

2020

Gazzola Paving Ltd. Subcontract for XXXXXXXXX



stipulated price subcontract

Project:

Subcontract Work:

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Enquiries should be directed to:

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AGREEMENT BETWEEN CONTRACTOR AND SUBCONTRACTOR

This Subcontract Agreement made on the by and between the parties	day of	in the year	
name of Contractor			
hereinafter called the "Contractor"			
and			
name of Subcontractor			
hereinafter called the "Subcontractor"			
Whereas the Contractor has entered into a	n agreement he	ereinafter called the "Prime Contract"	on the day of
in the year with _			
			Name of Owner
hereinafter called the "Owner" for the construct	tion of		
			Name of Project
hereinafter called the "Project"			
And whereas the <i>Prime Contract</i> includes the	he Subcontract	Work to be performed under this Sub-	contract Agreement in
accordance with the <i>Contract Documents</i> for w		_	_
			Name of County
is acting as and is hereinafter called the "Consu	ıltant"		Name of Consultant

And whereas the *Subcontractor* has agreed with the *Contractor* to perform the *Subcontract Work* and supply all of the labour, *Products*, tools, construction machinery and equipment necessary therefore as hereinafter set forth;

And whereas the *Contractor* and *Subcontractor* for themselves, their heirs, executors, administrators, successors and assigns do hereby agree to the full performance of the covenants herein contained;

NOW THEREFORE THE SUBCONTRACT AGREEMENT WITNESSETH as follows:

(NOTE: THE PARTIES SHALL COMPLETE ARTICLES 1A, 2A AND 3A AND DISCARD ARTICLES 1B, 2B AND 3B IF

- THERE IS A PRIME CONTRACT IN WRITING BETWEEN THE OWNER AND THE CONTRACTOR, AND
- IT IS THE INTENTION OF THE CONTRACTOR AND THE SUBCONTRACTOR THAT THE CONDITIONS OF SUCH PRIME CONTRACT ARE TO BE INCORPORATED INTO THIS SUBCONTRACT AND SHALL GOVERN IN THE EVENT OF A CONFLICT.)

ARTICLE 1A - WORK TO BE PERFORMED

1.1 The Subcontractor shall furnish the Products and perform the Subcontract Work in a proper and workmanlike manner pertaining to: (Insert full description of all work to be done with reference to specification section as described by number and heading if applicable)

1.2 The Subcontractor shall perform the Subcontract Work as required by the Subcontract Documents.

ARTICLE 2A – CONFLICT BETWEEN THE PRIME CONTRACT AND SUBCONTRACT

- 2.1 The requirements, terms and conditions of the *Prime Contract* as far as they are applicable to this *Subcontract*, shall be binding upon the *Contractor* and the *Subcontractor* as if the word "owner" appearing therein had been changed to "*Contractor*" and the word "contractor" appearing therein has been changed to "*Subcontractor*". In the event of any conflict between the terms of this *Subcontract* and the *Prime Contract*, the *Prime Contract* shall govern.
- 2.2 Paragraphs 10.2.4 and 10.2.5 of SCC 10.2 LAWS, NOTICES, PERMITS, AND FEES and SCC 12.1 INDEMNIFICATION shall be individually inoperative and considered as deleted from this contract in the event that conditions of identical wording or effect as they relate to each of these articles are not set out in the *Prime Contract*.

ARTICLE 3A – SUBCONTRACT DOCUMENTS

The following are the *Subcontract Documents* referred to in Article 1A of this Subcontract Agreement – WORK TO BE PERFORMED

- Prime Contract Agreement between Owner and Contractor
- Definitions of the *Prime Contract*
- The General Conditions of the *Prime Contract*
- Subcontract Agreement between Contractor and Subcontractor
- Definitions of the Subcontract
- The Subcontract Conditions of the Subcontract

*

^{* (}Insert here, attaching additional pages if required, a list identifying all other Subcontract Documents, e.g. supplementary conditions; information documents; 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 and date)

(NOTE: THE PARTIES SHALL COMPLETE ARTICLES 1B, 2B AND 3B AND DISCARD ARTICLES 1A, 2A AND 3A IF

- THERE IS NO WRITTEN PRIME CONTRACT BETWEEN THE OWNER AND THE CONTRACTOR, OR
- IT IS THE INTENTION OF THE CONTRACTOR AND THE SUBCONTRACTOR THAT THIS SUBCONTRACT REPRESENTS THE FULL SCOPE OF THE SUBCONTRACT WORK AND SHALL GOVERN IN THE EVENT OF A CONFLICT.)

ARTICLE 1B - WORK TO BE PERFORMED

1.1 The Subcontractor shall furnish the Products and perform the Subcontract Work in a proper and workmanlike manner pertaining to: (Insert full description of all work to be done with reference to specification section as described by number and heading if applicable)

1.2 The Subcontractor shall perform the Subcontract Work as required by the Subcontract Documents. Any amendments to the Contract Documents that relate to the Subcontract Work after time of the submission of subcontract bids to the Contractor and prior to execution of the Subcontract, shall be agreed in writing by the Contractor and Subcontractor.

ARTICLE 2B – CONFLICT BETWEEN THE PRIME CONTRACT AND SUBCONTRACT

2.1 In the event of any conflict between the terms of this Subcontract and the Prime Contract, this Subcontract shall govern.

ARTICLE 3B – SUBCONTRACT DOCUMENTS

The following are the *Subcontract Documents* referred to in Article 1B of this Subcontract Agreement – WORK TO BE PERFORMED

- Subcontract Agreement between Contractor and Subcontractor
- Definitions of the Subcontract
- The Subcontract Conditions of the Subcontract
- Prime Contract Agreement between Owner and Contractor, if any
- Definitions of the *Prime Contract*, if any
- The General Conditions of the *Prime Contract*, if any

*

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^{* (}Insert here, attaching additional pages if required, a list identifying all other Subcontract Documents, e.g. supplementary conditions; information documents; 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 and date)

ARTICLE 4 – SCHEDULE

4.1	The <i>Subcontractor</i> shall perform the <i>Subcontract Work</i> : 1 in accordance with a Schedule provided by the <i>Contractor</i> at the time of signing this <i>Subcontract</i> ; or 2 in accordance with a Schedule mutually agreed if provided by the <i>Contractor</i> after the signing of this <i>Subcontract</i> ; or
	.3 starting on or about (day/month/year) / and substantially perform the Subcontract Work by, on or about (day/month/year) / / and substantially perform the Subcontract Work by, on or about (day/month/year) / /
	The <i>Contractor</i> may reasonably adjust any schedule or specified timing during the course of the <i>Subcontract Work</i> after consulting with the <i>Subcontractor</i> .
ART	TICLE 5 – SUBCONTRACT PRICE
5.1	The Subcontract Price, which excludes Value Added Taxes, is:
	/100 dollars \$
5.2	Value Added Taxes (of
	/100 dollars \$
5.3	Total amount payable by the <i>Contractor</i> to the <i>Subcontractor</i> for the construction of the <i>Subcontract Work</i> is:
	/100 dollars \$
5.4	These amounts shall be subject to adjustments as provided in the Subcontract Documents.
5.5	All amounts are in Canadian funds.
ART	TICLE 6 – PAYMENT
6.1	Subject to the provisions of the <i>Subcontract Documents</i> , and in accordance with legislation and statutory regulations respecting holdback percentages the <i>Contractor</i> shall: .1 make progress payments to the <i>Subcontractor</i> on account of the <i>Subcontract Price</i> in accordance with paragraph 6.2 of this Article. The amounts of such payments shall be as certified by the <i>Consultant</i> together with such <i>Value Added Taxes</i> as may be applicable to such payment;
	.2 upon Substantial Performance of the Work, pay to the Subcontractor the percentage of the Subcontract Price which has been held back from the preceding progress payments when due together with such Value Added Taxes as may be applicable to such payment; and
	.3 upon the issuance of the <i>Consultant</i> 's certificate of payment that incorporates final payment of the <i>Subcontract Work</i> , pay to the <i>Subcontractor</i> the unpaid balance of the <i>Subcontract Price</i> when due together with such <i>Value Added Taxes</i> as may be applicable to such payment.
6.2	The Subcontractor shall make applications for payment together with supporting sworn statements and other documents that are required by the Subcontract Documents on or before the day of each month (herein called the Submission Date) to the Contractor for approval and due processing. The amount claimed shall be for the value, proportionate to the amount of the Subcontract, of Subcontract Work performed and Products delivered to the Place of the Work up to the day of the month. The Contractor shall pay the Subcontractor, no later than 30 calendar days after the Submission Date or 10 calendar days after the date of a Consultant's certificate for payment whichever is later, percent of the amount applied for or such other amount as the Contractor or the Consultant determines to be properly due. Where the Contractor or the Consultant makes any changes to the amount of the applications for payment as submitted by the Subcontractor, the Subcontractor shall be advised promptly in writing by the Contractor of changes

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and given the opportunity to defend the Subcontractor's submission without delay.

- 6.3 In the event that the *Consultant* fails to issue any certificate upon which payment shall become payable to the *Contractor* or the *Owner* fails to make a payment within the times prescribed in the *Prime Contract*:
 - .1 The *Contractor* shall immediately inform the *Owner* of the *Owner*'s default as provided for by the terms of the *Prime Contract*, contemporaneously advise the *Subcontractor* in writing of such default and provide to the *Subcontractor* a copy of any and all notices of default delivered by the *Contractor* to the *Owner*.
 - .2 Should the *Owner* not remedy the default within the time prescribed by the *Prime Contract*, the *Contractor* shall stop the *Work* and shall, within the time stipulated in the applicable lien legislation, take such steps as are required to enforce all of the *Contractor*'s lien rights to recover all amounts unpaid on the *Subcontract*. The *Contractor* shall provide the *Subcontractor* prompt *Notice in Writing* of all steps taken to enforce payment.
 - .3 In the event that the *Contractor* has complied with all the provisions of this paragraph 6.3, the time for payment provided for in paragraph 6.2 of this Article shall be extended for _____ *days from that otherwise provided for in paragraph 6.2 of this Article and the amount of the payment so suspended shall be deemed to be a holdback authorised pursuant to the terms of this *Subcontract* and shall be payable at the time provided for in this subparagraph. (* NOTE: the suspension time shall be 90 days or as otherwise agreed by the Contractor and the Subcontractor.)
 - .4 Notwithstanding any suspension as herein provided of the obligation to make payment which would otherwise be payable pursuant to paragraph 6.2 of this Article, the *Contractor* shall be obliged to pay interest on the amount of the payment which is suspended at the date payment of that sum finally becomes due at the rate provided in paragraph 6.5 of this Article calculated from the date when, but for paragraph 6.3 of this Article, payment would otherwise have been due.
- 6.4 If no claims exist against the *Subcontract Work* and the *Subcontractor* has submitted to the *Contractor* a sworn statement that all accounts for labour, sub-subcontracts, *Products*, *Construction Equipment*, and other indebtedness which may have been incurred by the *Subcontractor* in the performance of the *Subcontract Work* and for which the *Contractor* might in any way be held responsible have been paid in full, except for holdback amounts to be payable out of the funds to be paid to the *Subcontractor* pursuant to this paragraph 6.4 or as an identified amount in dispute, the amount withheld from progress payments made pursuant to paragraph 6.1.1 of this Article and which is payable pursuant to paragraph 6.1.2 of this Article is due and payable:
 - .1 In the Common Law provinces, on the day following the expiration of the holdback period stipulated in the lien legislation applicable to the *Place of the Work*. Where lien legislation does not exist or apply, the holdback amount shall be due and payable in accordance with other legislation, industry practice or provisions which may be agreed to between the parties. The *Contractor* may retain out of the holdback amount any sums required by law to satisfy any liens against the *Subcontract Work* or, if permitted by the lien legislation applicable to the *Place of the Work*, other third party monetary claims against the *Subcontractor* which are enforceable against the *Contractor*.
 - .2 In the Province of Quebec, no later than 30 calendar days after the date of *Substantial Performance of the Work*. The *Contractor* may retain out of the holdback amount any sums required by law to satisfy any legal hypothecs that have been taken or could be taken against the *Work* or other third party monetary claims against the *Owner* which are enforceable against the *Contractor*.

6.5 Interest

- .1 Should either party fail to make payments as they become due under the terms of this *Subcontract* or in an award by arbitration or court, interest at the following rates on such unpaid amounts shall also become due and payable until payment:
 - (1) 2% per annum above the prime rate for the first 60 days.

had it not been in dispute, until the date it is paid.

(2) 4% per annum above the prime rate after the first 60 days.

Such interest shall be compounded on a monthly basis. The prime rate shall be the rate of interest quoted by

(Insert name of chartered lending institution whose prime rate is to be used) for prime business loans as it may change from time to time.

Interest shall apply at the rate and in the manner prescribed by paragraph 6.5.1 of this Article on the settlement amount of any claim in dispute that is resolved either pursuant to Part 8 of the Subcontract Conditions – DISPUTE RESOLUTION or otherwise, from the date the amount would have been due and payable under the *Subcontract*,

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ARTICLE 7 - RECEIPT OF AND ADDRESSES FOR NOTICE IN WRITING

7.1 Notices in Writing will be addressed to the recipient at the address set out below. The delivery of a Notice in Writing will be by hand, by courier, by prepaid first class mail, or by facsimile or other form of electronic communication during the transmission of which no indication of failure of receipt is communicated to the sender. A Notice in Writing delivered by one party in accordance with this Subcontract 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 shall be deemed to have been received 5 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 shall be deemed to have been received on the Working Day next following such day. A Notice in Writing sent by facsimile or other form of electronic communication shall 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 shall 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. 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.

Contractor		
name of Contractor*		
name of commune.		
address		
facsimile number	email address	
Subcontractor		
name of Subcontractor*		
oj succontractor		
address		
facsimile number	email address	

ARTICLE 8 LANGUAGE OF THE SUBCONTRACT

- 8.1 When the *Subcontract 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/French* language shall prevail.
 - * Complete this statement by striking out inapplicable term.
- 8.2 This *Subcontract* Agreement is drawn in English at the request of the parties hereto. La présente convention est rédigée en anglais à la demande des parties.

^{*} If it is intended that the notice must be received by a specific individual, that individual's name shall be indicated.

