for infringement of patents and cost of defending suits therefor subject always to the Contractor’s obligations to indemnify the Owner as provided in paragraph 10.3.1 of GC 10.3 – PATENT FEES;
      6. premium for all contract securities and insurance for which the Contractor is required, by the Contract Documents, to provide, maintain and pay in relation to the performance of the Work;
      7. losses and expenses sustained by the Contractor for matters which are the subject of insurance under the policies prescribed in GC 11.1 – INSURANCE when such losses and expenses are not recoverable because the amounts are in excess of collectible amounts or within the deductible amounts;
      8. taxes and duties, other than Value Added Taxes, income, capital, or property taxes, relating to the Work for which the Contractor is liable;
      9. charges for voice and data communications, courier services, expressage, transmittal and reproduction of documents, and petty cash items;
      10. cost for removal and disposal of waste products and debris;
      11. legal costs, incurred by the Contractor, in relation to the performance of the Work provided that they are not:
          1. relating to a dispute between the Owner and the Contractor unless such costs are part of a settlement or awarded by arbitration or court;
          2. the result of the negligent acts or omissions of the Contractor; or
          3. the result of a breach of this Contract by the Contractor;
      12. cost of auditing when requested by the Owner; and.19 cost of Project specific information technology in accordance with the method determined by the parties.
    1. Notwithstanding any other provisions contained in the General Conditions of the Contract, it is the intention of the parties that the cost of any item under any cost element referred to in paragraph 6.3.7 shall cover and include any and all costs or liabilities attributable to the Change Directive other than those which are the result of or occasioned by any failure on the part of the Contractor to exercise reasonable care and diligence in the Contractor’s attention to the Work. Any cost due to failure on the part of the Contractor to exercise reasonable care and diligence in the Contractor’s performance of the Work attributable to the Change Directive shall be borne by the Contractor.
    2. The Contractor shall keep full and detailed accounts and records necessary for the documentation of the cost of performing the Work attributable to the Change Directive and shall provide the Consultant with copies thereof.
    3. For the purpose of valuing Change Directives, the Owner shall be afforded reasonable access to all of the Contractor’s pertinent documents related to the cost of performing the Work attributable to the Change Directive.
    4. Pending determination of the final amount of a Change Directive, the undisputed value of the Work performed as the result of a Change Directive is eligible to be included in progress payments.
    5. If the Owner and the Contractor do not agree on the proposed adjustment in the Contract Time attributable to the change in the Work, or the method of determining it, the adjustment shall be referred to the Consultant for a finding.
    6. When the Owner and the Contractor reach agreement on the adjustment to the Contract Price and to the Contract Time, this agreement shall be recorded in a Change Order.
    7. Notwithstanding anything in this Contract to the contrary, the Owner, without invalidating the Contract, may make minor adjustments in the Work consistent with the intent of the Contract Documents by delivering a Change Directive. Such adjustments in the Work shall not involve adjustment to the Contract Price or the Contract Time if they are within the general scope of the Work, if the Change Directive indicates that no adjustment shall be made to the Contract Price or the Contract Time as a result thereof and if such minor adjustments are reasonably inferable in the Contract Documents even though not expressly included.
  1. CONCEALED OR UNKNOWN CONDITIONS
     1. If the Owner or the Contractor discover conditions at the Place of the Work which are:
        1. subsurface or otherwise concealed physical conditions which existed before the commencement of the Work and differ materially from those indicated in the Contract Documents; or
        2. physical conditions, other than conditions due to weather, that are of a nature which differ materially from those ordinarily found to exist and generally recognized as inherent in construction activities of the character provided for in the Contract Documents, then the observing party shall give Notice in Writing to the other party of such conditions before they are disturbed and in no event later than 5 Working Days after first observance of the conditions.
     2. The Consultant will promptly investigate such conditions and make a finding. If the finding is that the conditions differ materially and this would cause an increase or decrease in the Contractor’s cost or time to perform the Work, the Owner, through the Consultant, shall issue appropriate instructions for a change in the Work as provided in GC 6.2 – CHANGE ORDER or GC 6.3 – CHANGE DIRECTIVE.
     3. If the Consultant finds that the conditions at the Place of the Work are not materially different or that no change in the Contract Price or the Contract Time is justified, the Consultant will promptly inform the Owner and the Contractor in writing.
     4. If such concealed or unknown conditions relate to toxic and hazardous substances and materials, artifacts and fossils, or mould, the parties will be governed by the provisions of GC 9.2 – TOXIC AND HAZARDOUS SUBSTANCES, GC 9.3 – ARTIFACTS AND FOSSILS and GC 9.5 – MOULD.
     5. Notwithstanding anything in the Contract to the contrary, the Contractor has investigated for itself the character of the Work and of all local conditions which might affect its obligations and has satisfied itself as to the nature and extent of the Work to be done under the Contract Documents and as to the facilities and difficulties attending the execution of the Work, including subsurface conditions. Notwithstanding anything in the Contract to the contrary, to the extent the Contractor has not so investigated, it is willing to assume and does hereby assume responsibility for all loss and damage from any cause whatsoever which such an investigation might have avoided and agrees to indemnify the Owner from all risk thereof and of conditions arising and developing in the course of the Work which might make it more onerous and more expensive to fulfil or perform than was contemplated or known when this Contract was signed. Notwithstanding anything in the Contract to the contrary, the Contractor acknowledges and declares that in entering into this Contract it did not and does not rely upon the information furnished by the Owner, its officers and employees and the Contractor confirms its understanding and awareness that any information from such source or sources was approximate and speculative only and was and is not in any manner guaranteed by the Owner.
  2. DELAYS
     1. If the Contractor is delayed in the performance of the Work by the Owner, the Consultant, or anyone employed or engaged by them directly or indirectly, contrary to the provisions of the Contract Documents, and provided the Contractor has given the Owner Notice in Writing in a timely fashion of the action or omission that has given rise to such delay then the Contract Time shall be extended for such reasonable time as the Consultant may recommend in consultation with the Contractor. The Contractor shall be reimbursed by the Owner for reasonable costs incurred by the Contractor as the result of such delay.
     2. If the Contractor is delayed in the performance of the Work by a stop work order issued by a court or other public authority and providing that such order was not issued as the result of an act or fault of the Contractor or any person employed or engaged by the Contractor directly or indirectly, resulting in the failure of the Contractor to attain Ready-for-Takeover by the date stipulated in Article A-1 of the Agreement – THE WORK, then the Contract Time shall be extended for such reasonable time as the Consultant may recommend in consultation with the Contractor. The Contractor shall be reimbursed by the Owner for reasonable costs incurred by the Contractor as the result of such delay.
     3. If the Contractor is delayed in the performance of the Work by:
        1. labour disputes, that do not involve the Contractor or that are decreed for its members by a recognized contractor’s association of which the Contractor is a member or to which the Contractor is otherwise bound (subject to paragraphs 6.5.4 and 6.5.5);
        2. fire, unusual delay by common carriers or unavoidable casualties;
        3. an abnormal weather condition occurs, where:
           1. such weather condition must delay, hinder or prevent the Contractor from performing all or a material part of the Work in accordance with the critical path of the Construction Schedule;
           2. such weather condition must be abnormal and outside the range of weather conditions reasonably expected at the applicable time of year based on the ten (10) year historical range of weather conditions at such time of year in Toronto as recorded by Environment Canada (an “**Abnormal Weather Condition**”); and
           3. the Contractor must have provided the Payment Certifier with a notice of the occurrence of any such Abnormal Weather Condition no later than 5 days of the occurrence of such Abnormal Weather Condition.
        4. any cause beyond the Contractor’s control other than one resulting from a default or breach of Contract by the Contractor,

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 the 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 actions by the Owner, the Consultant or anyone employed or engaged by them directly or indirectly.

* + 1. No extension shall be made for delay unless Notice in Writing of the cause of delay is given to the Consultant and the Owner not later than 3 Working Days after the commencement of the delay. In the case of a continuing cause of delay only one Notice in Writing shall be necessary. A notice of claim with respect to any delay shall indicate the reasons for such delay and the best estimate of the Contractor as to its estimated duration and the likely effect upon the time to complete the Work. Upon termination of the circumstances giving rise to the delay, the Contractor shall give to the Owner Notice in Writing of the termination of the delay.
    2. No extension shall be made for delay arising from a labour dispute that is decreed for its members by a recognized contractor’s association of which the Contractor is a member or to which the Contractor is otherwise bound if the Contractor, before entering into this Contract or commencing the Work, had or should have had knowledge that or a reasonable grounds for believing that the Work would be delayed by such a labour dispute and did not so inform the Owner.
    3. If there is a delay in the performance of any portion of the Work, the Contractor shall use its reasonable best efforts to re arrange and re schedule the Work so as to minimize the ultimate delay in the completion of the Work, including preparing a draft Schedule Remediation Plan for approval by the Owner within the earlier of 5 Working Days after the Contractor’s Notice in Writing under paragraph 6.5.4 and 10 Working Day after becoming aware of the delay. The Contractor shall be responsible for the care, maintenance and protection of the Work in the event of any shutdown. The Contractor will co operate with the Owner and the Consultant to avoid labour complications.
    4. If the delay is not caused by an event described in paragraphs 6.5.1, 6.5.2 or 6.5.3, and if the Contractor fails to correct the default in accordance with the Schedule Remediation Plan or in such other time period as may be subsequently agreed in writing by the Contractor and the Owner, without prejudice to any other right or remedy the Owner may have, the Owner may:
       1. correct such default and deduct the cost thereof from any payment then or thereafter due to the Contractor provided the Consultant has certified such cost to the Owner and the Contractor, or
       2. terminate the Contractor’s right to continue with the Work in whole or in part or terminate the Contract without incurring any damages pursuant to paragraph 7.1.4.2 of GC 7.1 – OWNER’S RIGHT TO PERFORM THE WORK, TERMINATE THE CONTRACTOR’S RIGHT TO CONTINUE WITH THE WORK OR TERMINATE THE CONTRACT.
    5. Any adjustment to the Contract Time and the Contract Price required as a result of GC 6.5 - DELAYS shall be made as provided in GC 6.1 - OWNER’S RIGHT TO MAKE CHANGES, GC 6.2 - CHANGE ORDER and GC 6.3 - CHANGE DIRECTIVE.
  1. CLAIMS FOR A CHANGE IN CONTRACT PRICE
     1. If the Contractor intends to make a claim for an increase to the Contract Price, or if the Owner intends to make a claim against the Contractor for a credit to the Contract Price, the party that intends to make the claim shall give timely Notice in Writing of intent to claim to the other party and to the Consultant.
     2. Upon commencement of the event or series of events giving rise to a claim, the party intending to make the claim shall:
        1. take all reasonable measures to mitigate any loss or expense which may be incurred as a result of such event or series of events; and
        2. keep such records as may be necessary to support the claim.
     3. The party making the claim shall submit within a reasonable time to the Consultant a detailed account of the amount claimed and the grounds upon which the claim is based and the Consultant will make a finding upon such claim.
     4. Where the event or series of events giving rise to the claim has a continuing effect, the detailed account submitted under paragraph 6.6.3 shall be considered to be an interim account and the party making the claim shall, at such intervals as the Consultant may reasonably require, submit further interim accounts giving the accumulated amount of the claim and any further grounds upon which it is based. The party making the claim shall submit a final account after the end of the effects resulting from the event or series of events.
     5. The Consultant’s findings, with respect to a claim made by either party, will be given by Notice in Writing to both parties within 30 Working Days after receipt of the claim by the Consultant, or within such other time period as may be agreed by the parties.
     6. If such finding is not acceptable to either party, the claim shall be settled in accordance with Part 8 of the General Conditions – DISPUTE RESOLUTION.

1. DEFAULT NOTICE
   1. OWNER’S RIGHT TO PERFORM THE WORK, TERMINATE THE CONTRACTOR’S RIGHT TO CONTINUE WITH THE WORK OR TERMINATE THE CONTRACT
      1. If the Contractor is adjudged bankrupt, or makes a general assignment for the benefit of creditors because of the Contractor’s insolvency, or if a receiver is appointed because of the Contractor’s insolvency, the Owner may, without prejudice to any other right or remedy the Owner may have, terminate the Contractor’s right to continue with the Work, by giving the Contractor or receiver or trustee in bankruptcy Notice in Writing to that effect.
      2. If the Contractor neglects to perform the Work properly or otherwise fails to comply with the requirements of the Contract to a substantial degree and if the Consultant has given a written statement to the Owner and Contractor which provides the detail of such neglect to perform the Work properly or such failure to comply with the requirements of the Contract to a substantial degree, the Owner may, without prejudice to any other right or remedy the Owner may have, give the Contractor Notice in Writing, containing particulars of the default including references to applicable provisions of the Contract, that the Contractor is in default of the Contractor’s contractual obligations and instruct the Contractor to correct the default in the 5 Working Days immediately following the receipt of such Notice in Writing.
      3. If the default cannot be corrected in the 5 Working Days specified or in such other time period as may be subsequently agreed in writing by the parties, the Contractor shall be in compliance with the Owner’s instructions if the Contractor:
         1. commences the correction of the default within the specified time;
         2. provides the Owner with an acceptable schedule for such correction; and
         3. corrects the default in accordance with the Contract terms and with such schedule.
      4. If the Contractor fails to correct the default in the time specified or in such other time period as may be subsequently agreed in writing by the parties, or if the Contractor is delayed for 180 days or longer in the performance of the Work and notwithstanding anything else herein provided, without prejudice to any other right or remedy the Owner may have, the Owner may by giving Notice in Writing:
         1. correct such default and deduct the cost thereof from any payment then or thereafter due the Contractor for the Work provided the Consultant has certified such cost to the Owner and the Contractor; or
         2. terminate the Contractor’s right to continue with the Work in whole or in part or terminate the Contract.
      5. If the Owner terminates the Contractor’s right to continue with the Work as provided in paragraphs 7.1.1 and 7.1.4, the Owner shall be entitled to:
         1. take possession of the Work and Products at the Place of the Work; subject to the rights of third parties, utilize the Construction Equipment at the Place of the Work; finish the Work by whatever method the Owner may consider expedient, but without undue delay or expense;
         2. withhold further payment to the Contractor until a final certificate for payment is issued;
         3. charge the Contractor the amount by which the full cost of finishing the Work as certified by the Consultant, including compensation to the Consultant for the Consultant’s additional services and a reasonable allowance as determined by the Consultant to cover the cost of corrections to work performed by the Contractor that may be required under GC 12.3 – WARRANTY, exceeds the unpaid balance of the Contract Price; 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; and
         4. on expiry of the warranty period, charge the Contractor the amount by which the cost of corrections to the Contractor’s work under GC 12.3 – WARRANTY exceeds the allowance provided for such corrections, or if the cost of such corrections is less than the allowance, pay the Contractor the difference.
      6. The Contractor’s obligation under the Contract as to quality, correction and warranty of the work performed by the Contractor up to the time of termination shall continue in force after such termination of the Contract.
      7. In addition to the rights set out in GC 7.1 – OWNER’S RIGHT TO PERFORM THE WORK, TERMINATE THE CONTRACTOR’S RIGHT TO CONTINUE WITH THE WORK OR TERMINATE THE CONTRACT, if the Owner has reasonable grounds for believing and does believe that the Contractor will not fulfill its contractual obligations hereunder, then the Owner shall also be entitled, on the giving of seven (7) days’ Notice in Writing, to terminate the Contractor’s right to continue with the Work in whole or in part or terminate the Contract, and in such event the Contractor shall be entitled to be paid for all work performed to the date of termination and the Contractor shall, at the request of the Owner, assign to the Owner all of its rights under any Subcontracts that the Owner may specify and the Owner shall thereafter assume all obligations under such Subcontracts.
   2. CONTRACTOR’S RIGHT TO SUSPEND THE WORK OR TERMINATE THE CONTRACT
      1. If the Owner is adjudged bankrupt, or makes a general assignment for the benefit of creditors because of the Owner’s insolvency, or if a receiver is appointed because of the Owner’s insolvency, the Contractor may, without prejudice to any other right or remedy the Contractor may have, terminate the Contract by giving the Owner or receiver or trustee in bankruptcy Notice in Writing to that effect.
      2. If the Work is suspended or otherwise delayed for a period of 20 Working Days or more under an order of a court or other public authority and providing that such order was not issued as the result of an act or fault of the Contractor or of anyone directly or indirectly employed or engaged by the Contractor, the Contractor may, without prejudice to any other right or remedy the Contractor may have, terminate the Contract by giving the Owner Notice in Writing to that effect.
      3. The Contractor may give Notice in Writing to the Owner, with a copy to the Consultant, that the Owner is in default of the Owner’s contractual obligations if:
         1. the Owner fails to furnish, when so requested by the Contractor, reasonable evidence that financial arrangements have been made to fulfill the Owner’s obligations under the Contract;
         2. the Owner fails to pay the Contractor when due the amounts certified by the Consultant or awarded by adjudication;
         3. arbitration or court, or the Consultant fails to issue a certificate as provided in Part 5 of the General Conditions – PAYMENT; or
         4. the Owner fails to comply with the requirements of the Contract to a substantial degree and the Consultant gives a written statement to the Owner and the Contractor that provides detail of such failure to comply with the requirements of the Contract to a substantial degree.
      4. The Contractor’s Notice in Writing to the Owner provided under paragraph 7.2.3 shall advise that if the default is not corrected within 5 Working Days following the receipt of the Notice in Writing, the Contractor may, without prejudice to any other right or remedy the Contractor may have, suspend the Work or terminate the Contract.
      5. If the Contractor terminates the Contract by giving a Notice in Writing to the Owner under the conditions set out above, 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.
2. DISPUTE RESOLUTION
   1. AUTHORITY OF THE CONSULTANT
      1. Differences between the parties to the Contract as to the interpretation, application or administration of the Contract or any failure to agree where agreement between the parties is called for, herein collectively called disputes, which are not resolved in the first instance by findings of the Consultant as provided in GC 2.2 – ROLE OF THE CONSULTANT, shall be settled in accordance with the requirements of Part 8 of the General Conditions – DISPUTE RESOLUTION.
      2. If a dispute arises under the Contract in respect of a matter in which the Consultant has no authority under the Contract to make a finding, the procedures set out in paragraph 8.1.3 and paragraphs 8.3.3 to 8.3.8 of GC 8.3 – NEGOTIATION, MEDIATION AND ARBITRATION, and in GC 8.4 – RETENTION OF RIGHTS apply to that dispute with the necessary changes to detail as may be required.
      3. If a dispute is not resolved promptly, the Consultant will give such instructions 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 so doing neither party will jeopardize any claim the party may have. If it is subsequently determined that such instructions were in error or at variance with the Contract Documents, the Owner shall pay the Contractor costs incurred by the Contractor in carrying out such instructions which the Contractor was required to do beyond what the Contract Documents correctly understood and interpreted would have required, including costs resulting from interruption of the Work.
   2. ADJUDICATION
      1. Nothing in this Contract shall be deemed to affect the rights of the parties to resolve any dispute by adjudication as may be prescribed by applicable legislation.
      2. If the Contractor issues a notice of adjudication to the Owner, it will include with such notice a description of the reasons for its dispute that includes a reference to the applicable application for payment and Proper Invoice, all Notices in Writing demanding payment, authority for the claim under the Contract (including copies of any applicable Change Order, Change Directive, requests for any related change, and written approval of any related change).