IN WITNESS WHEREOF.

Paragraphs (1) and (2), which only apply to the Province of Quebec, shall read as follows:

- (1) having read and fully understood this *Subcontract* and all the documents it includes or to which it refers, as well as the rights and obligations resulting therefrom; and
- (2) having had the opportunity of negotiating the essential stipulations of this *Subcontract*,

the parties hereto have executed this Subcontract by the hands of their duly authorized representatives.

SIGNED AND DELIVERED

in the presence of:

WITNESS	CONTRACTOR
	name of Contractor
gnature	signature
ame and title of person signing	name and title of person signing
ignature	signature
ame and title of person signing	name and title of person signing
*1	
	SUBCONTRACTOR
WITNESS	SUBCONTRACTOR
	SUBCONTRACTOR
	SUBCONTRACTOR
	SUBCONTRACTOR name of Subcontractor
WITNESS	name of Subcontractor
WITNESS	
VITNESS	name of Subcontractor
VITNESS	name of Subcontractor signature
	name of Subcontractor signature

- (a) proof of authority to execute this document, attach such proof of authority in the form of a certified copy of a resolution naming the representative(s) authorized to sign the Subcontract for and on behalf of the corporation or partnership; or
- (b) the affixing of a corporate seal, this Subcontract shall be properly sealed.

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DEFINITIONS

The following definitions shall apply to all Subcontract Documents.

1. Change Directive

A Change Directive is a written instruction signed by the Contractor directing the Subcontractor to proceed with a change in the Subcontract Work within the general scope of the Subcontract Documents prior to the Contractor and the Subcontractor agreeing upon adjustments in the Subcontract Price and the Subcontract Time.

2. Change Order

A *Change Order* is a written amendment to this *Subcontract* signed by the *Contractor* and the *Subcontractor* stating their agreement upon:

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

3. Construction Equipment

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

4. Contract Documents

The Contract Documents are those documents comprising the Prime Contract between the Owner and the Contractor and defined therein.

5. Drawings

The *Drawings* are the graphic and pictorial portions of the *Subcontract Documents*, wherever located and whenever issued, showing the design, location, and dimensions of the *Subcontract Work*, generally including plans, elevations, sections, details, and diagrams.

6. Notice in Writing

A *Notice in Writing*, where identified in the *Subcontract Documents*, is a written communication between the parties that is transmitted in accordance with the provisions of Article 7 of the Subcontract Agreement – RECEIPT OF AND ADDRESSES FOR NOTICES IN WRITING.

7. Owner, Consultant, Contractor, Subcontractor

The Owner, Consultant, Contractor, and Subcontractor are the persons or entities identified as such in this Subcontract Agreement and include their authorized representatives.

8. Place of the Work

The *Place of the Work* is the designated site or location of the *Work* identified in the *Contract Documents*.

9. Prime Contract

The *Prime Contract* is the undertaking by the *Owner* and the *Contractor* to perform their respective duties, responsibilities and obligations as prescribed in the *Contract Documents* and represents the entire agreement between the *Owner* and the *Contractor*.

10. Product

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

11. Project

The *Project* means the total construction contemplated of which the *Work* may be the whole or a part.

12. Provide

Provide means to supply and install.

13. Shop Drawings

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

14. Specifications

The *Specifications* are that portion of the *Subcontract 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 *Subcontract Work*.

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15. Subcontract

The *Subcontract* is the undertaking by the *Contractor* and the *Subcontractor* to perform their respective duties, responsibilities, and obligations as prescribed in the *Subcontract Documents* and represents the entire agreement between the *Contractor* and the *Subcontractor*.

16. Subcontract Documents

The *Subcontract Documents* consist of those documents as listed in Article 3A or Article 3B of the Subcontract Agreement – SUBCONTRACT DOCUMENTS, and any other amendments or provisions agreed upon between the *Contractor* and *Subcontractor*.

17. Subcontract Price

The Subcontract Price is the amount stipulated in Article 5 of the Subcontract Agreement – SUBCONTRACT PRICE.

18. Subcontract Time

The *Subcontract Time* is the time stipulated in Article 4 of the Subcontract Agreement – SCHEDULE within which the *Subcontract Work* is to be performed.

19. Subcontract Work

The Subcontract Work means the construction and related services required by the Subcontract Documents.

20. Substantial Performance of the Subcontract Work

Substantial Performance of the Subcontract Work is as defined in the lien legislation applicable to the Place of the Work. If such legislation is not in force or does not contain such definition, or if the Subcontract Work is governed by the Civil Code of Quebec, Substantial Performance of the Subcontract Work shall have been reached when the Subcontract Work is ready for use or is being used for the purpose intended and is so certified by the Consultant if the conditions of the Prime Contract require the Consultant to issue such a certificate.

21. Substantial Performance of the Work

Substantial Performance of the Work is as defined in the lien legislation applicable to the Place of the Work. If such legislation is not in force or does not contain such definition, or if the Work is governed by the Civil Code of Quebec, Substantial Performance of the Work shall have been reached when the Work is ready for use or is being used for the purpose intended and is so certified by the Consultant in consultation with the Contractor if the Consultant is required by the terms of the Prime Contract to issue such a certificate.

22. Sub-Subcontractor

A Sub-Subcontractor is a person or entity having a direct contract with the Subcontractor to perform a part or parts of the Subcontract Work.

23. Supplemental Instruction

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

24. Temporary Work

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

25. Value Added Taxes

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

26. Work

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

27. Working Day

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*.

SUBCONTRACT CONDITIONS

PART 1 GENERAL PROVISIONS

SCC 1.1 DOCUMENTS

- 1.1.1 The intent of the *Subcontract Documents* is to include the labour, *Products* and services necessary for the performance of the *Subcontract Work* by the *Subcontractor* in accordance with these documents. It is not intended, however, that the *Subcontractor* shall supply products or perform work not consistent with, not covered by, or not properly inferable from the *Subcontract Documents*.
- 1.1.2 Nothing contained in the *Subcontract Documents* shall create any contractual relationship between the *Contractor* and a *Sub-Subcontractor* or the *Sub-Subcontractor*'s agent, employee, or other person performing any portion of the *Subcontract Work*.
- 1.1.3 The *Subcontract Documents* are complementary, and what is required by any one shall be as binding as if required by all.
- 1.1.4 Words or abbreviations which have well known technical or trade meanings are used in the *Subcontract Documents* in accordance with such recognized meanings.
- 1.1.5 References in the *Subcontract Documents* to the singular shall be considered to include the plural as the context requires.
- 1.1.6 Neither the organization of the *Specifications* nor the arrangement of *Drawings* shall control the *Subcontractor* in dividing the work among *Sub-Subcontractors*.
- 1.1.7 If there is a conflict within *Subcontract Documents*:
 - .1 the order of priority of documents listed in Article 3A of the Subcontract Agreement SUBCONTRACT DOCUMENTS, from highest to lowest, shall be
 - the Agreement of the *Prime Contract*,
 - the Definitions of the Prime Contract,
 - Supplementary Conditions of the Prime Contract,
 - the General Conditions of the Prime Contract,
 - the Agreement of the Subcontract,
 - the Definitions of the Subcontract,
 - Supplementary Conditions of the Subcontract,
 - the Subcontract Conditions of the Subcontract,
 - Division 1 of the Specifications,
 - technical Specifications,
 - material and finishing schedules,
 - the *Drawings*.
 - .2 the order of priority of documents listed in Article 3B of the Subcontract Agreement SUBCONTRACT DOCUMENTS, from highest to lowest, shall be
 - the Agreement of the Subcontract,
 - the Definitions of the Subcontract,
 - Supplementary Conditions of the Subcontract,
 - the Subcontract Conditions of the Subcontract,
 - the Agreement of the Prime Contract, if any
 - the Definitions of the *Prime Contract*, if any
 - Supplementary Conditions of the *Prime Contract*, if any
 - the General Conditions of the *Prime Contract*, if any
 - Division 1 of the Specifications,
 - technical Specifications,
 - material and finishing schedules,
 - the Drawings.
 - .3 drawings of larger scale shall govern over those of smaller scale of the same date.
 - .4 dimensions shown on *Drawings* shall govern over dimensions scaled from *Drawings*.
 - .5 later dated documents shall govern over earlier documents of the same type.

1.1.8 The *Contractor* shall provide the *Subcontractor*, without charge, sufficient copies of the *Subcontract Documents* to perform the *Subcontract Work*.

SCC 1.2 ASSIGNMENT

1.2.1 Neither party to the *Subcontract* shall assign the *Subcontract* or a portion thereof without the written consent of the other, which consent shall not be unreasonably withheld.

PART 2 ADMINISTRATION OF THE SUBCONTRACT

SCC 2.1 SUPPLEMENTAL INSTRUCTIONS

2.1.1 During the progress of the *Subcontract Work* the *Contractor* will furnish *Supplemental Instructions* to the *Subcontractor* with reasonable promptness or in accordance with a schedule for such instructions agreed to by the *Contractor* and the *Subcontractor*.

SCC 2.2 REVIEW AND INSPECTION OF THE WORK

- 2.2.1 The *Owner*, the *Consultant* and the *Contractor* shall have access to the *Subcontract Work* for inspection whenever it is in preparation or progress. The *Subcontractor* shall cooperate to provide reasonable facilities for such access.
- 2.2.2 If special tests, inspections or approvals are required by the *Subcontract Documents*, or by the *Consultant*'s instructions, or by the laws or ordinances of the *Place of the Work*, the *Subcontractor* shall give the *Contractor* timely notice requesting inspection. Inspection by the *Consultant* and the *Contractor* shall be made promptly.
- 2.2.3 The *Subcontractor* shall furnish promptly to the *Contractor* two copies of certificates and inspection reports relating to the *Subcontract Work*.
- 2.2.4 If the *Subcontractor* 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 *Subcontractor* shall, if so directed, uncover such work, have the inspections or tests satisfactorily completed, and make good covering work at the *Subcontractor*'s expense.
- 2.2.5 The *Contractor* may order any portion or portions of the *Subcontract Work* to be examined to confirm that such work is in accordance with the requirements of the *Subcontract Documents*. If the work is not in accordance with the requirements of the *Subcontract Documents*, the *Subcontractor* shall correct the work and pay the cost of examination and correction. If the work is in accordance with the requirements of the *Subcontract Documents*, the *Contractor* shall pay the cost of examination and restoration.
- 2.2.6 The *Subcontractor* 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 *Subcontract Documents* to be performed by the *Subcontractor* or is designated by the laws or ordinances of the *Place of the Work*.
- 2.2.7 The *Subcontractor* shall pay the cost of samples required for any test or inspection to be performed by the *Consultant*, the *Owner* or the *Contractor* if such test or inspection is designated in the *Subcontract Documents*.

SCC 2.3 DEFECTIVE WORK

- 2.3.1 The *Subcontractor* shall promptly correct defective work that has been rejected by the *Contractor* as failing to conform to the *Subcontract Documents* whether or not the defective work has been incorporated in the *Subcontract Work* and whether or not the defect is the result of poor workmanship, use of defective products or damage through carelessness or other act or omission of the *Subcontractor*.
- 2.3.2 The *Subcontractor* shall make good promptly other work destroyed or damaged by such corrections at the *Subcontractor*'s expense.
- 2.3.3 If in the opinion of the *Contractor* it is not expedient to correct defective work or work not performed as provided in the *Subcontract Documents*, the *Contractor*, having obtained concurrence of such opinion from the *Consultant*, may deduct from the amount otherwise due to the *Subcontractor* the difference in value between the work as performed and that called for by the *Subcontract Documents*. If the *Subcontractor* does not agree with the difference in value, the disagreement shall be settled in accordance with Part 8 of the Subcontract Conditions DISPUTE RESOLUTION.

PART 3 EXECUTION OF THE WORK

SCC 3.1 CONSTRUCTION BY CONTRACTOR OR OTHER SUBCONTRACTORS

- 3.1.1 The *Contractor* reserves the right to award separate subcontracts in connection with other parts of the *Work* to other subcontractors and to perform work with own forces.
- 3.1.2 When separate subcontracts are awarded for other parts of the *Work*, or when work is performed by the *Contractor*'s own forces, the *Contractor* shall:
 - .1 provide for the co-ordination of the activities and work of other subcontractors and *Contractor*'s own forces with the *Subcontract Work*;
 - .2 assume overall responsibility for compliance with the applicable health and construction safety legislation at the *Place of the Work*;
 - .3 enter into separate subcontracts with other subcontractors under conditions of contract which are compatible with the conditions of the *Subcontract*;
 - .4 ensure that insurance coverage is provided to the same requirements as are called for in SCC 11.1 INSURANCE and co-ordinate such insurance with the insurance coverage of the *Subcontractor* as it affects the *Subcontract Work*; and
 - 5 take all reasonable precautions to avoid labour disputes or other disputes on the *Work* arising from the work of other subcontractors or the *Contractor*'s own forces.
- 3.1.3 When separate subcontracts are awarded for other parts of the *Work*, or when work is performed by the *Contractor*'s own forces, the *Subcontractor* shall:
 - 1 afford the Contractor and other subcontractors reasonable opportunity to store their products and execute their work;
 - .2 cooperate with other subcontractors and the *Contractor* in reviewing their construction schedules; and
 - .3 promptly report to the *Contractor* in writing any apparent deficiencies in the work of other subcontractors or of the *Contractor*'s own forces, where such work affects the proper execution of any portion of the *Subcontract Work*, prior to proceeding with that portion of the *Subcontract Work*.
- 3.1.4 Where the *Subcontract Documents* identify the work to be performed by other subcontractors or the *Contractor*'s own forces, the *Subcontractor* shall co-ordinate and schedule the *Subcontract Work* with the work of other subcontractors and the *Contractor*'s own forces as specified in the *Subcontract Documents*.
- 3.1.5 When a change in the *Subcontract Work* is required as a result of the co-ordination and integration of the work of other subcontractors or *Contractor*'s own forces with the *Subcontract Work*, the changes shall be authorized and valued as provided in SCC 6.1 CONTRACTOR'S RIGHT TO MAKE CHANGES, SCC 6.2 CHANGE ORDER, and SCC 6.3 CHANGE DIRECTIVE.
- 3.1.6 Disputes and other matters in question between the *Subcontractor* and other subcontractors shall be dealt with as provided in Part 8 of the Subcontract Conditions DISPUTE RESOLUTION provided the other subcontractors have reciprocal obligations. The *Subcontractor* shall be deemed to have consented to arbitration of any such dispute with any other subcontractor whose contract with the *Contractor* contains a similar agreement to arbitrate.