      3. The parties acknowledge and agree that the adjudication of a payment dispute in accordance with the Construction Act will not stay, pause, withdraw, terminate discontinue, or prejudice any mediation, arbitration, or court proceeding that relates to the same matter and that was commenced prior to the delivery of a notice of adjudication under the Construction Act, unless the parties otherwise agree in writing.
   3. NEGOTIATION, MEDIATION AND ARBITRATION
      1. In accordance with the rules for mediation as provided in CCDC 40 ‘Rules for Mediation and Arbitration of Construction Industry Disputes’ in effect at the time of bid closing, the parties shall appoint a Project Mediator
         1. within 20 Working Days after the Contract was awarded; or
         2. if the parties neglected to make an appointment within the 20 Working Days, within 10 Working Days after either party by Notice in Writing requests that the Project Mediator be appointed.
      2. A party shall be conclusively deemed to have accepted a finding of the Consultant under GC 2.2 – ROLE OF THE CONSULTANT and to have expressly waived and released the other party from any claims in respect of the particular matter dealt with in that finding unless, within 15 Working Days after receipt of that finding, the party sends a Notice in Writing of dispute to the other party and to the Consultant, which contains the particulars of the matter in dispute and the relevant provisions of the Contract Documents. The responding party shall send a Notice in Writing of reply to the dispute within 10 Working Days after receipt of such Notice in Writing setting out particulars of this response and any relevant provisions of the Contract Documents.
      3. The parties shall make all reasonable efforts to resolve their dispute by amicable negotiations and agree to provide, without prejudice, frank, candid, and timely disclosure of relevant facts, information and documents to facilitate these negotiations.
      4. After a period of 10 Working Days following receipt of a responding party’s Notice in Writing of reply under paragraph 8.3.2, the parties shall request the Project Mediator to assist the parties to reach agreement on any unresolved dispute. The mediated negotiations shall be conducted in accordance with the rules for mediation as provided in CCDC 40 in effect at the time of bid closing.
      5. If the dispute has not been resolved at the mediation or within such further period as is agreed by the parties, the Project Mediator will terminate the mediated negotiations by giving Notice in Writing to the Owner, the Contractor and the Consultant.
      6. By giving a Notice in Writing to the other party and the Consultant, not later than 10 Working Days after the date of termination of the mediated negotiations under paragraph 8.3.5, either party may refer the dispute to be finally resolved by arbitration under the rules of arbitration as provided in CCDC 40 in effect at the time of bid closing. The arbitration shall be conducted in the jurisdiction of the Place of the Work.
      7. On expiration of the 10 Working Days, the arbitration agreement under paragraph 8.3.6 is not binding on the parties and, if a Notice in Writing is not given under paragraph 8.3.6 within the required time, the parties may refer the unresolved dispute to the courts or to any other form of dispute resolution, including arbitration, which they have agreed to use.
      8. If neither party, by Notice in Writing, given within 10 Working Days of the date of Notice in Writing requesting arbitration in paragraph 8.3.6, requires that a dispute be arbitrated immediately, all disputes referred to arbitration as provided in paragraph 8.3.6 shall be:
         1. held in abeyance until:
            1. Ready-for-Takeover;
            2. the Contract has been terminated; or
            3. the Contractor has abandoned the Work, whichever is earlier; and
         2. consolidated into a single arbitration under the rules governing the arbitration under paragraph 8.3.6.
   4. RETENTION OF RIGHTS
      1. For any dispute, neither Party may suspend the performance of its obligations under the Contract, including remedying any material breach under GC 7.1 – OWNER’S RIGHT TO PERFORM THE WORK, TERMINATE THE CONTRACTOR’S RIGHT TO CONTINUE WITH THE WORK OR TERMINATE THE CONTRACT, while the Parties are following resolution procedures contemplated under the Contract for that dispute the dispute. Notwithstanding the preceding sentence, and without prejudice to GC 2.9 – DEFECTIVE WORK, the Owner may, acting reasonably, withhold payment of disputed amounts in invoices while the parties are making efforts to resolve the dispute over those amounts. The Owner will pay these amounts promptly after the dispute is resolved, to the extent it is resolved in the Contractor’s favour.
      2. Nothing in Part 8 of the General Conditions – DISPUTE RESOLUTION shall be construed in any way to limit a party from asserting any statutory right to a lien under applicable lien legislation of the jurisdiction of the Place of the Work and the assertion of such right by initiating judicial proceedings is not to be construed as a waiver of any right that party may have under paragraph 8.3.6 of GC 8.3 – NEGOTIATION, MEDIATION AND ARBITRATION to proceed by way of arbitration to adjudicate the merits of the claim upon which such a lien is based.
      3. The Contractor may suspend the Work if a dispute relates to Work that must be performed before additional Work can be performed, as appropriate, to protect public health and safety or the environment, or as otherwise authorized in the Contract Documents. The Contractor may not otherwise suspend the Work unless the Owner has not paid an amount claimed by the Contractor after an adjudicator’s determination or arbitrator or court’s decision that such amount is due.
3. PROTECTION OF PERSONS AND PROPERTY
   1. PROTECTION OF WORK AND PROPERTY
      1. The Contractor shall protect the Work, the Owner’s property and property adjacent to the Place of the Work from damage which may arise as the result of the Contractor’s operations under the Contract, and shall be responsible for such damage, except damage which occurs as the result of:
         1. errors or omissions in the Contract Documents; or
         2. acts or omissions by the Owner, the Consultant, Other Contractors, or their agents and employees.
      2. Before commencing any work, the Contractor shall determine the location of all underground utilities and structures indicated in the Contract Documents or that are reasonably apparent in an inspection of the Place of the Work.
      3. Should the Contractor in the performance of the Contract damage the Work, the Owner’s property or property adjacent to the Place of the Work, the Contractor shall be responsible for making good such damage at the Contractor’s expense.
      4. Should damage occur to the Work or the Owner’s property for which the Contractor is not responsible, as provided in paragraph 9.1.1, the Contractor shall make good such damage to the Work and, if the Owner so directs, to the Owner’s property. The Contract Price and Contract Time shall be adjusted as provided in GC 6.1 – OWNER’S RIGHT TO MAKE CHANGES, GC 6.2 – CHANGE ORDER and GC 6.3 – CHANGE DIRECTIVE.
         1. take all reasonable steps to determine whether any toxic or hazardous substances are present at the Place of the Work; and
         2. provide the Consultant and the Contractor with a written list of any such substances that are known to exist and their
      5. If the Contractor has caused damage to the work of another contractor on the Project, the Contractor agrees upon due notice to settle with the other contractor by negotiation or arbitration. If the other contractor makes a claim against the Owner on account of damage alleged to have been so sustained, the Owner shall notify the Contractor and may require the Contractor to defend the action at the Contractor’s expense. The Contractor shall satisfy a final order or judgment against the Owner and pay the costs incurred by the Owner arising from such action.
   2. TOXIC AND HAZARDOUS SUBSTANCES
      1. For the purposes of applicable legislation related to toxic and hazardous substances, the Owner shall be deemed to have control and management of the Place of the Work with respect to existing conditions.
      2. Prior to the Contractor commencing the Work, the Owner shall, locations.
      3. The Owner shall take all reasonable steps to ensure that no person’s exposure to any toxic or hazardous substance exceeds the time weighted levels prescribed by applicable legislation at the Place of the Work and that no property is damaged or destroyed as a result of exposure to, or the presence of, toxic or hazardous substances which were at the Place of the Work prior to the Contractor commencing the Work.
      4. Unless the Contract expressly provides otherwise, the Owner shall be responsible for taking all necessary steps, in accordance with applicable legislation in force at the Place of the Work, to dispose of, store or otherwise render harmless any toxic or hazardous substance which was present at the Place of the Work prior to the Contractor commencing the Work.
      5. If the Contractor:
         1. encounters toxic or hazardous substances at the Place of the Work; or
         2. has reasonable grounds to believe that toxic or hazardous substances are present at the Place of the Work, which were not brought to the Place of the Work by the Contractor or anyone for whom the Contractor is responsible and which were not disclosed by the Owner or which were disclosed but have not been dealt with as required under paragraph 9.2.4,

the Contractor shall:

* + - 1. take all reasonable steps, including stopping the Work, to ensure that no person’s exposure to any toxic or hazardous substance exceeds any applicable time weighted levels prescribed by applicable legislation at the Place of the Work; and
      2. immediately report the circumstances to the Consultant and the Owner in writing.
    1. If the Owner and the Contractor do not agree on the existence, significance of, or whether the toxic or hazardous substances were brought onto the Place of the Work by the Contractor or anyone for whom the Contractor is responsible, the Owner shall retain and pay for an independent qualified expert to investigate and determine such matters. The expert’s report shall be delivered to the Owner and the Contractor.
    2. If the Owner and the Contractor agree or if the expert referred to in paragraph 9.2.6 determines that the toxic or hazardous substances were not brought onto the place of the Work by the Contractor or anyone for whom the Contractor is responsible, the Owner shall promptly at the Owner’s own expense:
       1. take all steps as required under paragraph 9.2.4;
       2. reimburse the Contractor for the costs of all steps taken pursuant to paragraph 9.2.5; and
       3. extend the Contract Time for such reasonable time as the Consultant may recommend in consultation with the Contractor and the expert referred to in paragraph 9.2.6 and reimburse the Contractor for reasonable costs incurred as a result of the delay.
    3. If the Owner and the Contractor agree or if the expert referred to in paragraph 9.2.6 determines that the toxic or hazardous substances were brought onto the place of the Work by the Contractor or anyone for whom the Contractor is responsible, the Contractor shall promptly at the Contractor’s own expense:
       1. take all necessary steps, in accordance with applicable legislation in force at the Place of the Work, to safely remove and dispose the toxic or hazardous substances;
       2. make good any damage to the Work, the Owner’s property or property adjacent to the place of the Work as provided in paragraph 9.1.3 of GC 9.1 – PROTECTION OF WORK AND PROPERTY;
       3. reimburse the Owner for reasonable costs incurred under paragraph 9.2.6; and
       4. indemnify the Owner and the Consultant, their agents and employees, as required by GC 13.1 – INDEMNIFICATION.
    4. If either party does not accept the expert’s findings under paragraph 9.2.6, the disagreement shall be settled in accordance with Part 8 of the General Conditions – DISPUTE RESOLUTION. If such disagreement is not resolved promptly, the parties shall act immediately in accordance with the expert’s determination and take the steps required by paragraph 9.2.7 or 9.2.8 it being understood that by so doing, neither party will jeopardize any claim that party may have to be reimbursed as provided by GC 9.2 – TOXIC AND HAZARDOUS SUBSTANCES.
    5. The Contractor shall indemnify and hold harmless the Owner, Consultant, other consultants, Subcontractors, Suppliers and their agents and employees, from and against claims, demands, losses, costs, damages, actions, suits, or proceedings arising out of or resulting from exposure to, or the presence of, toxic or hazardous substances or materials which were brought onto or made at the Place of the Work after the Contractor commenced the Work. This obligation shall not be construed to negate, abridge, or reduce other rights or obligations of indemnity set out in GC 13.1 - INDEMNIFICATION or which otherwise exist respecting a person or party described in this paragraph.
  1. ARTIFACTS AND FOSSILS
     1. Fossils, coins, articles of value or antiquity, structures and other remains or things of scientific or historic interest discovered at the Place or Work shall, as between the Owner and the Contractor, be deemed to be the absolute property of the Owner.
     2. The Contractor shall take all reasonable precautions to prevent removal or damage to discoveries as identified in paragraph 9.3.1, and shall advise the Consultant upon discovery of such items.
     3. The Consultant will investigate the impact on the Work of the discoveries identified in paragraph 9.3.1. If conditions are found that would cause an increase or decrease in the Contractor’s cost or time to perform the Work, the Owner, through the Consultant, shall issue appropriate instructions for a change in the Work as provided in GC 6.2 – CHANGE ORDER or GC 6.3 – CHANGE DIRECTIVE.
  2. CONSTRUCTION SAFETY
     1. The Contractor shall be responsible for establishing, initiating, maintaining, and supervising all health and safety precautions and programs in connection with the performance of the Work in accordance with the applicable health and safety legislation. The Contractor agrees to act as, and perform all of the obligations of the H&S Constructor for the Work and the Project as a whole, including over Other Contractors working at the Place of the Work.
     2. The Owner and the Contractor shall comply with all health and safety precautions and programs established at the Place of the Work.
     3. The Owner and the Contractor shall comply with the rules, regulations and practices required by the applicable health and safety legislation.
     4. The Owner shall cause the Consultant, Other Contractors and the Owner’s own forces to comply with all health and safety precautions and programs established by the Contractor at the Place of the Work.
     5. Nothing in this Contract shall affect the determination of liability under the applicable health and safety legislation.
     6. The Contractor agrees, in addition to the obligations set out elsewhere in the Contract, to comply with all applicable legislation, rules, regulations and practices pertaining to employment standards, human rights, occupational health and safety, labour relations, workers’ compensation, pay equity and employment equity and all other legislation applicable to its employees. The Contractor will ensure that all of its employees and all of the employees of any Subcontractor and any agent of the Contractor are covered by worker’s compensation insurance or other similar legislative compensation scheme in force at the Place of the Work.
     7. Prior to the commencement of the Work, the Contractor shall submit to the Owner:
        1. a current Workplace Safety & Insurance Board Clearance Certificate if the Project is in Ontario, or equivalent documentation in other jurisdictions;
        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. a copy of the Notice of Project filed with the relevant Governmental Authority naming itself as OHSA Constructor.
     8. The Contractor shall indemnify, save harmless, and defend the Owner, its agents, 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 relevant occupational health and safety act for the Province where the Project is situated, including the payment of legal fees and disbursements on a solicitor and client basis.
  3. MOULD
     1. If the Contractor or the Owner observes or reasonably suspects the presence of mould at the Place of the Work, the remediation of which is not expressly part of the Work,
        1. the observing party shall promptly report the circumstances to the other party in writing;
        2. the Contractor shall promptly take all reasonable steps, including stopping the Work if necessary, to ensure that no person suffers injury, sickness or death and that no property is damaged as a result of exposure to or the presence of the mould; and
        3. if the Owner and the Contractor do not agree on the existence, significance or cause of the mould or as to what steps need be taken to deal with it, the Owner shall retain and pay for an independent qualified expert to investigate and determine such matters. The expert’s report shall be delivered to the Owner and the Contractor.
     2. If the Owner and the Contractor agree, or if the expert referred to in paragraph 9.5.1.3 determines that the presence of mould was caused by the Contractor’s operations under the Contract, the Contractor shall promptly, at the Contractor’s own expense:
        1. take all reasonable and necessary steps to safely remediate or dispose of the mould;
        2. make good any damage to the Work, the Owner’s property or property adjacent to the Place of the Work as provided in paragraph 9.1.3 of GC 9.1 – PROTECTION OF WORK AND PROPERTY;
        3. reimburse the Owner for reasonable costs incurred under paragraph 9.5.1.3; and
        4. indemnify the Owner and the Consultant, their agents and employees, as required by GC 13.1 – INDEMNIFICATION.
     3. If the Owner and the Contractor agree, or if the expert referred to in paragraph 9.5.1.3 determines that the presence of mould was not caused by the Contractor’s operations under the Contract, the Owner shall promptly, at the Owner’s own expense:
        1. take all reasonable and necessary steps to safely remediate or dispose of the mould;
        2. reimburse the Contractor for the cost of taking the steps under paragraph 9.5.1.2 and making good any damage to the Work as provided in paragraph 9.1.4 of GC 9.1 – PROTECTION OF WORK AND PROPERTY; and
        3. extend the Contract Time for such reasonable time as the Consultant may recommend in consultation with the Contractor and the expert referred to in paragraph 9.5.1.3 and reimburse the Contractor for reasonable costs incurred as a result of the delay.
     4. If either party does not accept the expert’s finding under paragraph 9.5.1.3, the disagreement shall be settled in accordance with Part 8 of the General Conditions – DISPUTE RESOLUTION. If such disagreement is not resolved promptly, the parties shall act immediately in accordance with the expert’s determination and take the steps required by paragraphs 9.5.2 or 9.5.3, it being understood that by so doing neither party will jeopardize any claim the party may have to be reimbursed as provided by GC 9.5 – MOULD.
  4. Excess Soils [NOTE TO USER: DELETE THIS GC 9.6 IF NO EXCAVATION IN SCOPE.]
     1. In this GC 9.6, the following defined terms are used:
        1. “**Excess Soil**” means excess soil as defined in the Soil Regulations; and
        2. “**Excess Soil Regulation**” means Ontario Regulation 406/19 – On-Site and Excess Soil Management as made under the *Environmental Protection Act* (Ontario) as amended from time to time or its successor regulation.
     2. The Parties expressly acknowledge that, where the Project involves Excess Soil and the Place of the Work is in Ontario, Applicable Law shall include the Soil Regulations, and the following will apply:
        1. except as may be set out in the Special Conditions, the **[Owner/Contractor]** will be responsible as “project leader” as defined under the Soil Regulations; and
        2. the Contractor expressly agrees and acknowledges that the Work includes assumption, performance, and fulfillment of all liabilities, responsibilities and obligations of the Project Leader applicable to Excess Soil as set out in the Contract Documents. Without limiting the foregoing, in performance of the Work and its obligations under this Contract, the Contractor shall coordinate and consult with the Owner as required to ensure compliance of the Project with the Soil Regulations.