SCC 3.2 TEMPORARY SERVICES

3.2.1 Unless otherwise stipulated in the *Subcontract Documents*, the *Contractor* will provide and pay for all temporary water, power and heat, general purpose lighting and toilet facilities but excluding those temporary services required for the *Subcontractor*'s site office.

SCC 3.3 SUPERVISION

- 3.3.1 The *Subcontractor* shall provide all necessary supervision and appoint a competent representative who shall be in attendance at the *Place of the Work* while work is being performed. The appointed representative shall not be changed except for valid reason.
- 3.3.2 The appointed representative shall represent the *Subcontractor* at the *Place of the Work*. Information and instructions provided to the *Subcontractor*'s appointed representative shall be deemed to have been received by the *Subcontractor*, except with respect to Article 7 of the Subcontract Agreement RECEIPT OF AND ADDRESSES FOR NOTICE IN WRITING.

SCC 3.4 SUB-SUBCONTRACTORS

- 3.4.1 The *Subcontractor* shall preserve and protect the rights of the parties under the *Subcontract* with respect to *Subcontract Work* to be performed under sub-subcontract, and shall:
 - .1 enter into contracts or written agreements with *Sub-Subcontractors* to require them to perform their work as provided in the *Subcontract Documents*;
 - 2 incorporate the terms and conditions of the *Subcontract Documents* into all contracts or written agreements with *Sub-Subcontractors*; and
 - 3 be as fully responsible to the *Contractor* for acts and omissions of *Sub-Subcontractors* and of persons directly or indirectly employed by them as for acts and omissions of persons directly employed by the *Subcontractor*.
- 3.4.2 The Subcontractor shall indicate in writing, if requested by the Contractor, those Sub-Subcontractors whose bids have been received by the Subcontractor which the Subcontractor would be prepared to accept for the performance of a portion of the Subcontract Work. Should the Contractor not object before signing the Subcontract, the Subcontractor shall employ those Sub-Subcontractors that comply with the requirements of the Subcontract Documents and so identified by the Subcontractor in writing for the performance of that portion of the Subcontract Work to which their bid applies.
- 3.4.3 The *Contractor* may, for reasonable cause, at any time before the *Contractor* has signed the *Subcontract*, object to the use of a proposed *Sub-Subcontractor* and require the *Subcontractor* to employ one of the other sub-subcontract bidders.
- 3.4.4 If the *Contractor* requires the *Subcontractor* to change a proposed *Sub-Subcontractor*, the *Subcontract Price* and *Subcontract Time* shall be adjusted by the differences occasioned by such required change.
- 3.4.5 The *Subcontractor* shall not be required to employ as a *Sub-Subcontractor*, a person or firm to which the *Subcontractor* may reasonably object.
- 3.4.6 The *Contractor* may provide to a *Sub-Subcontractor* information as to the percentage of the *Sub-Subcontractor*'s work which has been certified for payment.

SCC 3.5 SHOP DRAWINGS

- 3.5.1 The Subcontractor shall provide Shop Drawings as required in the Subcontract Documents.
- 3.5.2 The *Subcontractor* shall provide *Shop Drawings* to the *Contractor* to review in orderly sequence and sufficiently in advance so as to cause no delay in the *Subcontract Work* or in the work of other contractors.
- 3.5.3 Upon request of the *Contractor*, they shall jointly prepare a schedule of the dates for provision, review and return of *Shop Drawings*.
- 3.5.4 The *Subcontractor* shall provide *Shop Drawings* in the form specified, or if not specified, as directed by the *Contractor*.
- 3.5.5 *Shop Drawings* provided by the *Subcontractor* to the *Contractor* shall indicate by stamp, date and signature of the person responsible for the review that the *Subcontractor* has reviewed each one of them.
- 3.5.6 *Shop Drawings* which require approval of any legally constituted authority having jurisdiction shall be provided to such authority by the *Subcontractor* for approval.
- 3.5.7 The *Subcontractor* shall review all *Shop Drawings* before providing them to the *Contractor*. The *Subcontractor* represents by this review that:
 - .1 the *Subcontractor* has determined and verified all applicable field measurements, field construction conditions, *Product* requirements, catalogue numbers and similar data, or will do so, and
 - .2 the *Subcontractor* has checked and co-ordinated each *Shop Drawing* with the requirements of the *Subcontract Work* and of the *Subcontract Documents*.
- 3.5.8 At the time of providing *Shop Drawings*, the *Subcontractor* shall expressly advise the *Contractor* in writing of any deviations in a *Shop Drawing* from the requirements of the *Subcontract Documents*. The *Contractor* shall indicate the acceptance or rejection of such deviation expressly in writing.
- 3.5.9 The *Contractor*'s review shall not relieve the *Subcontractor* of responsibility for errors or omissions in the *Shop Drawings* or for meeting all requirements of the *Subcontract Documents*.

- 3.5.10 The *Subcontractor* shall provide revised *Shop Drawings* to correct those which the *Contractor* rejects as inconsistent with the *Subcontract Documents*, unless otherwise directed by the *Contractor*. The *Subcontractor* shall advise the *Contractor* in writing of any revisions to the *Shop Drawings* other than those requested by the *Contractor*.
- 3.5.11 The *Contractor* 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 *Subcontract Work*.

SCC 3.6 USE OF THE WORK

- 3.6.1 The *Subcontractor* shall confine *Construction Equipment*, *Temporary Work*, storage of *Products*, waste products and debris, and operations of employees to limits indicated by laws, ordinances, permits, the *Subcontract Documents*, or by direction of the *Contractor* and shall not unreasonably encumber the *Place of the Work*.
- 3.6.2 The *Subcontractor* shall not load or permit to be loaded any part of the *Work* with a weight or force that will endanger the safety of the *Work*.
- 3.6.3 The *Subcontractor* shall comply with the *Contractor*'s instructions regarding signs, advertisements, fires, and smoking.

SCC 3.7 CUTTING AND REMEDIAL WORK

- 3.7.1 The *Subcontractor* shall do the cutting and remedial work required to make the affected parts of the *Subcontract Work* come together properly.
- 3.7.2 The *Subcontractor* shall coordinate the *Subcontract Work* to ensure that the cutting and remedial work is kept to a minimum.
- 3.7.3 The *Subcontractor* shall not cut, dig, box, or sleeve any structural member so as to endanger existing work nor alter the work of any others without the *Contractor*'s written consent.
- 3.7.4 Should the *Owner*, the *Contractor* or anyone employed by them 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 SCC 6.1 CONTRACTOR'S RIGHT TO MAKE CHANGES, SCC 6.2 CHANGE ORDER and SCC 6.3 CHANGE DIRECTIVE.
- 3.7.5 Cutting and remedial work shall be performed by specialists familiar with the *Products* affected and shall be performed in a manner to neither damage nor endanger the *Work*.

SCC 3.8 CLEANUP

- 3.8.1 The *Subcontractor* shall maintain the *Subcontract Work* in a safe and tidy condition and free from the accumulation of waste products and debris caused by the *Subcontract Work*.
- 3.8.2 Before applying for *Substantial Performance of the Subcontract Work*, the *Subcontractor* shall remove waste products and debris caused by the *Subcontract Work* to the satisfaction of the *Contractor*. If the *Contractor* instructs the *Subcontractor* to perform these housekeeping requirements and the *Subcontractor* fails to do so within a reasonable time, the *Contractor* shall have the right to have the work performed by whatever means may be expedient and the *Subcontractor* agrees to pay all reasonable costs of such clean-up and removal of waste products and debris.
- 3.8.3 Prior to application for Substantial Performance of the Subcontract Work, the Subcontractor shall remove any remaining products, tools, Construction Machinery, Temporary Work, and waste products and debris resulting from the Subcontractor's work.

SCC 3.9 PAYMENT OF ACCOUNTS

3.9.1 The Subcontractor shall promptly and satisfactorily settle and pay for all accounts, claims or liens with respect to the Subcontract Work. If, after having received 2 Working Days Notice in Writing from the Contractor to settle and pay such accounts, claims or liens, the Subcontractor fails or refuses to settle or pay same, the Contractor shall have the right to settle or pay such accounts, claims or liens for the account of the Subcontractor and the receipt issued to the Contractor with respect to such accounts, claims or liens shall be conclusive evidence as to such payments and the amount thereof. Notwithstanding the foregoing provision, the Subcontractor shall not be required to pay any such accounts, claims or liens if it has reasonable grounds for disputing same and the Contractor in these circumstances will only have the right to pay or settle such accounts, claims or liens in such manner as in its opinion, will not prejudice the Subcontractor's right to dispute same.

PART 4 ALLOWANCES

SCC 4.1 CASH ALLOWANCES

- 4.1.1 The *Subcontract Price* includes the cash allowances, if any, stated in the *Subcontract Documents*. The scope of work or costs included in such cash allowance shall be as described in the *Subcontract Documents*.
- 4.1.2 The *Subcontract Price*, and not the cash allowances, includes the *Subcontractor*'s overhead and profit in connection with such cash allowances.
- 4.1.3 Expenditures under cash allowances shall be authorized by the *Contractor*.
- 4.1.4 Where the actual cost of the *Subcontract Work* under any cash allowance exceeds the amount of the allowance, the *Subcontractor* shall be compensated for the excess incurred and substantiated plus an amount for overhead and profit on the excess as set out in the *Subcontract Documents*. Where the actual cost of the *Subcontract Work* under any cash allowance is less than the amount of the allowance, the *Contractor* shall be credited for the unexpended portion of the cash allowance, but not for the *Subcontractor*'s overhead and profit on such amount. Multiple cash allowances shall not be combined for the purpose of calculating the foregoing.
- 4.1.5 The *Subcontract Price* shall be adjusted by *Change Order* to provide for any difference between the amount of each cash allowance and the actual cost of the *Subcontract Work* under that cash allowance.

PART 5 PAYMENT

SCC 5.1 APPLICATIONS FOR PAYMENT

- 5.1.1 Applications for payment on account as provided in Article 6 of the Subcontract Agreement PAYMENT may be made monthly as the *Subcontract Work* progresses.
- 5.1.2 The *Subcontractor* shall submit to the *Contractor*, at least 20 calendar days before the first application for payment, a schedule of values for the parts of the *Subcontract Work*, aggregating the total amount of the *Subcontract Price*, so as to facilitate evaluation of applications for payment.
- 5.1.3 The schedule of values shall be made out in such form and supported by such evidence as the *Contractor* may reasonably direct and when accepted by the *Contractor*, shall be used as the basis for applications for payment, unless it is found to be in error.
- 5.1.4 The Subcontractor shall include a statement based on the schedule of values with each application for payment.
- 5.1.5 Applications for payment for *Products* delivered to the *Place of the work* but not yet incorporated into the *Subcontract Work* shall be supported by such evidence as the *Contractor* may reasonably require to establish the value and delivery of the *Products*.

SCC 5.2 WITHHOLDING OF PAYMENT

- 5.2.1 If because of climatic or other conditions reasonably beyond the control of the *Subcontractor*, there are items of *Subcontract Work* that cannot be performed, payment in full for that portion of the *Subcontract Work* which has been performed as certified by the *Consultant* shall not be withheld or delayed by the *Contractor* on account thereof, but the *Contractor* may withhold, until the remaining portion of the *Subcontract Work* is finished, only such an amount that the *Contractor* determines is sufficient and reasonable to cover the cost of performing such remaining *Subcontract Work*.
- 5.2.2 The provisions of SCC 5.2 WITHOLDING OF PAYMENT shall be effective only when the applicable lien legislation permits the release of any portion of the *Subcontract Price* which has been withheld by way of holdback under the conditions contemplated herein.

SCC 5.3 NON-CONFORMING WORK

5.3.1 No payment by the *Contractor* under this *Subcontract* nor partial or entire use or occupancy of the *Work* by the *Owner* shall constitute an acceptance of any portion of the *Subcontract Work* or *Products* which are not in accordance with the requirements of the *Subcontract Documents*.

CCA 1 – 2008

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PART 6 CHANGES IN THE WORK

SCC 6.1 CONTRACTOR'S RIGHT TO MAKE CHANGES

- 6.1.1 The *Contractor*, without invalidating the *Subcontract*, may make:
 - .1 changes in the *Subcontract Work* consisting of additions, deletions or other revisions to the *Subcontract Work* by *Change Order* or *Change Directive*, and
 - .2 changes to the Subcontract Time for the Subcontract Work, or at any part thereof, by Change Order.
- 6.1.2 The Subcontractor shall not perform a change in the Subcontract Work without a Change Order or a Change Directive.

SCC 6.2 CHANGE ORDER

- 6.2.1 When a change in the *Subcontract Work* is proposed or required, the *Contractor* shall provide the *Subcontractor* with a written description of the proposed change in the *Subcontract Work*. The *Subcontractor* shall promptly present, in a form acceptable to the *Contractor*, a method of adjustment or an amount of adjustment for the *Subcontract Price*, if any, and the adjustment in the *Subcontract Time*, if any, for the proposed change in the *Subcontract Work*.
- 6.2.2 When the *Contractor* and the *Subcontractor* agree to the adjustments in the *Subcontract Price* and *Subcontract 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 *Subcontract Work* performed as the result of a *Change Order* shall be included in the application for progress payment.