1. GOVERNING REGULATIONS
   1. TAXES AND DUTIES
      1. The Contract Price shall include all taxes and customs duties in effect at the time of the bid closing except for Value Added Taxes payable by the Owner to the Contractor as stipulated in Article A-4 of the Agreement – CONTRACT PRICE.
      2. Any increase or decrease in cost to the Contractor due to changes in government sales taxes, custom duties or excise taxes occurring after the date of the tender shall increase or decrease the Contract Price accordingly. For greater certainty, the parties agree that the Contractor is not entitled to any mark up for profit, overhead or otherwise in connection with any increase in taxes or duties and that the Contract Price will be increased only by the actual amount of increased taxes or duties actually paid to the government. If any such taxes or duties be retroactively reduced, the Owner shall be entitled to withhold payment to the Contractor of a sum equal to the amount of such tax or duty reduction but only after the Contractor has received the benefit of such tax or duty reduction.
      3. When an exemption from or recovery of, government sales taxes, customs duties or excise taxes is applicable to the Contract, the Contractor shall, at the request of the Owner (or its agent) assist, join in, or make 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 governmental authorities as may be required to implement the foregoing.
   2. LAWS, NOTICES, PERMITS, AND FEES
      1. The laws of the Place of the Work shall govern the Work. Contractor shall at all times be responsible for obtaining all required approvals for the Work and shall at all times comply with all applicable laws in the performance of its obligations hereunder. Applicable laws shall include any and all applicable domestic, federal, provincial, territorial, regional, municipal or local statutes, laws, by-laws, rules, regulations, codes (including design and building codes), ordinances, permits, decrees, writs, injunctions, orders or the like, of any governmental authority, applicable to the Contractor, or to the performance of the Work.
      2. The Owner shall obtain and pay for development approvals, building permit, permanent easements and rights of servitude.
      3. The Contractor shall be responsible for the procurement of permits, licences, inspections, and certificates, which are necessary for the performance of the Work and all necessary permits, licenses and certificates, and fees shall include the approval of Drawings and Specifications required by applicable provincial labour legislation. The Contract Price includes the cost of these permits, licences, inspections, and certificates, and their procurement.
      4. The Contractor shall give the required notices and comply with the laws, ordinances, rules, regulations, or codes which are or become in force during the performance of the Work and which relate to the Work, to the preservation of the public health, and to construction safety.
      5. The Contractor shall, to the extent only of the Contractor’s expertise, experience and knowledge, be responsible for verifying that the Contract Documents are in compliance with the applicable laws, ordinances, rules, regulations, or codes relating to the Work. If the Contract Documents are at variance therewith, or if, subsequent to the time of bid closing, changes are made to the applicable laws, ordinances, rules, regulations, or codes which require modification to the Contract Documents, the Contractor shall advise the Consultant in writing requesting direction immediately upon such variance or change becoming known. The Consultant will issue the changes required to the Contract Documents as provided in GC 6.1 – OWNER’S RIGHT TO MAKE CHANGES, GC 6.2 – CHANGE ORDER and GC 6.3 – CHANGE DIRECTIVE.
      6. If the Contractor fails to advise the Consultant in writing; fails to obtain direction as required in paragraph 10.2.5; and performs work that is contrary to any laws, ordinances, rules, regulations, or codes; the Contractor shall be responsible for and shall correct the violations thereof; and shall bear the costs, expenses and damages attributable to the failure to comply with the provisions of such laws, ordinances, rules, regulations, or codes.
   3. PATENT FEES
      1. The Contractor shall pay the royalties and patent licence fees required for the performance of the Contract. The Contractor shall hold the Owner harmless from and against claims, demands, losses, costs, damages, actions, suits, or proceedings arising out of the Contractor’s performance of the Contract which are attributable to an infringement or an alleged infringement of a patent of invention by the Contractor or anyone for whose acts the Contractor may be liable.
      2. The Owner shall hold the Contractor harmless against claims, demands, losses, costs, damages, actions, suits, or proceedings arising out of the Contractor’s performance of the Contract which are attributable to an infringement or an alleged infringement of a patent of invention in executing anything for the purpose of the Contract, the physical model, plan or design of which was supplied to the Contractor as part of the Contract.
   4. WORKERS’ COMPENSATION
      1. Prior to commencing the Work, and again with the Contractor’s applications for payment, the Contractor shall provide evidence of compliance with workers’ compensation legislation at the Place of the Work.
2. INSURANCE
   1. INSURANCE
      1. The Owner and Contractor shall provide, maintain and pay for the insurance coverages –required in Schedule 4 (Insurance Requirements), provided that the cost of any insurance required to be provided and maintained by the Contractor under this Contract shall be included in the Contract Price.
      2. Unless specified otherwise in Schedule 4 (Insurance Requirements), the duration of each insurance policy shall be from the date of commencement of the Work until the date of Substantial Performance of the Work as set out in the certificate of Substantial Performance of the Work. The Contractor shall be responsible for deductible amounts under all policies and for determining the deductible amount in respect of automobile liability and Contractor’s equipment insurance. It shall be the responsibility of the Contractor not to violate, nor knowingly permit to be violated, any conditions of the policies maintained according to the provisions of this GC 11.1 and it shall be the Contractor’s duty and responsibility to impose upon each Subcontractor the same responsibilities and obligations imposed upon the Contractor under such provisions.
      3. The Contractor (for itself and its insurers) hereby releases each of the Indemnified Parties and waives any rights, including rights of subrogation it may have against them for compensation for any loss or damage incurred by the Contractor or its Subcontractors or loss of use of property of the Contractor or its Subcontractors. The foregoing release and waiver will operate so long as available in the Province where the Project is located.
      4. All insurance policies required to be taken out by the Contractor, or any of its Subcontractors, as required under this GC 11.1, shall be in a form acceptable to the Owner and shall contain a waiver of any subrogation rights which the Contractor’s, or Subcontractors’ as the case may be, insurers may have against the Owner and each of the other Indemnified Parties. All project specific insurance policies will be primary in nature.
      5. Each insurance policy provided by the Contractor or any Subcontractor shall be endorsed to provide the Owner with not less than thirty (30) days written notice of cancellation of the policy, except for non-payment of premium, in which case the statutory condition shall apply. The Contractor shall promptly provide the Owner with copies of any notices received by the Contractor from the insurer advising of any material change to any insurance policy arranged by the Contractor or any amendment to any such policy restricting coverage.
      6. The Contractor shall provide certificates of insurance evidencing the coverage as required above to the Owner prior to the commencement of the Work and shall promptly provide the Owner with a certified true copy of each insurance policy. A new certificate shall be provided promptly upon renewal of said insurance policies. The certificates shall confirm the obligation on the part of the insurer to provide at least thirty (30) days written notice of cancellation to the certificate holders. The renewed insurance policy shall be forwarded to the Owner at the address indicated in this Agreement.
      7. If the Contractor fails to provide or maintain insurance or indemnify the Indemnified Parties against claims, actions, expenses or loss as required in this Agreement, than the Owner shall have the right to provide and maintain such insurance or respond to such claims and give evidence thereof to the Contractor. The cost thereof plus a fifteen percent (15%) administrative fee shall be payable by the Contractor to the Owner on demand or the Owner may deduct the costs thereof from monies which are due or may become due to the Contractor.
      8. The Contractor or the Owner, as the case may be, hereby declares that “specimen” policy wordings are available upon request for examination by any party insured under any insurance policy provided and maintained by the Owner or the Contractor, as the case may be (an “Insured”), and it shall be the responsibility of each Insured to examine said policies and arrange, at its sole cost, for any additional protection any Insured may deem necessary.
      9. If so requested by any Insured the Contractor or the Owner, as the case may be, shall deliver to any Insured, at any time after the commencement of coverage under policies placed and maintained by the Owner, certificates of insurance evidencing that the applicable policy is in force.
      10. The policies described in this GC 11.1 to be obtained by the Contractor or the Owner, as the case may be, will be placed and maintained with insurers and will contain terms and conditions determined by the Owner in its sole discretion. The Owner is not liable to the Contractor or any Subcontractor or any “Insured” for any deficiency or alleged deficiency in coverage, provided that the policies comply with the description set out in this GC 11.1 The Contractor shall place and maintain, and shall require all Subcontractors to place and maintain such other insurance as they may consider necessary or desirable for their own protection, including “Difference in Conditions”, “Difference in Deductible”, “Difference in Perils” and/or “Difference in Limits” for Commercial General Liability coverage, in each case at the sole expense of the Contractor and/or each Subcontractor.
      11. The Contractor hereby represents, warrants and covenants that its Contract Price does not include any allowance for insurance premiums, whether payable by the Contractor or a Subcontractor, for policies to be taken out by the Owner, of the type and to the extent of coverage described in this GC 11.1, including any “Difference in Conditions”, “Difference in Deductible”, “Difference in Perils” and/or “Difference in Limits” for Commercial General Liability coverage.
      12. Subject to GC 9.1 – PROTECTION OF WORK AND PROPERTY, in the event of damage or destruction to the Project, the Contractor shall immediately proceed to restore the Work and shall be entitled to receive from the Owner (in addition to any sum due under the Agreement) the amount of insurance proceeds received by the Owner relating to such property damage, pursuant to the insurance maintained by the Owner in accordance with Schedule 4 (Insurance Requirements), with respect to the cost of restoration of the Work, such amount not to be paid before the Owner has received the insurance proceeds under the insurance with respect to the restoration of the Work. Damage shall not affect the rights and obligations of either party under the Agreement except that the Contractor shall be entitled to such reasonable extension of time for Substantial Performance and Final Completion of the Work as the Consultant may decide.
      13. The Contractor and its Contractors and Subcontractors of every tier shall cooperate with the Owner’s insurers and comply with all of their reasonable requirements.
      14. The Contractor will promptly submit a written report on all incidents involving bodily injury or property damage to the Contractor and to the Owner.
3. OWNER TAKEOVER
   1. READY-FOR-TAKEOVER
      1. The prerequisites to attaining Ready-for-Takeover of the Work are limited to the following:
         1. the Consultant has certified or verified the Substantial Performance of the Work;
         2. evidence of compliance with the requirements for occupancy or occupancy permit as prescribed by the authorities having jurisdiction;
         3. final cleaning and waste removal at the time of applying for Ready-for-Takeover, as required by the Contract Documents;
         4. the delivery to the Owner of such operations and maintenance documents reasonably necessary for immediate operation and maintenance, as required by the Contract Documents;
         5. make available a copy of the as-built drawings completed to date on site;
         6. startup, testing required for immediate occupancy, as required by the Contract Documents;
         7. ability to secure access to the Work has been provided to the Owner, if required by the Contract Documents; and
         8. demonstration and training, as required by the Contract Documents, is scheduled by the Contractor acting reasonably.
      2. If any prerequisites set out in paragraphs 12.1.1.3 to 12.1.1.6 must be deferred because of conditions reasonably beyond the control of the Contractor, or by agreement between the Owner and the Contractor to do so, Ready-for-Takeover shall not be delayed.
      3. When the Contractor considers that the Work is Ready-for-Takeover, the Contractor shall deliver to the Consultant and to the Owner a comprehensive list of items to be completed or corrected, together with a written application for Ready-for-Takeover for review. Failure to include an item on the list does not alter the responsibility of the Contractor to complete the Contract.
      4. The Consultant will review the Work to verify the validity of the application and will promptly, and in any event, no later than 10 calendar days after receipt of the Contractor’s list and application:
         1. advise the Contractor in writing that the Work is not Ready-for-Takeover and give reasons why; or
         2. confirm the date of Ready-for-Takeover in writing to each of the Owner and the Contractor.
      5. Immediately following the confirmation of the date of Ready-for-Takeover, the Contractor, in consultation with the Consultant, shall establish a reasonable date for finishing the Work.
      6. The provision of GC 12.1 – READY-FOR-TAKEOVER shall be subject to GC 12.2 – EARLY OCCUPANCY BY THE OWNER.
   2. EARLY OCCUPANCY BY THE OWNER
      1. The Owner may take occupancy of a part or the entirety of the Work before Ready-for-Takeover has been attained only as agreed by the Contractor which agreement shall not be unreasonably withheld.
      2. The Owner shall not occupy a part or the entirety of the Work without prior approval by authorities having jurisdiction.
      3. If the Owner takes occupancy of a part of the Work before Ready-for-Takeover has been attained:
         1. the part of the Work which is occupied shall be deemed to have been taken over by the Owner as from the date on which it is occupied;
         2. the Contractor shall cease to be liable for the care of such part as from this date, when responsibility shall pass to the Owner; and
         3. the warranty period specified in paragraph 12.3.1 of GC 12.3– WARRANTY for that part of the Work shall start from the date on which it is occupied.
      4. If the Owner takes occupancy of the entirety of the Work before all the prerequisites are met as described in paragraph 12.1.1 of GC 12.1 – READY-FOR-TAKEOVER, the Work shall, subject to the requirements of the applicable lien legislation, be deemed to achieve Ready-for-Takeover. This shall not relieve the Contractor’s responsibility to complete the Work in a timely manner.
   3. WARRANTY
      1. The Contractor warrants that the Work is free from any defect in workmanship and materials and complies in all respects with the provisions of the Contract Documents and the Contractor agrees to correct promptly, at its own expense, defects or deficiencies in the Work which appear (i) in the case of Work covered by the extended warranties set out in the Specifications, prior to the end of the extended warranty period and (ii) in the case of all other Work, prior to and during the period of one year from the date of Substantial Performance of the Work. The Contractor shall also pay at its own expense for any damage to other work or property or to Persons resulting from any defects or deficiencies in the Work which appear during the warranty period. The carrying out of the replacement work and the making good of all defects shall be executed at such time as is convenient to the Owner and this may entail overtime work on the part of the Contractor. Additional charges for overtime work in this regard shall be borne by the Contractor at its expense. These warranties shall enure to the benefit of any subsequent owner of the Project or any part thereof.
      2. Except for extended warranties as described in paragraph 12.3.8 or as otherwise set out in the Special Conditions, the warranty period under the Contract is one year from the date when Ready-for-Takeover has been attained.
      3. The Contractor shall be responsible for the proper performance of the Work to the extent that the design and Contract Documents permit such performance.
      4. The Owner shall promptly give the Contractor Notice in Writing of observed defects and deficiencies which occur during the warranty period.
      5. Except as set out in paragraph 12.3.6, the Contractor shall correct promptly, at the Contractor’s expense, defects or deficiencies in the Work which appear prior to and during the one year warranty periods specified in the Contract Documents.
      6. The Contractor shall correct or pay for damage resulting from corrections made under the requirements of paragraph 12.3.5.
      7. Any extended warranties required beyond the one year warranty period as described in paragraph 12.3.1 shall be as specified in the Contract Documents. Extended warranties shall be issued by the warrantor to the benefit of the Owner. The Contractor’s responsibility with respect to extended warranties shall be limited to obtaining any such extended warranties from the warrantor. The obligations under such extended warranties are solely the responsibilities of the warrantor.
      8. The Contractor shall be responsible for obtaining Product warranties in excess of one year on behalf of the Owner from the manufacturer. The Product warranties shall be issued by the manufacturer in favour of the Owner or if not issued to the Owner extended warranties beyond the standard one year warranty after the date of acceptance of the Work will be assigned to the Owner. The Contractor shall ensure that such warranties commence on the date of completion of the Work as approved of by the Consultant and the Owner. The Contractor shall remain jointly liable with the manufacturer to the Owner with respect to such Products Warranties to the extent required in the Contract Documents, notwithstanding any limitation in the manufacturer’s warranty.
      9. If any defect is corrected under the conditions of GC 12.3 – WARRANTY, the time period for the warranty in that particular item in the Work shall begin again from the date when the defect is corrected and if such defect be corrected more than once the time period for warranty applicable shall begin again from the latest date when such defect is corrected.
      10. The foregoing warranty in paragraph 12.3.1 shall not limit the extended warranty on any items of equipment or material called for elsewhere in the specifications.
      11. The Contractor shall, to the extent permitted by manufacturers and suppliers, assign to the Owner, the benefit of any guarantee or warranty by any manufacturer or supplier in addition to the warranty as provided in paragraph 12.3.8 above.
      12. The Contractor shall commence to correct any deficiency within 5 Working Days after receiving a notice from the Owner, and complete the Work as expeditiously as possible, except that in case the deficiency would prevent maintaining security or keep basic systems essential to the ongoing business of the Owner operational as designed, in which case all necessary corrections and/or installation 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 made during normal business hours of the Contractor, the Owner is authorized, regardless of paragraph GC 3.1.1 of the General Conditions to carry out all necessary repairs or replacements at the Contractor’s expense.
      13. The carrying out of replacement work and the making good of defects that are the responsibility of the Contractor shall be at the sole cost of the Contractor and shall be executed at times convenient to the Owner.
4. INDEMNIFICATION AND WAIVER
   1. INDEMNIFICATION
      1. The Contractor shall indemnify, hold harmless, and defend the Owner, its directors, officers, agents and employees from and against all claims, demands, losses, costs, including legal costs, damages, actions, suits or proceedings by whomever made, brought or prosecuted and in any manner based upon, arising out of, related to, occasioned by or attributable to the activities of the Contractor, its servants, agents or Subcontractors, in performing the Work or to any negligent acts or omissions of the Contractor, its servants, agents or subcontractors. This indemnification shall specifically include, but not be limited to, compliance or non-compliance with the occupational health & safety act governing the Place of the Work and under legislation or ordinances applying to such Work.
      2. The obligation of either party to indemnify as set out in paragraph 13.1.1 shall be limited as follows (unless otherwise specified in the Special Conditions):
         1. in respect to losses suffered by the Owner and the Contractor for which insurance is to be provided by either party pursuant to GC 11.1 – INSURANCE, the general liability insurance limit for one occurrence as referred to in CCDC 41 in effect at the time of bid closing;
         2. in respect to losses suffered by the Owner and the Contractor for which insurance is not required to be provided by either party in accordance with GC 11.1 – INSURANCE, the greater of the Contract Price as recorded in Article A-4 of the Agreement – CONTRACT PRICE or $2,000,000, but in no event shall the sum be greater than $20,000,000;
         3. in respect to indemnification by a party against the other with respect to losses suffered by them, such obligation shall be restricted to direct loss and damage, and neither party shall have any liability to the other for indirect, consequential, punitive or exemplary damages; and
         4. in respect to indemnification respecting claims by third parties, the obligation to indemnify is without limit.
      3. The obligation of either party to indemnify the other as set out in paragraphs 13.1.1 and 13.1.2 shall be inclusive of interest and all legal costs.
      4. The Owner and the Contractor shall indemnify and hold harmless the other from and against all claims, demands, losses, costs, damages, actions, suits, or proceedings arising out of their obligations described in GC 9.2 – TOXIC AND HAZARDOUS SUBSTANCES.
      5. The Owner shall indemnify and hold harmless the Contractor from and against all claims, demands, losses, costs, damages, actions, suits, or proceedings:
         1. as described in paragraph 10.3.2 of GC 10.3 – PATENT FEES; and
         2. arising out of the Contractor’s performance of the Contract which are attributable to a lack of or defect in title or an alleged lack of or defect in title to the Place of the Work.
      6. In respect to any claim for indemnity or to be held harmless by the Owner or the Contractor:
         1. Notice in Writing of such claim shall be given within a reasonable time after the facts upon which such claim is based become known; and
         2. should any party be required as a result of its obligation to indemnify another to pay or satisfy a final order, judgment or award made against the party entitled by this contract to be indemnified, then the indemnifying party upon assuming all liability for any costs that might result shall have the right to appeal in the name of the party against whom such final order or judgment has been made until such rights of appeal have been exhausted.
   2. WAIVER OF CLAIMS
      1. Subject to any lien legislation applicable to the Place of the Work, the Contractor waives and releases the Owner from all claims which the Contractor has or reasonably ought to have knowledge of that could be advanced by the Contractor against the Owner under the Contract, including, without limitation, those arising from negligence or breach of contract in respect to which the cause of action is based upon acts or omissions which occurred prior to or on the Ready-for-Takeover date, except as follows:
         1. claims arising prior to or on the Ready-for-Takeover date for which Notice in Writing of claim has been received by the Owner from the Contractor no later than 5 calendar days before the expiry of the lien period provided by the lien legislation applicable at the Place of the Work or 20 calendar days following the Ready-for-Takeover date, whichever is later;
         2. indemnification for claims advanced against the Contractor by third parties for which a right of indemnification may be asserted by the Contractor against the Owner pursuant to the provisions of this Contract;
         3. claims respecting toxic and hazardous substances, patent fees and defect in title matters for which a right of indemnity could be asserted by the Contractor pursuant to the provisions of paragraphs 13.1.4 or 13.1.5 of GC 13.1 – INDEMNIFICATION; and
         4. claims resulting from acts or omissions which occur after the Ready-for-Takeover date.
      2. The Contractor waives and releases the Owner from all claims resulting from acts or omissions which occurred after the Ready-for-Takeover date except for:
         1. indemnification respecting third party claims, and claims respecting toxic and hazardous substances, patent fees and defect in title matters, all as referred in paragraphs 13.2.1.2 and 13.2.1.3; and
         2. claims for which Notice in Writing of claim has been received by the Owner from the Contractor within 395 calendar days following the Ready-for-Takeover date.
      3. Subject to any lien legislation applicable to the Place of the Work, the Owner waives and releases the Contractor from all claims which the Owner has or reasonably ought to have knowledge of that could be advanced by the Owner against the Contractor under the Contract, including, without limitation, those arising from negligence or breach of contract in respect to which the cause of action is based upon acts or omissions which occurred prior to or on the Ready-for-Takeover date, except as follows:
         1. claims arising prior to or on the Ready-for-Takeover date for which Notice in Writing of claim has been received by the Contractor from the Owner no later than 20 calendar days following the Ready-for-Takeover date;
         2. indemnification for claims advanced against the Owner by third parties for which a right of indemnification may be asserted by the Owner against the Contractor pursuant to the provisions of this Contract;
         3. claims respecting toxic and hazardous substances for which a right of indemnity could be asserted by the Owner against the Contractor pursuant to the provisions of paragraph 13.1.4 of GC 13.1 – INDEMNIFICATION;
         4. damages arising from the Contractor’s actions which result in substantial defects or deficiencies in the Work. “Substantial defects or deficiencies” mean those defects or deficiencies in the Work which affect the Work to such an extent or in such a manner that a significant part or the whole of the Work is unfit for the purpose intended by the Contract Documents;
         5. claims arising pursuant to GC 12.3 – WARRANTY; and
         6. claims arising from acts or omissions which occur after the Ready-for-Takeover date.
      4. Respecting claims arising upon substantial defects and deficiencies in the Work, as referenced in paragraph 13.2.3.4, and notwithstanding paragraph 13.2.3.5, the Owner waives and releases the Contractor from all claims except claims for which Notice in Writing of claim has been received by the Contractor from the Owner within a period of six years from the Ready-for-Takeover date, provided that any limitation statute of the Province or Territory of the Place of the Work permit such agreement. If the applicable limitation statute does not permit such agreement, the time within any such claim may be brought shall be such shorter period as may be prescribed by any limitation statute of the Province or Territory of the Place of the Work.
      5. The Owner waives and releases the Contractor from all claims arising from acts or omissions which occur after the Ready-for-Takeover date, except for:
         1. indemnification for claims advanced against the Owner by third parties, as referenced in paragraph 13.2.3.2;
         2. claims respecting toxic and hazardous substances for which a right of indemnity could be asserted by the Owner against the Contractor, as referenced in paragraph 13.2.3.3;
         3. claims arising under GC 12.3 – WARRANTY; and
         4. claims for which Notice is Writing has been received by the Contractor from the Owner within 395 calendar days following the Ready-for-Takeover date.
      6. “Notice in Writing of claim” as provided for in GC 13.2 – WAIVER OF CLAIMS to preserve a claim or right of action which would otherwise, by the provisions of GC 13.2 – WAIVER OF CLAIMS, be deemed to be waived, must include the following:
         1. a clear and unequivocal statement of an intention to claim;
         2. a statement as to the nature of the claim and the grounds upon which the claim is based; and.3 a statement of the estimated quantum of the claim.
      7. A claim for lien asserted under the lien legislation prevailing at the Place of the Work shall qualify as notice of claim for the purposes of this Contract.
      8. The party giving the Notice in Writing of claim as provided for in GC 13.2 – WAIVER OF CLAIMS shall submit within a reasonable time a detailed account of the amount claimed.
      9. Where the event or series of events giving rise to a claim made under paragraphs 13.2.1 or 13.2.3 has a continuing effect, the detailed account submitted under paragraph 13.2.8 shall be considered to be an interim account and the party making the claim shall submit further interim accounts, at reasonable intervals, giving the accumulated amount of the claim and any further grounds upon which such claim is based. The party making the claim shall submit a final account after the end of the effects resulting from the event or series of events.
      10. Nothing in GC 13.2 – WAIVER OF CLAIMS shall be deemed to affect the rights of the parties under any lien legislation or limitations legislation prevailing at the Place of the Work.
      11. Notwithstanding any provision to the contrary in this Contract, the Contractor expressly waives and releases the Owner and any of the Owner’s consultants, servants, employees or agents, from all claims, in any way related to the Contract for:
          1. indirect losses; and
          2. consequential damages;