SCC 6.3 CHANGE DIRECTIVE

- 6.3.1 If the *Contractor* requires the *Subcontractor* to proceed with a change in the *Subcontract Work* prior to the *Contractor* and the *Subcontractor* agreeing upon the corresponding adjustment in *Subcontract Price* and *Subcontract Time*, the *Contractor* shall issue a *Change Directive*.
- 6.3.2 A *Change Directive* shall only be used to direct a change in the *Subcontract Work* which is within the general scope of the *Subcontract Documents*.
- 6.3.3 A Change Directive shall not be used to direct a change in the Subcontract Time only.
- 6.3.4 Upon receipt of a *Change Directive*, the *Subcontractor* shall proceed promptly with the change in the *Subcontract Work*.
- 6.3.5 For the purpose of valuing *Change Directives*, changes in the *Subcontract Work* that are not substitutions or otherwise related to each other shall not be grouped together in the same *Change Directive*.
- 6.3.6 The adjustment in the *Subcontract Price* for a change carried out by way of a *Change Directive* shall be determined on the basis of the cost of the *Subcontractor*'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 *Subcontractor*'s cost, the *Subcontract Price* shall be increased by the amount of the net increase in the *Subcontractor*'s cost, plus the *Subcontractor*'s percentage fee on such net increase.
 - .2 If the change results in a net decrease in the *Subcontractor*'s cost, the *Subcontract Price* shall be decreased by the amount of the net decrease in the *Subcontractor*'s cost, without adjustment for the *Subcontractor*'s percentage fee.
 - 3 The Subcontractor's fee shall be as specified in the Subcontract Documents or as otherwise agreed by the parties.
- 6.3.7 The cost of performing the *Subcontract Work* attributable to the *Change Directive* shall be limited to the actual cost of the following:
 - .1 salaries, wages and benefits paid to personnel in the direct employ of the *Subcontractor* under a salary or wage schedule agreed upon by the *Contractor* and the *Subcontractor*, or in the absence of such a schedule, actual salaries, wages and benefits paid under applicable bargaining agreement, and in the absence of a salary or wage schedule and bargaining agreement, actual salaries, wages and benefits paid by the *Subcontractor*, for personnel
 - (1) stationed at the Subcontractor's field office, in whatever capacity employed;
 - (2) engaged in expediting the production or transportation of material or equipment, at shops or on the road;
 - (3) engaged in the preparation or review of *Shop Drawings*, fabrication drawings and coordination drawings; or
 - (4) engaged in the processing of changes in the Subcontract Work.

- .2 contributions, assessments or taxes incurred for such items as employment insurance, provincial or territorial health insurance, workers' compensation, and Canada or Quebec Pension Plan, insofar as such cost is based on wages, salaries or other remuneration paid to employees of the *Subcontractor* and included in the cost of the *Subcontract Work* as provided in paragraph 6.3.7.1;
- .3 travel and subsistence expenses of the *Subcontractor*'s personnel described in paragraph 6.3.7.1;
- .4 all *Products* including cost of transportation thereof;
- .5 materials, supplies, *Construction Equipment*, *Temporary Work*, and hand tools not owned by the workers, including transportation and maintenance thereof, which are consumed in the performance of the *Subcontract Work*; and cost less salvage value on such items used but not consumed, which remain the property of the *Subcontractor*;
- .6 all tools and *Construction Equipment*, exclusive of hand tools used in the performance of the *Subcontract Work*, whether rented from or provided by the *Subcontractor* or others, including installation, minor repairs and replacements, dismantling, removal, transportation, and delivery cost thereof;
- .7 equipment and services required for the *Subcontractor*'s field office;
- .8 deposits lost;
- .9 the amounts of all sub-subcontracts;
- .10 quality assurance such as independent inspection and testing services;
- .11 charges levied by authorities having jurisdiction at the *Place of the Work*;
- .12 royalties, patent license fees and damages for infringement of patents and cost of defending suits therefor subject always to the *Subcontractor*'s obligations to indemnify the *Contractor* as provided in paragraph 10.3.1 of SCC 10.3 PATENT FEES;
- .13 any adjustment in premiums for all bonds and insurance which the *Subcontractor* is required, by the *Subcontract Documents*, to purchase and maintain;
- .14 any adjustment in taxes, other than Value Added Taxes, and duties for which the Subcontractor is liable;
- .15 charges for long distance telephone and facsimile communications, courier services, expressage, and petty cash items incurred in relation to the performance of the *Subcontract Work*;
- .16 removal and disposal of waste products and debris; and
- .17 safety measures and requirements.
- 6.3.8 Notwithstanding any other provisions contained in this *Subcontract*, 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 *Subcontractor* to exercise reasonable care and diligence in the *Subcontractor*'s attention to the *Subcontract Work*. Any cost due to failure on the part of the *Subcontractor* to exercise reasonable care and diligence in the *Subcontractor*'s attention to the *Subcontract Work* shall be borne by the *Subcontractor*.
- 6.3.9 The *Subcontractor* shall keep full and detailed accounts and records necessary for the documentation of the cost of performing the *Subcontract Work* attributable to the *Change Directive* and shall provide the *Contractor* with copies thereof when requested.
- 6.3.10 For the purpose of valuing *Change Directives*, the *Contractor* shall be afforded reasonable access to all of the *Subcontractor*'s pertinent documents related to the cost of performing the *Subcontract Work* attributable to the *Change Directive*, and for this purpose the *Subcontractor* shall preserve such records for a period of one year from the date of *Substantial Performance of the Work* or as specified in the *Subcontract Documents*.
- 6.3.11 Pending determination of the final amount of a *Change Directive*, the undisputed value of the *Subcontract Work* performed as the result of a *Change Directive* is eligible to be included in progress payments.
- 6.3.12 If the *Contractor* and *Subcontractor* do not agree on the proposed adjustment in the *Subcontract Time* attributable to the change in the *Subcontract Work*, or the method of determining it, the disagreement shall be referred to Part 8 of the Subcontract Conditions DISPUTE RESOLUTION.
- 6.3.13 When the *Contractor* and the *Subcontractor* reach agreement on the adjustment to the *Subcontract Price* and to the *Subcontract Time*, this agreement shall be recorded in a *Change Order*.

SCC 6.4 CONCEALED OR UNKNOWN CONDITIONS

- 6.4.1 If the *Contractor* or the *Subcontractor* discover conditions at the *Place of the Work* which are:
 - .1 subsurface or otherwise concealed physical conditions which existed before the commencement of the *Subcontract Work* which differ materially from those indicated in the *Subcontract 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 *Subcontract 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 3 *Working Days* after first observance of the conditions.
- 6.4.2 The *Contractor* 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 *Subcontractor*'s cost or time to perform the *Subcontract Work*, the *Contractor* shall issue appropriate instructions for a change in the *Subcontract Work* as provided in SCC 6.2 CHANGE ORDER or SCC 6.3 CHANGE DIRECTIVE.
- 6.4.3 If the *Contractor* finds that the conditions at the *Place of the Work* are not materially different or that no change in the *Subcontract Price* or the *Subcontract Time* is justified, the *Contractor* shall report the reasons for this finding to the *Subcontractor* in writing.
- 6.4.4 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 SCC 9.2 TOXIC AND HAZARDOUS SUBSTANCES, SCC 9.3 ARTIFACTS AND FOSSILS and SCC 9.5 MOULD.

SCC 6.5 DELAYS

- 6.5.1 If the *Subcontractor* is delayed in the performance of the *Subcontract Work* by an action or omission of the *Owner*, *Consultant*, *Contractor*, or anyone employed or engaged by them directly or indirectly, contrary to the provisions of the *Subcontract Documents*, then the *Subcontract Time* shall be extended for such reasonable time as the *Contractor* and *Subcontractor* shall agree that the *Subcontract Work* was delayed. The *Subcontractor* shall be reimbursed by the *Contractor* for reasonable costs incurred by the *Subcontractor* as a result of such delay.
- 6.5.2 If the *Subcontractor* is delayed in the performance of the *Subcontract 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 *Subcontractor* or any person employed or engaged by the *Subcontractor* directly or indirectly, then the *Subcontract Time* shall be extended for such reasonable time as the *Contractor* and *Subcontractor* shall agree that the *Subcontract Work* was delayed. The *Subcontractor* shall be reimbursed by the *Contractor* for reasonable costs incurred by the *Subcontractor* as a result of such delay.
- 6.5.3 If the *Subcontractor* is delayed in the performance of the *Subcontract Work* by:
 - .1 labour disputes, strikes, lock-outs (including lock-outs decreed or recommended for its members by a recognized contractors' association, of which the *Subcontractor* is a member or to which the *Subcontractor* is otherwise bound),
 - .2 fire, unusual delay by common carriers or unavoidable casualties,
 - .3 abnormally adverse weather conditions, or
 - .4 any cause beyond the *Subcontractor*'s control other than one resulting from a default or breach of *Subcontract* by the *Subcontractor*.
 - then the *Subcontract Time* shall be extended for such reasonable time as the *Contractor* and *Subcontractor* shall agree that the *Subcontract Work* was delayed. The extension of time shall not be less than the time lost as the result of the event causing the delay, unless the *Subcontractor* agrees to a shorter extension. The *Subcontractor* shall not be entitled to payment for costs incurred by such delays unless such delays result from actions by the *Owner*, *Consultant*, *Contractor*, or anyone employed or engaged by them directly or indirectly.
- 6.5.4 No extension shall be made for delay unless *Notice in Writing* of the cause of delay is given to the *Contractor* not later than 7 *Working Days* after commencement of delay. In the case of a continuing cause of delay only one *Notice in Writing* shall be necessary.
- 6.5.5 If no schedule is made under SCC 2.1 SUPPLEMENTAL INSTRUCTIONS, then no request for extension shall be made because of failure of the *Contractor* to furnish instructions until 14 *Working Days* after demand for such instructions has been made.

SCC 6.6 CLAIMS FOR A CHANGE IN SUBCONTRACT PRICE

6.6.1 If the *Subcontractor* intends to make a claim for an increase to the *Subcontract Price*, or if the *Contractor* intends to make a claim against the *Subcontractor* for a credit to the *Subcontract Price*, the party that intends to make the claim shall give timely *Notice in Writing* of intent to claim to the other party.

- 6.6.2 Upon commencement of the event or series of events giving rise to the claim, the party intending to make a 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.
- 6.6.3 The party making the claim shall submit within a reasonable time to the other party a detailed account of the amount claimed and the grounds upon which the claim is based.
- 6.6.4 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 other party 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.
- 6.6.5 The responding party shall reply by *Notice in Writing* within 10 *Working Days* after receipt of the claim, or within such other time period as may be agreed by the parties.
- 6.6.6 If such reply is not acceptable to the party making the claim, the claim shall be settled in accordance with Part 8 of the Subcontract Conditions DISPUTE RESOLUTION.

PART 7 DEFAULT NOTICE

SCC 7.1 CONTRACTOR'S RIGHT TO PERFORM THE SUBCONTRACT WORK, TERMINATE THE SUBCONTRACTOR'S RIGHT TO CONTINUE WITH THE SUBCONTRACT WORK OR TERMINATE THE SUBCONTRACT

- 7.1.1 If the *Subcontractor* is adjudged bankrupt, or makes a general assignment for the benefit of creditors because of the *Subcontractor*'s insolvency, or if a receiver is appointed because of the *Subcontractor*'s insolvency, the *Contractor* may, without prejudice to any other right or remedy the *Contractor* may have, terminate the *Subcontractor*'s right to continue with the *Subcontract Work*, by giving the *Subcontractor* or receiver or trustee in bankruptcy *Notice in Writing* to that effect.
- 7.1.2 If the *Subcontractor* neglects to prosecute the *Subcontract Work* properly or otherwise fails to comply with the requirements of the *Subcontract* to a substantial degree, the *Contractor* may, without prejudice to any other right or remedy the *Contractor* may have, give the *Subcontractor Notice in Writing* that the *Subcontractor* is in default of the *Subcontractor*'s contractual obligations and instruct the *Subcontractor* to correct the default in 3 *Working Days* immediately following the receipt of such *Notice in Writing*.
- 7.1.3 If the default cannot be corrected in the 3 *Working Days* specified or in such other time period as may be subsequently agreed in writing by the parties, the *Subcontractor* shall be in compliance with the *Contractor*'s instructions if the *Subcontractor*:
 - .1 commences the correction of the default within the specified time, and
 - .2 provides the Contractor within the 3 Working Days with an acceptable schedule for such correction, and
 - .3 corrects the default in accordance with the *Subcontract* terms and with such schedule.
- 7.1.4 If the *Subcontractor* 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, without prejudice to any other right or remedy the *Contractor* may have, the *Contractor* may:
 - .1 correct such default and deduct the cost thereof from any payment then or thereafter due the *Subcontractor*, or
 - .2 terminate the *Subcontractor*'s right to continue with the *Subcontract Work* in whole or in part or terminate the *Subcontract*.
- 7.1.5 If the *Contractor* terminates the *Subcontractor*'s right to continue with the *Subcontract Work* as provided in paragraphs 7.1.1 and 7.1.4, the *Contractor* shall be entitled to:
 - .1 take possession of the *Subcontract 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 *Subcontract Work* by whatever method the *Contractor* may consider expedient, but without undue delay or expense; and
 - .2 withhold further payment to the *Subcontractor* until a final certificate for payment is issued; and

- .3 charge the *Subcontractor* the amount by which the full cost of finishing the *Subcontract Work* and a reasonable allowance to cover the cost of corrections to work performed by the *Subcontractor* that may be required under SCC 12.3 WARRANTY, exceeds the unpaid balance of the *Subcontract Price*; however, if such cost of finishing the *Subcontract Work* is less than the unpaid balance of the *Subcontract Price*, the *Contractor* shall pay the *Subcontractor* the difference; and
- 4 on expiry of the warranty period, charge the *Subcontractor* the amount by which the cost of corrections to the *Subcontractor*'s work under SCC 12.3 WARRANTY exceeds the allowance provided for such corrections, or if the cost of such corrections is less than the allowance, pay the *Subcontractor* the difference.
- 7.1.6 The *Subcontractor*'s obligation under the *Subcontract* as to quality, correction and warranty of the work performed by the *Subcontractor* up to the time of termination shall continue after such termination of the *Subcontract*.