including, without limiting the generality of the foregoing, claims for loss of profit, extra, extended or unallocable overheads or any indirect increased cost or expense.

* 1. SET-OFF
     1. The Owner shall be entitled to deduct from or set off against any payment of the Contract Price and any other amounts payable by the Owner to the Contractor under this Agreement:
        1. any amount expended by the Owner in exercising the Owner’s rights under this Agreement to perform any of the Contractor’s obligations that the Contractor has failed to perform;
        2. any amount paid by the Owner directly to Subcontractors in respect of Work for which the Owner previously paid the Contractor;
        3. any damages, costs or expenses (including, without limitation, reasonable legal fees and expenses) incurred by the Owner as a result of the failure of the Contractor to perform any of its obligations under this Agreement;
        4. a reasonable amount on account of any outstanding Work or any outstanding deficiencies; and
        5. any other amount owing from the Contractor to the Owner under this Agreement.

1. Place of the Work
2. Description of Project
3. Construction Schedule
4. Insurance Requirements

The Owner and Contractor shall provide, maintain and pay for the insurance coverages required in this Schedule 4:

1. Commercial General Liability Insurance

The Contractor shall provide, maintain and pay for, or cause to be provided, maintained and paid for, Commercial General Liability Insurance on a wrap-up form to include the Owner, the Contractor, the Owner’s designated Representative, Subcontractors of every tier as named insureds, with a limit of not less than ten million dollars ($10,000,000) for any one accident or occurrence, or such other limit as the Owner may in its sole discretion determine, inclusive per occurrence for bodily injury, death and damage to property including loss of use thereof, with a bodily injury and property damage deductible no greater than fifty thousand dollars ($50,000). Such insurance shall include any other entity the Owner may reasonably require from time to time as named or additional insureds including, without limitation, the construction lender, if any, and Consultants. The policy shall include non-owned vehicles, tenants, legal liability, medical payments, damage to existing structures, damage to hired vehicles and limited pollution, blasting and demolition, where applicable, and shall contain a standard form of cross-liability and severability of interest clause. This insurance shall be maintained continuously from commencement of the Work until the date of Substantial Performance of the Work, as set out in the Certificate of Substantial Performance of the Work, and with respect to completed operations, coverage for a period of not less than thirty-six (36) months (or such other period as the Owner may in its discretion require) from the date of Substantial Performance of the Work. The policy shall be non-cancellable except as provided in the policy.

1. Automobile Liability Insurance:

The Contractor shall provide, maintain and pay for and shall require each of its Subcontractors to provide, maintain and pay for, automobile liability insurance in respect to licensed vehicles with limits of not less than five million dollars ($5,000,000) inclusive per occurrence and which shall be in the Standard Owner’s Form Automobile Policy providing third party liability and accident benefits insurance and covering all vehicles of every description and kind owned, leased or operated by or on behalf of the Contractor, or any person or persons for whom the Contractor is in law responsible.

1. Contractor’s Equipment Insurance:

The Contractor shall provide, maintain and pay for and shall require each of its Subcontractors to provide, maintain and pay for, “all-risk contractors’ equipment insurance” covering construction machinery and equipment used by the Contractor or any of its trades or suppliers for the performance of the Work. Such insurance shall be in a form acceptable to the Owner and shall not allow subrogation claims by the Insurer against the Owner. Subject to satisfactory proof of financial capability by the Contractor for self-insurance of its equipment, the Owner agrees to waive the equipment insurance requirement, but the Contractor shall be deemed for the purposes of this Agreement to have satisfactorily taken out such insurance and indemnify the Owner to the same extent.

1. Contractor’s Pollution Liability Insurance:

The Contractor shall provide, maintain and pay for, or cause to be provided, maintained and paid for, liability insurance which includes Pollution, Legal Liability and Mould coverage of not less than five million dollars ($5,000,000) per occurrence or such other amount as the Owner may require, with a deductible no greater than one hundred thousand dollars ($100,000), and with the Owner and any other entity the Owner may reasonably require from time to time, including but not limited to, contractors and Subcontractors of every tier as additional named insured. This policy shall be maintained for a period of three (3) years (or such other period as the Owner may in its discretion require) after completion of this Agreement and shall not include any health hazard or pollution exclusions.

1. Course of Construction (Builder’s Risk) Property Insurance:

The Owner shall provide, maintain and pay for “Course of Construction” insurance, to remain in effect until Substantial Performance of the Work. Such insurance shall be “All Risks” property insurance covering all risks of physical loss or damage to the Project, including earthquake, flood and sewer back-up and construction phase boiler and machinery insurance, less such deductible amounts as are deemed acceptable by the Owner, which in any event shall not exceed fifty thousand dollars ($50,000) not including damages caused by water, flood, earthquake or DE5. Coverage shall be not less than one hundred percent (100%) of the total Contract Price of the Work or such other amount as the Owner may purchase, including Recurring Soft Costs and Delay in Start-up. The form of such policy shall be at least equal in scope and coverage to DE5 with respect to faulty design, faulty materials or faulty workmanship, or such other form as the Owner may purchase. The insurance policy or policies may also exclude coverage of certain property from time to time mentioned in the policy or policies, including, without limitation, property and equipment of every description owned by the Contractor or his Subcontractors or for which they are responsible, as well as automobiles, accounts, bills, currency, stamps, deeds, evidences of debt or title, money notes or securities. Such insurance shall name the Owner, Contractor and Consultant as named insureds and the Owner and construction lender, if any, as loss payees, and shall name as additional insured any other entity the Owner may reasonably require from time to time. The insurance policy or policies shall also contain a “Waiver of Subrogation” in favour of the Subcontractors with respect to the Work. The Owner shall be entitled to purchase at the Owner’s cost any additional policies or extensions it deems prudent or to vary or alter or replace from time to time all policies of insurance made in implementation of this paragraph as it may, in its sole discretion, decide, provided that the provisions of this paragraph remain complied with. The policy shall be non-cancellable except as provided in the policy.

1. Additional Insurance

The Contractor shall provide, maintain and pay for such other insurance not identified in this Schedule as is customary for a contractor to purchase and maintain in the Province in which the Project is located, which is to be clearly identified by the Contractor as to the risk insured, the rate applicable, the insured interest for the Owner, and such other information as the Owner may reasonably require. It is acknowledged and agreed that the Owner has the right to negotiate any or all of this Contractor Additional Insurance.

1. Drawings and Specifications
2. Personnel and Rates
3. Procurement Documents
4. Close-Out Procedures

**Intentionally Deleted.**

1. CONSTRUCTION MANAGEMENT PLAN
2. Owner policies

Without limiting the terms and conditions of the Contract, the Contractor shall comply with rules, regulations and policies established by the Owner from time to time, including, without limitation, the Owner’s Code of Business Conduct and Ethics Policy, which policy is available for access by the Contractor on the Owner’s website, <https://riocan.com/about/corporate-governance/>. A copy of certain of the policies referred to in the foregoing is attached to this Schedule 10, provided that such copy or copies remain subject to change from time to time and reference shall be made by the Contractor to the Owner’s website link provided in this paragraph for the most up-to-date version(s).