SCC 7.2 SUBCONTRACTOR'S RIGHT TO SUSPEND THE SUBCONTRACT WORK OR TERMINATE THE SUBCONTRACT

- 7.2.1 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 *Subcontractor* may, without prejudice to any other right or remedy the *Subcontractor* may have, terminate the *Subcontract* by giving the *Contractor* or receiver or trustee in bankruptcy *Notice in Writing* to that effect.
- 7.2.2 If the *Work* should be 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 *Subcontractor* or of anyone directly or indirectly employed or engaged by the *Subcontractor*, the *Subcontractor* may, without prejudice to any other right or remedy the *Subcontractor* may have, terminate the *Subcontract* by giving the *Contractor Notice in Writing* to that effect.
- 7.2.3 The *Subcontractor* may give *Notice in Writing* to the *Contractor* that the *Contractor* is in default of the *Contractor*'s contractual obligations if the *Contractor* fails to pay the *Subcontractor* in accordance with the time for payment stated in Article 6 of the Subcontract Agreement PAYMENT.
- 7.2.4 The *Subcontractor*'s *Notice in Writing* to the *Contractor* 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 *Subcontractor* may, without prejudice to any other right or remedy the *Subcontractor* may have, suspend the *Subcontract Work* or terminate the *Subcontract*.
- 7.2.5 If the *Subcontractor* terminates the *Subcontract* under the conditions set out above, the *Subcontractor* 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 *Subcontractor* may have sustained as a result of the termination of the *Subcontract*.
- 7.2.6 If the *Prime Contract* is terminated for any reason, either the *Contractor* or the *Subcontractor* may terminate this *Subcontract* upon *Notice in Writing* to the other party. Thereafter the respective rights of the parties shall be as if the *Subcontractor* had terminated under any of the above conditions.

PART 8 DISPUTE RESOLUTION

SCC 8.1 INTERPRETATION AND INSTRUCTION OF THE CONTRACTOR

- 8.1.1 The *Contractor*, in the first instance, shall decide on questions arising under the *Subcontract* and interpret the requirements therein. Such decisions shall be given in writing. The *Contractor* shall use the *Contractor*'s powers under the *Subcontract* to enforce its faithful performance by both parties hereto.
- 8.1.2 Differences between the parties to the *Subcontract* as to the interpretation, application or administration of the *Subcontract* 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 decisions of the *Contractor* as provided in paragraph 8.1.1, shall be settled in accordance with the requirements of Part 8 of the Subcontract Conditions DISPUTE RESOLUTION.

8.1.3 If a dispute is not resolved promptly, the *Contractor* shall give instructions for the proper performance of the *Subcontract Work* and to prevent delays pending settlement of the dispute. The *Subcontractor* 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 *Subcontract Documents*, the *Contractor* shall pay the *Subcontractor* costs incurred by the *Subcontractor* in carrying out such instructions which the *Subcontractor* was required to do beyond what the *Subcontract Documents* correctly understood and interpreted would have required, including costs resulting from interruption of the *Subcontract Work*.

SCC 8.2 NEGOTIATION, MEDIATION AND ARBITRATION

- 8.2.1 The *Subcontractor* shall be conclusively deemed to have accepted a decision of the *Contractor* under paragraph 8.1.1 of SCC 8.1 INTERPRETATION AND INSTRUCTION OF THE CONTRACTOR and to have expressly waived and released the *Contractor* from any claims in respect of the particular matter dealt with in that decision unless, within 7 *Working Days* after receipt of that decision, the *Subcontractor* sends a *Notice in Writing* of dispute to the *Contractor*, which contains the particulars of the matter in dispute and the relevant provisions of the *Subcontract Documents*. The *Contractor* 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 *Subcontract Documents*.
- 8.2.2 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.
- 8.2.3 After a period of 10 *Working Days* following receipt of a *Contractor*'s *Notice in Writing* of reply under paragraph 8.2.1, the parties shall request the Project Mediator of the *Work* to assist the parties to reach agreement on any unresolved dispute. The mediated negotiations shall be conducted in accordance with the Rules for Mediation of Construction Disputes as provided in CCDC 40 in effect of the time of bid closing with the following amendment:
 - .1 the word "Contract" appearing in the rules shall read "Subcontract";
 - .2 delete clauses 5.1 to 5.4 and replace them with the following:
 - "5.1 The Project Mediator shall be the Project Mediator of the Work appointed by the parties to the *Prime Contract*"; and
 - .3 in clause 11.1, delete "GC 8.2.5" and substitute "SCC 8.2.4".
- 8.2.4 If the dispute has not been resolved within 10 *Working Days* after the Project Mediator was requested under paragraph 8.2.3 or within such further period agreed by the parties, the Project Mediator shall terminate the mediated negotiations by giving *Notice in Writing* to both parties.
- 8.2.5 By giving a *Notice in Writing* to the other party, not later than 10 *Working Days* after the date of termination of the mediated negotiations under paragraph 8.2.4, either party may refer the dispute to be finally resolved by arbitration under the Rules of Arbitration of Construction Disputes as provided in CCDC 40 in effect of the time of bid closing with the following amendment:
 - .1 the word "Contract" appearing in the rules shall read "Subcontract"; and
 - .2 delete clause 7.1 (b) and replace it with the following:
 - "7.1 (b) the date the Work has been completed or the Subcontract has been terminated.".

The arbitration shall be conducted in the jurisdiction of the *Place of the Work*.

- 8.2.6 On expiration of the 10 *Working Days*, the arbitration agreement under paragraph 8.2.5 is not binding on the parties and, if a *Notice in Writing* is not given under paragraph 8.2.5 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.
- 8.2.7 Should the dispute be as between the *Contractor* and *Subcontractor* only, arbitration proceedings shall not take place, unless otherwise agreed by the parties, until after the performance or alleged performance of the *Subcontract Work* except:
 - .1 when the dispute concerns a payment alleged by the Subcontractor to be due; or
 - .2 when either party can show that the matter in dispute requires immediate consideration while evidence which would otherwise be lost is available.
- 8.2.8 In all other instances, the resolution of the dispute by arbitration shall be held in abeyance until the *Work* has been completed or the *Subcontract* has been terminated, whichever is earlier.

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- 8.2.9 Except to the extent that any dispute between the *Contractor* and *Subcontractor* is a part of or relates to a dispute between the *Owner* and the *Contractor*, all disputes between the *Contractor* and *Subcontractor* shall be consolidated into a single arbitration.
- 8.2.10 Should any dispute or portion of any dispute between the *Contractor* and *Subcontractor* relate to a dispute between the *Owner* and the *Contractor*, such dispute or portion thereof as between the *Contractor* and *Subcontractor* shall be disposed of at the same time in the same proceedings and by the same Arbitration Board as is appointed to resolve the dispute between the *Owner* and the *Contractor*.
- 8.2.11 Should no Project Mediator have been appointed by the parties to the *Prime Contract*, and if no mediator is agreed to between the parties within 5 days of a mediator being required under 8.2.3, the provisions of paragraphs 8.2.3 and 8.2.4 shall be inapplicable and the notice required under 8.2.5 shall be given within 10 *Working Days* after the receipt of the *Contractor*'s *Notice in Writing* of reply under paragraph 8.2.1.

SCC 8.3 RETENTION OF RIGHTS

- 8.3.1 It is agreed that no act by either party shall be construed as a renunciation or waiver of any rights or recourses, provided the party has given the *Notices in Writing* required under Part 8 of the Subcontract Conditions DISPUTE RESOLUTION and has carried out the instructions as provided in paragraph 8.1.3 of SCC 8.1 INTERPRETATION AND INSTRUCTION OF THE CONTRACTOR.
- 8.3.2 Nothing in Part 8 of the Subcontract 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 8.2.5 of SCC 8.2 NEGOTIATION, MEDIATION AND ARBITRATION to proceed by way of arbitration to adjudicate the merits of the claim upon which such a lien is based.

PART 9 PROTECTION OF PERSONS AND PROPERTY

SCC 9.1 PROTECTION OF WORK AND PROPERTY

- 9.1.1 The *Subcontractor* shall protect the *Subcontract Work* and shall take all reasonable precautions to protect the *Work* and property of others during the performance of the *Subcontract Work*.
- 9.1.2 Before commencing any work, the *Subcontractor* shall determine the location of all underground utilities and structures indicated in the *Subcontract Documents* or that are reasonably apparent in an inspection of the *Place of the Work*.
- 9.1.3 The *Contractor* shall be responsible for the overall protection of the *Work*. If the *Subcontract Work* or others' work is damaged, the *Contractor* shall assess the responsibility for, extent of and value of such damage and the affected parties shall accept such assessment or process it as a dispute in accordance with Part 8 of the Subcontract Conditions DISPUTE RESOLUTION.

SCC 9.2 TOXIC AND HAZARDOUS SUBSTANCES

- 9.2.1 If the Subcontractor
 - .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 *Subcontractor* or anyone for whom the *Subcontractor* is responsible and which were not disclosed in the *Subcontract Documents* or which were disclosed but have not been dealt with by the *Contractor* or *Owner* in accordance with applicable legislation related to toxic and hazardous substances, the *Subcontractor* shall
 - 3 take all reasonable steps, including stopping the *Subcontract 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
 - .4 immediately report the circumstances to the *Contractor* in writing.
- 9.2.2 If the *Contractor* and *Subcontractor* 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 *Subcontractor* or anyone for whom the *Subcontractor* is responsible, the *Contractor* shall retain and pay for an independent qualified expert to investigate and determine such matters. The expert's report shall be delivered to the *Contractor* and the *Subcontractor*.

- 9.2.3 If the *Contractor* and *Subcontractor* agree or if the expert referred to paragraph 9.2.2 determines that the toxic or hazardous substances were not brought onto the *Place of the Work* by the *Subcontractor* or anyone for whom the *Subcontractor* is responsible, the *Contractor* shall promptly at no cost to the *Subcontractor*:
 - .1 take all reasonable and necessary steps, in accordance with applicable legislation in force at the *Place of the Work*, to dispose of, store or otherwise render harmless toxic or hazardous substances which were present at the *Place of the Work*;
 - .2 reimburse the Subcontractor for the costs of all steps taken pursuant to paragraph 9.2.1;
 - .3 extend the *Subcontract Time* for such reasonable time in consultation with the *Subcontractor* and the expert referred to in 9.2.2 and reimburse the *Subcontractor* for reasonable costs incurred as a result of the delay; and
 - .4 indemnify the Subcontractor as required by paragraph SCC 12.1 INDEMNIFICATION.
- 9.2.4 If the *Contractor* and *Subcontractor* agree or if the expert referred to in paragraph 9.2.2 determines that the toxic or hazardous substances were brought onto the place of the *Work* by the *Subcontractor* or anyone for whom the *Subcontractor* is responsible, the *Subcontractor* shall promptly at the *Subcontractor*'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 Subcontract Work;
 - .3 reimburse the *Contractor* for reasonable costs incurred in making 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 SCC 9.1 PROTECTION OF WORK AND PROPERTY;
 - .4 reimburse the *Contractor* for reasonable costs incurred under paragraph 9.2.2; and
 - .5 indemnify the *Contractor* as required by SCC 12.1 INDEMNIFICATION.
- 9.2.5 If either party does not accept the expert's findings under paragraph 9.2.2, the disagreement shall be settled in accordance with Part 8 of the Subcontract 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 9.2.3 or 9.2.4 it being understood that by so doing, neither party will jeopardize any claim that party may have to be reimbursed as provided by SCC 9.2 TOXIC AND HAZARDOUS SUBSTANCES.

GC 9.3 ARTIFACTS AND FOSSILS

- 9.3.1 Fossils, coins, articles of value or antiquity, structures and other remains or things of scientific or historic interest discovered at the *Place of the Work* shall, as between the *Contractor* and the *Subcontractor*, be deemed to be the absolute property of the *Contractor*.
- 9.3.2 The *Subcontractor* shall take all reasonable precautions to prevent removal or damage to discoveries as identified in paragraph 9.3.1, and shall advise the *Contractor* upon discovery of such items.
- 9.3.3 The *Contractor* shall investigate the impact on the *Subcontract Work* of the discoveries identified in paragraph 9.3.1. If conditions are found that would cause an increase or decrease in the *Subcontractor's* cost or time to perform the *Subcontract Work*, the *Contractor* shall issue appropriate instructions for a change in the *Subcontract Work* as provided in SCC 6.2 CHANGE ORDER or SCC 6.3 CHANGE DIRECTIVE.

SCC 9.4 CONSTRUCTION SAFETY

- 9.4.1 The *Subcontractor* shall respect and comply with:
 - .1 the rules, regulations and practices required by the applicable construction health and safety legislation, and
 - .2 all safety precautions and programs of the *Contractor*.

SCC 9.5 MOULD

- 9.5.1 If the *Contractor* or *Subcontractor* observes or reasonably suspects the presence of mould at the *Place of the Work*, the remediation of which is not expressly part of the *Subcontract Work*,
 - .1 the observing party shall promptly report the circumstances to the other party in writing, and
 - .2 the *Contractor* and the *Subcontractor* shall promptly take all reasonable steps, including stopping the *Subcontract 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

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- .3 if the *Contractor* and *Subcontractor* 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 *Contractor* shall retain and pay for an independent qualified expert to investigate and determine such matters. The expert's report shall be delivered to the *Contractor* and *Subcontractor*.
- 9.5.2 If the *Contractor* and *Subcontractor* agree, or if the expert referred to in paragraph 9.5.1.3 determines that the presence of mould was not caused by the *Subcontractor*'s operations under the *Subcontract*, the *Contractor* shall promptly, at no cost to the *Subcontractor*:
 - .1 take all reasonable and necessary steps to safely remediate or dispose of the mould, and
 - .2 reimburse the Subcontractor for the cost of taking the steps under paragraph 9.5.1.2, and
 - .3 extend the *Subcontract Time* for such reasonable time in consultation with the *Subcontractor* and the expert referred to in 9.5.1.3 and reimburse the *Subcontractor* for reasonable costs incurred as a result of the delay, and
 - 4 indemnify the *Subcontractor* as required by SCC 12.1 INDEMNIFICATION.
- 9.5.3 If the *Contractor* and *Subcontractor* agree, or if the expert referred to in paragraph 9.5.1.3 determines that the presence of mould was caused by the *Subcontractor*'s operations under the *Subcontract*, the *Subcontractor* shall promptly, at the *Subcontractor*'s own expense:
 - .1 take all reasonable and necessary steps to safely remove the mould, and
 - .2 make good any damage to the Subcontract Work;
 - .3 reimburse the *Contractor* for reasonable costs incurred in making 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 SCC 9.1 PROTECTION OF WORK AND PROPERTY;
 - .4 reimburse the *Contractor* for reasonable costs incurred under paragraph 9.5.1.3, and
 - .5 indemnify the *Contractor* as required by SCC 12.1 INDEMNIFICATION.
- 9.5.4 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 Subcontract 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 SCC 9.5 MOULD.

PART 10 GOVERNING REGULATIONS

SCC 10.1 TAXES AND DUTIES

- 10.1.1 The *Subcontract 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 *Contractor* to the *Subcontractor* as stipulated in Article 5 of the Subcontract Agreement SUBCONTRACT PRICE.
- 10.1.2 Any increase or decrease in costs to the *Subcontractor* due to changes in such included taxes and duties after the time of the bid closing shall increase or decrease the *Subcontract Price* accordingly.

SCC 10.2 LAWS, NOTICES, PERMITS, AND FEES

- 10.2.1 The laws of the *Place of the Work* shall govern the *Subcontract Work*.
- 10.2.2 The *Owner* or the *Contractor* shall obtain and pay for development approvals, building permit, permanent easements, rights of servitude, and all other necessary approvals and permits, except for the permits and fees referred to in paragraph 10.2.3 or for which the *Subcontract Documents* specify as the responsibility of the *Subcontractor*.
- 10.2.3 The *Subcontractor* shall be responsible for the procurement of permits, licences, inspections, and certificates, which are necessary for the performance of the *Subcontract Work* and customarily obtained by subcontractors in the jurisdiction of the *Place of the Work* after the issuance of the building permit. The *Subcontract Price* includes the cost of these permits, licences, inspections, and certificates, and their procurement.
- 10.2.4 The *Subcontractor* 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 *Subcontract Work* and which relate to the *Subcontract Work*, to the preservation of the public health, and to construction safety.

- 10.2.5 The *Subcontractor* shall not be responsible for verifying that the *Subcontract Documents* are in compliance with the applicable laws, ordinances, rules, regulations, or codes relating to the *Subcontract Work*. If the *Subcontract 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 *Subcontract Documents*, the *Subcontractor* shall advise the *Contractor* in writing requesting direction immediately upon such variance or change becoming known. The *Contractor* will make the changes required to the *Subcontract Documents* as provided in SCC 6.1 CONTRACTOR'S RIGHT TO MAKE CHANGES, SCC 6.2 CHANGE ORDER, and SCC 6.3 CHANGE DIRECTIVE.
- 10.2.6 If the *Subcontractor* fails to advise the *Contractor* in writing; and fails to obtain direction as required in paragraph 10.2.5; and performs work knowing it to be contrary to any laws, ordinances, rules, regulations, or codes; the *Subcontractor* 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.
- 10.2.7 If, subsequent to the time of bid closing, changes are made to applicable laws, ordinances, rules, regulations, or codes of authorities having jurisdiction which affect the cost of the *Subcontract Work*, either party may submit a claim in accordance with the requirements of SCC 6.6 CLAIMS FOR A CHANGE IN SUBCONTRACT PRICE.

SCC 10.3 PATENT FEES

- 10.3.1 The *Subcontractor* shall pay the royalties and patent licence fees required for the performance of the *Subcontract*. The *Subcontractor* shall hold the *Contractor* harmless from and against claims, demands, losses, costs, damages, actions, suits, or proceedings arising out of the *Subcontractor*'s performance of the *Subcontract* which are attributable to an infringement or an alleged infringement of a patent of invention by the *Subcontractor* or anyone for whose acts the *Subcontractor* may be liable.
- 10.3.2 The *Contractor* shall hold the *Subcontractor* harmless against claims, demands, losses, costs, damages, actions, suits, or proceedings arising out of the *Subcontractor*'s performance of the *Subcontract* which are attributable to an infringement or an alleged infringement of a patent of invention in executing anything for the purpose of the *Subcontract*, the model, plan or design of which was supplied to the *Subcontractor* as part of the *Subcontract Documents*.

SCC 10.4 WORKERS' COMPENSATION

10.4.1 At any time during the term of the *Subcontract*, when requested by the *Contractor*, the *Subcontractor* shall provide such evidence of compliance by the *Subcontractor* and *Sub-Subcontractors* with workers' compensation legislation, including payments due thereunder.

PART 11 INSURANCE AND CONTRACT SECURITY

SCC 11.1 INSURANCE

- 11.1.1 Without restricting the generality of SCC 12.1 INDEMNIFICATION, the *Subcontractor* shall provide, maintain and pay for the following insurance coverages, the minimum requirements of which are specified in CCDC 41 CCDC INSURANCE REQUIREMENTS in effect at the time of bid closing except as hereinafter provided:
 - .1 General liability insurance in the name of the *Subcontractor* and include, or in the case of a single, blanket policy, be endorsed to name, the *Contractor* as insured but only with respect to liability, other than legal liability arising out of their sole negligence, arising out of the operations of the *Subcontractor* with regard to the *Subcontract Work*. General liability insurance shall be maintained from the date of commencement of the *Subcontract Work* until one year from the date of *Substantial Performance of the Work*. Liability coverage shall be provided for completed operations hazards from the date of *Substantial Performance of the Work*, as set out in the certificate of *Substantial Performance of the Work*, on an ongoing basis for a period of 6 years following *Substantial Performance of the Work*.
 - .2 Automobile Liability Insurance from the date of commencement of the *Subcontract Work* until one year after the date of *Substantial Performance of the Work*.
 - 3 Aircraft or Watercraft Liability Insurance when owned or non-owned aircraft or watercraft are used directly or indirectly in the performance of the *Subcontract Work*.

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- .4 Boiler and machinery insurance in the joint names of the *Subcontractor*, the *Contractor*, the *Owner*, and the *Consultant*. The coverage shall be maintained continuously from commencement of use or operation of the boiler and machinery objects insured by the policy and until 10 calendar days after the date of *Substantial Performance* of the Work.
- .5 Contractors' Equipment Insurance from the date of commencement of the *Subcontract Work* until one year after the date of *Substantial Performance of the Work*.
- 11.1.2 The *Contractor* shall provide, maintain and pay for "Broad form" property insurance in the joint names of the *Contractor*, the *Owner* and the *Consultant*. The policy shall include the *Subcontractor* as insured. The "Broad form" property insurance shall be provided from the date of commencement of the *Subcontract Work* until the earliest of:
 - .1 10 calendar days after the date of Substantial Performance of the Work;
 - .2 on the commencement of use or occupancy of any part or section of *Work* unless such use or occupancy is for construction purposes, habitational, office, banking, convenience store under 465 square metres in area, or parking purposes, or for the installation, testing and commissioning of equipment forming part of the *Work*;
 - 3 when left unattended for more than 30 consecutive calendar days or when construction activity has ceased for more than 30 consecutive calendar days.
- 11.1.3 The "Broad form" property policy shall provide that, in the case of a loss or damage, payment shall be made to the *Contractor* and the *Subcontractor* as their respective interests may appear. In the event of loss or damage:
 - 1 the *Contractor* shall act on behalf of the *Subcontractor* for the purpose of adjusting the amount of such loss or damage payment with the insurers. When the extent of the loss or damage is determined, the *Subcontractor* shall proceed to restore the *Subcontract Work*. Loss or damage shall not affect the rights and obligations of either party under the *Subcontract* except that the *Subcontractor* shall be entitled to a reasonable extension of *Subcontract Time* agreed between the *Contractor* and the *Subcontractor* in consideration of the extent of the loss or damage;
 - 2 the *Subcontractor* shall be entitled to receive from the *Contractor*, in addition to the amount due under the *Subcontract*, the amount which the *Contractor*'s interest in restoration of the *Subcontract Work* has been appraised, such amount to be paid as the restoration of the *Subcontract Work* proceeds in accordance with the progress payment provisions. In addition the *Subcontractor* shall be entitled to receive from the payments made by the insurer the amount of the *Subcontractor*'s interest in the restoration of the *Subcontract Work*; and
 - .3 to the *Subcontract Work* arising from the work of the *Contractor*, the *Contractor*'s own forces, or another contractor, the *Contractor* shall, in accordance with the *Contractor*'s obligations under the provisions relating to construction by the *Contractor* or other contractors, pay the *Subcontractor* the cost of restoring the *Subcontract Work* as the restoration of the *Subcontract Work* proceeds and as in accordance with the progress payment provisions.
- 11.1.4 Prior to commencement of the *Subcontract Work* and upon the placement, renewal, amendment, or extension of all or any part of the insurance, the *Subcontractor* shall promptly provide the *Contractor* with confirmation of coverage and, if required, a certified true copy of the policies certified by an authorized representative of the insurer together with copies of any amending endorsements applicable to the *Subcontract Work*.
- 11.1.5 The parties shall pay their share of the deductible amounts in direct proportion to their responsibility in regards to any loss for which the above policies are required to pay, except where such amounts may be excluded by the terms of the *Subcontract*.
- 11.1.6 If the *Subcontractor* fails to provide or maintain insurance as required by the *Subcontract Documents*, then the *Contractor* shall have the right to provide and maintain such insurance and give evidence to the *Subcontractor*. The *Subcontractor* shall pay the cost thereof to the *Contractor* on demand or the *Contractor* may deduct the cost from the amount which is due or may become due to the *Subcontractor*.
- 11.1.7 All required insurance policies shall be with insurers licensed to underwrite insurance in the jurisdiction of the *Place of the Work*.
- 11.1.8 If a revised version of CCDC 41 CCDC INSURANCE REQUIREMENTS is published, which specifies reduced insurance requirements, the parties shall address such reduction, prior to the *Subcontractor*'s insurance policy becoming due for renewal, and record any agreement in a *Change Order*.
- 11.1.9 If a revised version of CCDC 41 CCDC INSURANCE REQUIREMENTS is published, which specifies increased insurance requirements, the *Contractor* may request the increased coverage from the *Subcontractor* by way of a *Change Order*.
- 11.1.10 A *Change Directive* shall not be used to direct a change in the insurance requirements in response to the revision of CCDC 41 CCDC INSURANCE REQUIREMENTS.

SCC 11.2 CONTRACT SECURITY

- 11.2.1 The *Subcontractor* shall provide and maintain in good standing until the fulfilment of the *Subcontract* the contract security required at the time of bidding or mutually agreed upon prior to signing this *Subcontract*.
- 11.2.2 The *Contractor* shall, at the request of the *Subcontractor*, furnish evidence that contract security has been provided in accordance with the *Prime Contract*.

PART 12 INDEMNIFICATION, WAIVER OF CLAIMS AND WARRANTY

SCC 12.1 INDEMNIFICATION

- 12.1.1 Without restricting the parties' obligation to indemnify as described in paragraphs 12.1.4 and 12.1.5, the *Contractor* and the *Subcontractor* shall each indemnify and hold harmless the other from and against all claims, demands, losses, costs, damages, actions, suits, or proceedings whether in respect to losses suffered by them or in respect to claims by third parties that arise out of, or are attributable in any respect to their involvement as parties to this *Subcontract*, provided such claims are:
 - .1 caused by:
 - (a) the negligent acts or omissions of the party from whom indemnification is sought or anyone for whose acts or omissions that party is liable, or
 - (b) a failure of the party to the *Subcontract* from whom indemnification is sought to fulfil its terms or conditions; and
 - .2 made in writing within a period of 6 years from the date of *Substantial Performance of the Work* as set out in the certificate of *Substantial Performance of the Work*, or within such shorter period as may be prescribed by any limitation statute of the province or territory of the *Place of the Work*.

The parties expressly waive the right to indemnity for claims other than those provided for in this Subcontract.

- 12.1.2 The obligation of either party to indemnify as set forth in paragraph 12.1.1 shall be limited as follows:
 - .1 In respect to losses suffered by the *Contractor* and the *Subcontractor* for which insurance is to be provided by either party pursuant to SCC 11.1 INSURANCE, the general liability insurance limit for one occurrence as referred to in CCDC 41 CCDC INSURANCE REQUIREMENTS in effect at the time of bid closing.
 - .2 In respect to losses suffered by the *Contractor* and the *Subcontractor* for which insurance is not required to be provided by either party in accordance with SCC 11.1 INSURANCE, the greater of the *Prime Contract* price or \$2,000,000, but in no event shall the sum be greater than \$20,000,000.
 - .3 In respect to claims by third party for direct loss resulting from bodily injury, sickness, disease or death, or to injury to or destruction of tangible property, the obligation to indemnify is without limit. In respect to all other claims for indemnity as a result of claims advanced by third parties, the limits of indemnify set forth in paragraphs 12.1.2.1 and 12.1.2.2. shall apply.
- 12.1.3 The obligation of either party to indemnify the other as set forth in paragraphs 12.1.1 and 12.1.2 shall be inclusive of interest and all legal costs.
- 12.1.4 The *Contractor* and the *Subcontractor* 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 SCC 9.2 TOXIC AND HAZARDOUS SUBSTANCES.
- 12.1.5 The *Contractor* shall indemnify and hold harmless the *Subcontractor* from and against all claims, demands, losses, costs, damages, actions, suits, or proceedings:
 - .1 as described in paragraph 10.3.2 of SCC 10.3 PATENT FEES, and
 - .2 arising out of the *Subcontractor*'s performance of the *Subcontract* 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*.
- 12.1.6 In respect to any claim for indemnity or to be held harmless by the *Contractor* or the *Subcontractor*:
 - .1 *Notice in Writing* of such claim shall be given within a reasonable time after the facts upon which such claim is based became known:
 - .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.