**[NOTE TO USER: CONSIDER INSERTING THE RELEVANT CORPORATE POLICIES TO THIS SCHEDULE 10. IF NOT, DELETE THE LANGUAGE HIGHLIGHTED IN YELLOW IN THE ABOVE PARAGRAPH.]**

1. Special Conditions

**[NOTE TO USER: The Special Conditions are conditions that may be used for a particular project if the legal and commercial team decides they are needed or wanted. Blanks/bullets will need to be completed based on information provided in the Contractor’s bid or before the contract is sent out in the RFP, and highlighting removed.**

**If any of the below Special Conditions are not used, they should be deleted.**

**Inclusion of any of the Special Conditions below require the approval of the Vice President of the applicable RioCan business unit (CapEx Construction, Tenant Construction, Development Construction) and after consultation with RioCan Legal, before being provided to a Contractor or included in an RFP.]**

1. **Liquidated Damages for Delayed Performance (GC 6.5)**

**[NOTE TO USER: RioCan to decide if this provision applies and, if so, complete it before sending out to bidders or a contractor. The amount needs to be calculated by the Commercial and Estimating Director. If this provision is not used, it should be deleted.]**

The Contractor shall pay as liquidated damages to the Owner the amount of [$n] per Working Day for each day beyond the date scheduled for Substantial Performance of the Work that the Work is not substantially performed by the Contractor, provided that the Contract Time and the date for Substantial Performance of the Work shall be extended for the causes of delay specified in GC 6.5 - DELAYS for such time as provided in paragraphs 6.5.1, 6.5.2, and 6.5.3 of GC 6.5 - DELAYS, as applicable.

1. **Incentive for Early Performance (GC 6.5)**

**[NOTE TO USER: RioCan to decide if this provision applies and, if so, complete it before sending out to bidders or a contractor. The amount needs to be calculated by the [TITLE]. If this provision is not used, it should be deleted.]**

The Owner shall pay as a bonus fee to the Contractor [$n] for each **[full month/Working Day]** that the Contractor attains Substantial Performance of the Work prior to the original date scheduled for Substantial Performance of the Work or the date the Agreement was signed. For greater certainty, in calculating the incentive in this paragraph, the Contractor receives the benefit of any Owner Time Contingency that is not used by the Owner.

1. **Warranty Period (GC 12.3)**

**[NOTE TO USER: The standard 1 year warranty in paragraph 12.3.1 of GC 12.3 - may only be changed with the approval of the [TITLE] or a higher RioCan officer.]**

Notwithstanding paragraph 12.3.1 of GC 12.3 - WARRANTY, the general warranty period is: [n] years from the date of Substantial Performance of the Work.

1. **Pre-Approved or Required Subcontractors and Suppliers (GC 3.6)**

**[NOTE TO USER: Insert any requirements regarding Subcontractors and Suppliers, that is different than, or in addition to, GC 3.6, or if there are particular Subcontractors or Suppliers the Contractor must use for particular parts of the Work. Sample provisions are set out below. This provision needs to be consistent with the Procurement Documents/RFP. Delete these provisions if they are not used.]**

* 1. The Contractor **[may, with notice but without further approval of the Owner,] OR [shall]** engage as a Subcontractor or Supplier to perform any part of the Work any party listed in **[Schedule [n] (Approved Subcontractors)].** **[NOTE TO USER: If used, Schedule [n] will need to be added or an alternate reference for the list of approved Subcontractors (such as the Contractor’s bid documents).]**
  2. The Contractor shall engage the following as Subcontractors and/or Suppliers to perform the portions of the Work described below:
     1. [**Name of Subcontractor**] to perform [**description of portion of the Work**]
     2. [**Name of Subcontractor**] to perform [**description of portion of the Work**]
  3. Notwithstanding this paragraph **[9]** of Schedule 11 (Special Conditions), the Contractor remains fully responsible for the Work and all work and services performed by Subcontractors and Suppliers in accordance with paragraph 3.6.1 of GC 3.6 – SUBCONTRACTORS AND SUPPLIERS.

1. **Tenant Improvements**

**[NOTE TO USER: The below are applicable when the Contractor is constructing improvements relating to a tenant space specifically.]**

* 1. The Contractor acknowledges that the Work includes work for units (“**Leased Premises**”) that the Owner or an affiliate of the Owner will lease to commercial or retail tenants (each, a “**Tenant**”) as set out in Exhibit 1 to this Schedule 11 (Special Conditions).
  2. The Contractor shall:
     1. grant the Owner and Tenants the right to enter, use, access and occupy the applicable Leased Premises, and to store equipment and materials and to perform work on the Leased Premises (“**Tenant Work**”) before the date of Ready-for-Takeover. Such entry, occupation, and Tenant Work shall not relieve the Contractor of the Contractor’s responsibility to complete the Work in accordance with the provisions of the Contract Documents;
     2. provide the Owner and Tenants reasonable access to the applicable Leased Premises in order to permit them to perform Tenant Work, including elevator access and operation, and to make available to the Owner and Tenants for their own use such base building services as heating, ventilating, cooling, water, lighting and telephone for the space or spaces to be occupied in order for the Owner and Tenants to perform Tenant Work at the Leased Premises, at the cost of the Owner. If the equipment required to furnish such Tenant Work is not entirely completed at the time the Owner or Tenants require to perform Tenant Work, the Contractor shall make every reasonable effort to complete same as soon as possible to the extent that the necessary equipment can be put into operation and use;
     3. continue to control the Place of the Work and act as H&S Constructor for the Project, other than for the Leased Premises where a Tenant or a Tenant’s contractor occupies and has taken control of such Leased Premises and is acting as H&S Constructor in accordance with paragraph 9.4.1 of GC 9.4 – CONSTRUCTION SAFETY; provided that the Tenant has signed an Acknowledgement and Agreement in favour of the Contractor substantially in the form approved by the Owner, pursuant to which the Tenant acknowledges and agrees to abide by the health and safety policies, procedures and directions of the H&S Constructor.
  3. If a Tenant intends to take over space in all or a part of any Leased Premises for occupancy or, the Owner shall give the Contractor and Consultant reasonable notice in writing of such Tenant’s intent to take over such Leased involved and confirming any terms and conditions with respect to the take over of such Leased Premises as may have then been mutually agreed upon.
  4. The Owner’s or any Tenant’s early occupancy or use of any such Leased Premises shall not constitute the Owner’s acceptance of any Work, materials or equipment which are not in accordance with the requirements of the Contract Documents, nor relieve the Contractor from its obligations to complete the Work, nor for responsibility for loss or damage due to or arising out of defects in, or malfunctioning of, any Work, material or equipment, nor from any other unfulfilled obligations or responsibilities under the Contract. If, however, damage results from any act by the Tenant or anyone for whose acts or omissions the Owner is responsible, the Owner shall assume its proportionate responsibility for such damage.

1. **Site Plan Agreement**

**[NOTE TO USER: Insert any requirements from any site plan agreement or approval from the applicable municipality, including any public works, utility works, public art/parks/sidewalks, any schedule requirements, etc. If there are none, or if these requirements are not obligations that are to be passed along to the Contractor, then this provision can be deleted.]**

* 1. The Contractor acknowledges that the Work includes work required to be performed by the Owner for the **[Name of Municipality]** under **[**Describe **source of requirements (e.g. site plan agreement, municipal approval conditions, etc.)]** (the “**Municipal Work**”).
  2. The Municipal Work forms part of the Work and is included in the determination of attaining Substantial Performance of the Work and total completion of the Work.

1. **Additional Requirements for Substantial Performance of the Work / Ready-for-Takeover (GC 5.4)**
   1. Subject to Section 7(b) of this Schedule 11 (Special Conditions), the definition of Substantial Performance of the Work shall mean the following prerequisites:
2. the Consultant has certified or verified the substantial performance of the work, as defined by the lien legislation applicable to the Place of the Work, or, if such lien legislation is not in force or does not contain such definition, or if the Work is governed by the Civil Code of Québec, when the Consultant has certified that the Work is ready for use or is being used for the purpose intended;
3. evidence of compliance with the requirements for occupancy or occupancy permit as prescribed by the authorities having jurisdiction;
4. final cleaning and waste removal at the time of applying for Substantial Performance of the Work, as required by the Contract Documents;
5. the delivery to the Owner of such operations and maintenance documents reasonably necessary for immediate operation and maintenance, as required by the Contract Documents;
6. make available a copy of the as-built drawings completed to date on site;
7. startup testing required for immediate occupancy, as required by the Contract Documents;
8. ability to secure access to the Work has been provided to the Owner, if required by the Contract Documents.
9. demonstration and training, as required by the Contract Documents, is scheduled by the Contractor acting reasonably.
   1. If any requirements set out in Section 7(a) of this Schedule 11 (Special Conditions) must be deferred because of conditions reasonably beyond the control of the Contractor, or by agreement between the Owner and the Contractor to do so, Substantial Performance of the Work and Ready-for-Takeover shall not be delayed.

Exhibit 1  
form of statutory declaration

**Statutory Declaration**

**TO BE MADE BY THE CONTRACTOR WHEN APPLYING FOR PROGRESS PAYMENT**

**OR FOR RELEASE OF HOLDBACK, SECURITY DEPOSIT OR BOTH UPON**

**SUBSTANTIAL OR TOTAL PERFORMANCE**

**C A N A D A** )IN THE MATTER OF THE CONTRACT

) BETWEEN [·], OWNER,

PROVINCE OF Ontario ) AND [·], CONTRACTOR,

) FOR THE WORK ON PREMISES

TO WIT: ) LOCATED AT [·],

) IN THE PROVINCE OF ONTARIO

)

I, of the of in the Province of ONTARIO, do hereby DECLARE THAT:

1. I am of , the Contractor named in the Contract abovementioned, and as such have personal knowledge of the facts hereunder declared.
2. All accounts for labour, subcontracts, products, construction machinery and equipment and other indebtedness which may have been incurred by the Contractor in the performance of the Work (as defined in the Contract) and for which the Owner might in any way be held responsible have been paid in full except holdback monies properly retained.
3. There are no claims for lien registered against the Owner or the Place of the Work (as defined in the Contract) and I am not aware of any grounds supporting any claim for lien against the Owner. The Contractor has not received any notice of adjudication or other claims from any Subcontractor or Supplier relating to the Work that it has not previously disclosed to the Owner.
4. I MAKE THIS SOLEMN DECLARATION conscientiously believing it to be true and knowing that it is of the same force and effect as if made under oath.

**DECLARED** before me at the **[City/Town/etc.]** )

                           of  **[name]**     )

in the Province of Ontario )

day of **[month]** 20\_\_ ) \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

)

A Commissioner, etc.