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SCC 12.2 WAIVER OF CLAIMS

- 12.2.1 Subject to any lien legislation applicable to the *Place of the Work*, as of the 10th calendar day before the expiry of the lien period provided by the lien legislation applicable at the *Place of the Work*, the *Subcontractor* waives and releases the *Contractor* from all claims which the *Subcontractor* has or reasonably ought to have knowledge of that could be advanced by the *Subcontractor* against the *Contractor* arising from the *Subcontractor*'s involvement in the *Subcontract Work*, 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 date of *Substantial Performance of the Work*, except as follows:
 - .1 claims arising prior to or on the date of *Substantial Performance of the Work* for which *Notice in Writing* of claim has been received by the *Contractor* from the *Subcontractor* no later than the 11th calendar day before the expiry of the lien period provided by the lien legislation applicable at the *Place of the Work*;
 - .2 indemnification for claims advanced against the *Subcontractor* by third parties for which a right of indemnification may be asserted by the *Subcontractor* against the *Contractor* pursuant to the provisions of this *Subcontract*;
 - .3 claims for which a right of indemnity could be asserted by the *Subcontractor* pursuant to the provisions of paragraphs 12.1.4 or 12.1.5 of SCC 12.1 INDEMNIFICATION; and
 - .4 claims resulting from acts or omissions which occur after the date of Substantial Performance of the Work.
- 12.2.2 The *Subcontractor* waives and releases the *Contractor* from all claims referenced in paragraph 12.2.1.4 except for those referred in paragraphs 12.2.1.2 and 12.2.1.3 and claims for which *Notice in Writing* of claim has been received by the *Contractor* from the *Subcontractor* within 390 calendar days following the date of *Substantial Performance of the Work*.
- 12.2.3 Subject to any lien legislation applicable to the *Place of the Work*, as of the 10th calendar day before the expiry of the lien period provided by the lien legislation applicable at the *Place of the Work*, the *Contractor* waives and releases the *Subcontractor* from all claims which the *Contractor* has or reasonably ought to have knowledge of that could be advanced by the *Contractor* against the *Subcontractor* arising from the *Contractor*'s involvement in the *Subcontract Work*, 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 date of *Substantial Performance of the Work*, except as follows:
 - .1 claims arising prior to or on the date of *Substantial Performance of the Work* for which *Notice in Writing* of claim has been received by the *Subcontractor* from the *Contractor* no later than the 11th calendar day before the expiry of the lien period provided by the lien legislation applicable at the *Place of the Work*;
 - .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 *Subcontractor* pursuant to the provisions of this *Contract*;
 - .3 claims for which a right of indemnity could be asserted by the *Contractor* against the *Subcontractor* pursuant to the provisions of paragraph 12.1.4 of SCC 12.1 INDEMNIFICATION;
 - .4 damages arising from the *Subcontractor*'s actions which result in substantial defects or deficiencies in the *Subcontract Work*. "Substantial defects or deficiencies" mean those defects or deficiencies in the *Subcontract Work* which affect the *Subcontract 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 SCC 12.3 WARRANTY; and
 - .6 claims arising from acts or omissions which occur after the date of Substantial Performance of the Work.
- 12.2.4 The *Contractor* waives and releases the *Subcontractor* from all claims referred to in paragraph 12.2.3.4 except claims for which *Notice in Writing* of claim has been received by the *Subcontractor* from the *Contractor* within a period of 6 years from the date of *Substantial Performance of the Work* should 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, within such shorter period as may be prescribed by:
 - .1 any limitation statute of the Province or Territory of the *Place of the Work*; or
 - .2 if the *Place of the Work* is the Province of Quebec, then Article 2118 of the Civil Code of Quebec.
- 12.2.5 The *Contractor* waives and releases the *Subcontractor* from all claims referenced in paragraph 12.2.3.6 except for those referred in paragraph 12.2.3.2, 12.2.3.3 and those arising under SCC 12.3 WARRANTY and claims for which *Notice in Writing* has been received by the *Subcontractor* from the *Contractor* within 390 calendar days following the date of *Substantial Performance of the Work*.

- 12.2.6 "Notice in Writing of claim" as provided for in SCC 12.2 WAIVER OF CLAIMS to preserve a claim or right of action which would otherwise, by the provisions of SCC 12.2 WAIVER OF CLAIMS, be deemed to be waived, must include the following:
 - .1 a clear and unequivocal statement of the 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.
- 12.2.7 The party giving "*Notice in Writing* of claim" as provided for in SCC 12.2 WAIVER OF CLAIMS shall submit within a reasonable time a detailed account of the amount claimed.
- 12.2.8 Where the event or series of events giving rise to a claim made under paragraphs 12.2.1 or 12.2.3 has a continuing effect, the detailed account submitted under paragraph 12.2.7 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 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.
- 12.2.9 If a *Notice in Writing* of claim pursuant to paragraph 12.2.1.1 is received on the twelfth or eleventh calendar day before the expiry of the lien period provided by the lien legislation applicable at the *Place of the Work*, the period within which *Notice in Writing* of claim shall be received pursuant to paragraph 12.2.3.1 shall be extended to two calendar days before the expiry of the lien period provided by the lien legislation applicable at the *Place of the Work*.
- 12.2.10 If a *Notice in Writing* of claim pursuant to paragraph 12.2.3.1 is received on the twelve or eleventh calendar day before the expiry of the lien period provided by the lien legislation applicable at the *Place of the Work*, the period within which *Notice in Writing* of claim shall be received pursuant to paragraph 12.2.1.1 shall be extended to two calendar days before the expiry of the lien period provided by the lien legislation applicable at the *Place of the Work*.

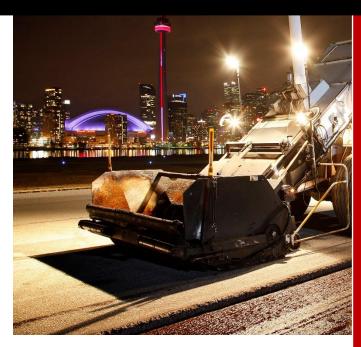
SCC 12.3 WARRANTY

- 12.3.1 Except for extended warranties as described in paragraph 12.3.6, the warranty period under this *Subcontract* is one year from the date of *Substantial Performance of the Work*.
- 12.3.2 The *Subcontractor* shall be responsible for the proper performance of the *Subcontract Work* to the extent that the design and *Subcontract Documents* permit such performance.
- 12.3.3 The *Contractor* shall promptly give the *Subcontractor Notice in Writing* of observed defects and deficiencies which occur during the one year warranty period.
- 12.3.4 Subject to paragraph 12.3.2, the *Subcontractor* shall correct promptly, at the *Subcontractor*'s expense, defects or deficiencies in the *Subcontract Work* which appear prior to and during the one year warranty period.
- 12.3.5 The *Subcontractor* shall correct or pay for damage resulting from corrections made under the requirements of paragraph 12.3.4.
- 12.3.6 Any extended warranties required beyond the one year warranty period as described in paragraph 12.3.1, shall be as specified in the *Subcontract Documents*. Extended warranties shall be issued by the warrantor to the benefit of the *Owner*. The *Subcontractor*'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.



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20.03.12 Master Subcontractor - Supplementary Conditions of Subcontract for XXXXXX



AMENDMENTS TO AGREEMENT AND DEFINITIONS AND SUPPLEMENTARY CONDITIONS TO THE SUBCONTRACT CONDITIONS OF THE STANDARD CONSTRUCTION DOCUMENT CCA 1 – 2008 STIPULATED PRICE CONTRACT

The following Amendments to the Agreement and Definitions and Supplementary Conditions shall amend and take precedence over the Agreement between *Contractor* and *Subcontractor*, Definitions and *Subcontract* Conditions, Parts 1 to 12 inclusive, of the Standard Construction Document CCA 1 - 2008 Stipulated Price Contract, English version. Where reference is made to the deletion of all of an article or paragraph, the article or paragraph number shall remain and the provisions of the article or paragraph shall be replaced with "not used". In addition, where additions or deletions are made to the beginning or end of a sentence, capitalization, periods, and other punctuation shall be deemed to have been amended as required.

AGREEMENT BETWEEN CONTRACTOR AND SUBCONTRACTOR

Delete ARTICLES 1B, 2B and 3B in their entirety.

ARTICLE 1A - WORK TO BE PERFORMED

- 1. Add new Articles 1.3:
 - 1.3 This *Subcontract* may be amended only by written agreement signed by the *Subcontractor* and by a duly authorized representative of the *Contractor*.

ARTICLE 2A - CONFLICT BETWEEN PRIME CONTRACT AND SUBCONTRACT

- <u>1.</u> <u>Delete Article 2.1 in its entirety and replace with the following: </u>
 - 2.1 The *Prime Contract*, including all terms and conditions, drawings and specifications forming a part thereof, shall, with respect to the *Subcontract Work*, unless otherwise modified by this *Subcontract*, be binding upon the *Subcontractor*. Clauses that are required in the *Prime Contract* to be specifically included herein under the terms of the *Prime Contract* are deemed to be so included. The *Subcontractor* shall, in respect of the *Subcontract Work* and in addition to the requirements of this *Subcontract*, shall have all of the obligations and liabilities towards the *Contractor* as the *Contractor* has to the *Owner* under the *Prime Contract*, and all rights and remedies given to the *Owner* under the *Prime Contract* shall enure to the benefit of and be exercisable by the *Contractor* as to any matter arising under this *Subcontract*. The *Consultant's* decisions, instructions and determinations under the *Prime Contract* shall, to the extent applicable or relevant to the *Subcontract Work*, be binding upon the *Subcontractor* to the same extent as they are binding upon the *Contractor* under the *Prime Contract*. In the event of any conflict between the terms of this *Subcontract* and the *Prime Contract* this *Subcontract* will govern.
- 2. Add new Articles 2.3, 2.4 and 2.5:
 - 2.3 The *Prime Contract* may set out time limitations by which the *Contractor* must give notice to the *Owner* or *Consultant* for the notice, and rights asserted, to be effective. In each such case, for the *Subcontractor*'s notice, and rights asserted, to be effective, the *Subcontractor* must give its notice to the *Contractor* by the earlier of: (a) the time period specified in this *Subcontract*, or (b) at least three (3) days before the date that the *Contractor* is required to deliver its notice to the *Owner* or *Consultant*.

- 2.4 The Subcontractor shall provide all necessary supporting documentation in a timely manner so as to allow Contractor to comply with its obligations under the Prime Contract. If the Subcontractor fails to provide such Notice in Writing or supporting documentation it waives any and all claims to such Equivalent Project Relief with respect to the event or matter giving rise to the claim for Equivalent Project Relief.
- 2.5 For greater certainty, the *Subcontractor* acknowledges and agrees that the terms and the conditions of the *Prime Contract* that are of general application are incorporated into and form part of the *Subcontract*.

ARTICLE 4 - SCHEDULE

- 1. Add new Articles 4.2, 4.3, 4.4, 4.5 and 4.6:
 - 4.2 Time is of the essence in this *Subcontract*. The *Subcontractor* shall perform the *Subcontract Work* in strict accordance with the *Schedule*.
 - 4.3 The Subcontractor shall diligently prosecute the Subcontract Work and complete and deliver the Subcontract Work in conformance with the Schedule as updated by the Consultant or the Contractor. The Subcontractor shall, without additional costs to Contractor, work such overtime, acquire and use for the execution of the Subcontract Work such additional labour and equipment and supplies and perform such other acts as may be necessary to maintain progress under and compliance with the Schedule.
 - 4.4 Within ten (10) days of receiving written confirmation of the award of the *Subcontract* (or such later time as agreed upon by the *Contractor*), the *Subcontractor* shall prepare and submit a *Schedule* to the *Contractor* and the *Consultant* for their review and acceptance in the format as directed by the *Contractor* that indicates the timing of the activities of the *Subcontract Work* and provides sufficient detail of the critical events and their interrelationship to demonstrate the *Subcontract Work* will be performed in conformity with the *Schedule* and in accordance with the *Subcontract*.
 - 4.5 The Subcontractor will monitor the progress of the Subcontract Work on a weekly basis relative to the Schedule, and update and submit an electronic and hard copy schedule to the Consultant and the Contractor as specified in the Specifications or if not specified, at least on a monthly basis, or as requested by the Consultant or by the Contractor, and advise the Consultant and the Contractor weekly in writing of any variation from or slippage in the Schedule.
 - 4.6 The *Subcontractor* is responsible for performing the *Subcontract Work* in strict accordance with the *Subcontract Time*. Any schedule submissions revised from the accepted baseline schedule or revised schedule accepted by the *Owner* or the *Contractor* are not deemed to be approved extensions of the *Schedule*. All extensions to the *Subcontract Time* must be made in accordance with the *Subcontract*.

ARTICLE 5 - SUBCONTRACT PRICE

- 1. Add new Articles 5.6, and 5.7:
 - 5.6 The Subcontract Price is a fixed firm sum as per the price breakdown set out in Article 5.1. The Subcontract Price may only be amended as expressly provided for in this Subcontract.
 - 5.7 The Subcontract Price includes, and the Subcontractor shall pay, all taxes, licenses and fees of every nature which may be imposed or charged by any governmental authority upon the labour, services, supplies, materials, or other things used by the Subcontractor or any of its

suppliers or *Subcontractors* or in connection with this *Subcontract*. The *Subcontractor* shall pay all duties, excises and customs broker fees applicable to the *Subcontract Work*. In accordance with applicable laws, the *Contractor* shall withhold from the *Subcontractor* any amounts required to be remitted to governmental authorities. Such amounts withheld shall reduce the amounts payable by the *Contractor* to the *Subcontractor* under this *Subcontract* but shall nonetheless constitute payment by the *Contractor* to the *Subcontractor*.

ARTICLE 6 – PAYMENT

- <u>1.</u> <u>Delete Articles 6.2, 6.3, 6.4 and 6.5 in their entirety and substitute:</u>
 - The *Subcontractor* shall make applications for payment together with supporting sworn statements and such other documents that are required by the *Subcontract Documents* and which are in a format acceptable to *Contractor* on or before the 25th of each month (herein called the Submission Date) to the *Contractor* for approval and due processing. The amount claimed shall be for the value, proportionate to the amount of the *Subcontract*, of *Subcontract Work* performed and *Products* delivered to the *Place of the Work* up to the 30th day of the month.
 - 6.3 Subject to the provisions in this Article 6, any applicable lien and maintenance holdbacks, and any reductions withholdings, set-offs or other adjustments made pursuant to SCC 5.2 WITHHOLDING OF PAYMENT, the *Contractor* shall pay **ninety percent (90%)** of the amount applied for or such other amount as the *Contractor* or the *Consultant* determines to be properly due within seven (7) calendar days of all preconditions listed in Article 6.4.
 - 6.4 The *Subcontractor* shall only be entitled to payment in respect of a Payment Application (a "Progress Payment") if and when all of the following preconditions to payment are satisfied:
 - .1 The *Subcontractor's* Payment Application is Complete;
 - .2 The *Contractor* receives payment from the *Owner* for the *Subcontract Work*, or portion thereof, including in the *Subcontractor's* Progress Payment; and
 - .3 All provisions of applicable lien legislation have been complied with.
 - 6.5 Subject to the provisions of this Article 6 and upon the *Subcontractor* submitting evidence of compliance with applicable workers' compensation legislation, supporting statutory declarations, and any other documents that the *Contractor* requires, the *Contractor* shall pay any statutory holdback monies in accordance with applicable lien legislation and the *Prime Contract*. The release of any statutory holdback monies shall not be due until authorized by the certificate of the *Consultant*, and are not due until the later of: (a) the expiration of all rights to claim for lien arising from the performance of the *Subcontract Work*; (b) ten (10) days after the certificate is issued; and (c) the number of days stipulated in the *Prime Contract* when holdback monies may be released after the certificate is issued.
- 2. Add new Articles 6.6, 6.7, 6.8, 6.9, 6.10, 6.11, 6.12, and 6.13:
 - Notwithstanding any other provisions to the contrary in this *Subcontract*, the *Subcontractor* acknowledges and agrees that:
 - 1. the Subcontractor shall not be entitled to receive any entitlement or benefit in respect of any Equivalent Project Relief unless the Contractor has received such entitlement or benefit from the Owner, and
 - 2. the condition precedent to the obligation of the *Contractor* to pay the *Subcontractor* in accordance with this Article 6 is receipt by the *Contractor* of payment from the

Owner in relation to the amount or amounts payable by the *Contractor* to the *Subcontractor* in accordance with applicable lien legislation.

- 6.7 Accepting a Payment Application as Complete, submitting any portion of a Payment Application in the *Contractor's* Proper Invoice to the *Owner*, or paying any portion of a Progress Payment to *Subcontractor* (whether voluntarily or due to the determination of an adjudicator), does not constitute:
 - (a) evidence of the value of the Subcontract Work;
 - (b) Evidence that the Subcontract Work has been executed satisfactorily; or
 - (c) Acceptance of the Subcontract Work by the Contractor, Owner or Consultant, including with respect to any defects.
- 6.8 Notwithstanding any other provisions in this Article 6, if there are any items of the *Subcontract Work* that the *Subcontractor* has not performed, or has performed with deficiencies, the *Contractor* may withhold monies from payments made on account of the *Subcontract Price* until the items and deficiencies are completed and rectified. The *Contractor* may withhold those monies that the *Contractor* determines are sufficient and reasonable to cover the cost of performing the items and deficiencies and to adequately protect the *Contractor* from any loss, damage, expense and claims.
- Notwithstanding any provision in the *Subcontract* to the contrary, the *Contractor* shall have the right to set-off against the balance due or to become due to the *Subcontractor* under the *Subcontract*, (i) any amounts set-off by the *Owner* under the *Prime Contract* with respect to the *Subcontract Work*, including on account of delay, penalty or liquidated damages; (ii) any amounts necessary to compensate for any liquidated amounts awarded by a court of competent jurisdiction or by an arbitrator; or (iii) any amounts owing or due and payable from the *Subcontractor* to the *Contractor* under the *Subcontract* or otherwise. If the *Contractor* fails to pay any amount owing to the *Subcontractor* because of a good faith dispute, no default by the *Contractor* under the *Subcontract* shall be deemed to exist because of such failure of payment, provided the *Contractor* pays the amount determined to be owing to the *Subcontractor* within thirty (30) days following the resolution of such dispute by agreement of the parties or pursuant to PART 8 DISPUTE RESOLUTION.
- 6.10 Subject to any earlier date required by the *Subcontract Documents*, or unless otherwise agreed to in writing, the *Subcontractor's* final invoice must be submitted no later than the earlier of: (a) thirty (30) days after the date of last supply of the *Subcontract Work*, or (b) ten (10) days after substantial performance of the *Prime Contract*.
- 6.11 The acceptance of final payment by the *Subcontractor* following *Total Completion of the Work* shall constitute full and complete payment for all direct or indirect costs, overhead, profit, incidental expenses, damages and other costs of any kind that were or may have been incurred or sustained by *Subcontractor* in connection with this *Subcontract* and the performance of the *Subcontract Work* and shall be a waiver of all claims by the *Subcontractor* for compensation for the *Subcontract Work* performed by it, except for those claims previously made in writing to the *Contractor* in accordance with this *Subcontract* and remaining unresolved at the time of final payment. For greater certainty, nothing in this paragraph shall relieve the *Subcontractor* of its duties and obligations under this *Subcontract*, which obligations shall survive the completion of the *Subcontract Work*, including any warranty, guarantee or indemnity obligations.
- 6.12 The *Contractor* will have no liability for payment of invoices received from the *Subcontractor* following final payment, and the *Subcontractor* waives and releases the *Contractor* from any and all claims for payment with respect thereto.

6.13 No payment to the *Subcontractor*, monthly or final, shall operate as an approval of the *Subcontract Work*, or materials, or any part thereof, or a waiver of the *Subcontractor's* obligation to remedy improper *Subcontract Work* or satisfy warranty obligations or other responsibilities under this *Subcontract*.

ARTICLE 7 - RECEIPT OF AND ADDRESSES FOR NOTICE IN WRITING

- 1. <u>Delete</u> the second sentence of paragraph 7.1 and substitute: "The delivery of a *Notice in Writing* will be by courier delivery, prepaid first class mail, facsimile or other form of electronic communication, provided that there is confirmation of successful transmission to the recipient.
- 2. <u>Insert</u> the following at the end of paragraph 7.1:

"If the *Subcontractor* fails to provide the *Contractor* with the Notice in Writing required herein within the time frame stipulated, the *Subcontractor* will be barred from advancing or recovering any adjustment to the *Subcontract Price*, or the *Subcontract Time*, or any additional compensation whatsoever. This requirement is of the essence and it is the express intention of the *Subcontractor* and the *Contractor* that any such claims by the *Subcontractor* will be barred unless the *Subcontractor* has strictly complied with the requirements hereof."

ARTICLE 9 - CONFIDENTIALITY

- Add new ARTICLE 9 CONFIDENTIALITY:
 - 9.1 The Subcontractor agrees to ensure that it shall, both during or following the term of the Subcontract, maintain the confidentiality and security of all Confidential Information, and that it shall not directly or indirectly disclose, destroy, exploit, or use any Confidential Information except where required by law, without first obtaining the written consent of the Contractor. The Subcontractor may disclose any portion of the Contract Documents or any other information provided to the Subcontractor by the Contractor to any Sub-Subcontractor if the Subcontractor discloses only such information as is necessary to fulfill the purposes of the Subcontract and the Subcontractor has included a commensurate confidentiality provision in its contract with the Sub-Subcontractor.
 - 9.2 The Subcontractor acknowledges that this Subcontract, including, without limitation, all information supplied to Contractor, Owner, and Consultant, may be subject to disclosure under the Access to Information Act, as amended. The Subcontractor represents and warrants that all consents and approvals with respect to the collection, use, and disclosure of personal information have been obtained.
 - 9.3 All communications between the *Subcontractor* and the *Owner* or the *Consultant* with respect to the *Subcontract Work* shall be transmitted through the *Contractor*, unless otherwise agreed by the *Contractor*. The *Subcontractor* shall not, without the prior written approval of the *Contractor*, make any announcement, publication, photograph or other type of public communication concerning the *Project* or the *Subcontract Work* or allow any third party to do the same, or place any signs at the *Place of Work* (unless required by applicable law), photograph or videotape the *Subcontract Work* or the *Place of Work*.

ARTICLE 10 - EQUIVALENT PROJECT RELIEF

- Add new ARTICLE 10 EQUIVALENT PROJECT RELIEF:
 - 10.1 To the extent applicable to the *Subcontract Work* or the rights or obligations of the *Subcontractor* under this *Subcontract*:
 - .1 The Subcontractor shall have the same rights, powers and remedies against Contractor under this Subcontract as the Contractor has against the Owner under the

Prime Contract, as if the Subcontractor was the Contractor and the Contractor was the Owner under the Prime Contract, except as modified by this Subcontract;

- .2 The *Subcontractor* shall be bound by all rulings of the *Owner* to the same extent that *Contractor* is bound:
- .3 The Subcontractor shall only be entitled to receive the benefit of an entitlement to relief of the Contractor under the Prime Contract to the same extent that Contractor is or becomes entitled to receive it under the Prime Contract, except as modified by this Subcontract;
- .4 In no event shall *Subcontractor* be entitled to greater rights, entitlements or relief against *Contractor* under this *Subcontract* than the *Contractor* actually obtains from the *Owner* under the *Prime Contract*:
- .5 Subject to sub-paragraph 10.1.6 below, the Contractor shall pursue such relief on behalf of the Subcontractor diligently and in good faith in accordance with and subject to the provisions of the Prime Contract; provided however, that the Subcontractor will reimburse the Contractor for any reasonable and justifiable costs and expenses associated therewith, and in the event that legal assistance and/or legal proceedings become necessary, the Subcontractor shall, in addition to reimbursing Contractor's internal costs and expenses, be liable for and fully indemnify the Contractor for all legal fees, costs and disbursements on a dollar-fordollar basis ("Equivalent Project Relief"); and
- .6 The *Contractor* shall have no obligation to the *Subcontractor* under this Article 10 to pursue claims for relief that, in the reasonable opinion of the *Contractor*, are unsupportable or without merit.
- To the extent that the *Contractor* is subject to any waiver or release of claims under the *Prime Contract*, the *Subcontractor* shall be equally bound by such waiver or release to the extent applicable to claims arising under this *Subcontract* and the performance of the *Subcontract Work*.
- 10.3 Where any notice is required to be provided by the *Contractor* to the *Owner* under the *Subcontract Documents* to preserve a right or entitlement by the *Contractor*, the *Subcontractor* must provide a corresponding *Notice in Writing* to the *Contractor* no later than three (3) days prior to the date any such notice is required to be provided by the *Contractor* under the *Subcontract Documents*. *Subcontractor* shall also provide all necessary supporting documentation in a timely manner so as to allow *Contractor* to comply with its obligations under the *Prime Contract*. If the *Subcontractor* fails to provide such *Notice in Writing* or supporting documentation it waives any and all claims to such *Equivalent Project Relief* with respect to the event or matter giving rise to the claim for *Equivalent Project Relief*.
- Any Equivalent Project Relief received from the Owner attributable to the Subcontractor shall be paid within fifteen (15) days of receipt from the Owner, subject to any applicable holdbacks or retainages set out in the Subcontract Documents. The Contractor will use all reasonable efforts to obtain a breakdown from the Owner of the allocation basis for any Equivalent Project Relief received from the Owner.
- 10.5 Notwithstanding any other provision of this *Subcontract*, the parties acknowledge and agree that this ARTICLE 10 EQUIVALENT PROJECT RELIEF shall not apply to, and the *Subcontractor* shall not be entitled to request the *Contractor* to pursue or enforce any claim with respect to any of the *Contractor*'s suspension or termination rights under the *Prime Contract*.

10.6 The *Subcontractor* will be entitled, if permitted by the *Owner*, to attend and fully participate in all meetings with the *Owner* to discuss an entitlement to relief being sought by the *Subcontractor* (and for which the *Subcontractor* has submitted a proper notice pursuant to the terms of the *Subcontract*), that would be subject to *Equivalent Project Relief*.

DEFINITIONS

1. <u>Add the following definitions:</u>

Appendix(ces)

Appendix(ces) shall mean the Appendix or Appendices which are referenced in Article 3A of the Subcontract Agreement and which are incorporated into the Subcontract Documents and this Subcontract.

As-Built Drawings

As-Built Drawings means drawings prepared by the Subcontractor or a Sub-Subcontractor by marking on a copy of the Drawings the changes from the Drawings which occur during construction including, but are not limited to the exact location of major building components that were shown generally on the Drawings.

Confidential Information

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

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

Equivalent Project Relief

Equivalent Project Relief shall have the meaning given in ARTICLE 10 – EQUIVALENT PROJECT RELIEF.

Proper Invoice

Proper Invoice is as defined in the lien legislation applicable to the Place of Work.

Schedule

Schedule means the detailed and comprehensive time schedule to be prepared by the Subcontractor for approval of the Contractor, which plans all aspects of the Subcontract Work and which provides sufficient detail of the critical events, deadlines and milestones for the Subcontract Work and their interrelationship to demonstrate the Subcontract Work will be performed in conformity with the schedule provided by Contractor.

Standard of Care

Standard of Care shall have the meaning given in SCC 3.14.1

Subcontract Proposal

Subcontract Proposal shall mean any submission by the Subcontractor in response to a request for proposals, request for qualifications, request for quotations or call for tenders made by the Contractor.

Supplier

Supplier means a person or entity having a direct contract with the Subcontractor to supply materials or equipment in connection with the Subcontract Work.

Total Completion of the Subcontract Work

Total Completion of the Subcontract Work means the date established under SCC 5.4 on which the Subcontract Work is to be satisfactorily completed, and the obligations of the Subcontractor under this Subcontract fulfilled, except for any remaining warranty obligations.

SUPPLEMENTARY CONDITIONS TO THE SUBCONTRACT CONDITIONS OF THE STIPULATED PRICE SUBCONTRACT

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

SCC 1.1 DOCUMENTS

- 1. <u>Delete</u> 1.1.7 and replace with the following:
 - 1.1.7 If there is a conflict within the *Subcontract Documents*, the order of priority of documents, from highest to lowest, shall be as set out in Article 3A of the *Subcontract Agreement*.

SCC 1.2 ASSIGNMENT

- 1. Delete paragraph 1.2.1 in its entirety and substitute new paragraph 1.2.1:
 - 1.2.1 The Subcontractor may not assign the Subcontract or a portion thereof without the consent of the Contractor and the granting of such consent shall be in the Contractor's sole and absolute discretion.

SCC 2.3 DEFECTIVE WORK

1. Add the following sentence to the end of paragraph 2.3.1:

The *Subcontractor* shall rectify, in a manner acceptable to the *Contractor*, all defective work and deficiencies throughout the work whether or not they are specifically identified by the *Contractor* or the *Consultant*. To the extent applicable, such rectifications shall be undertaken so as not interfere with the operations of the *Owner*.

- 2. Add new paragraph 2.3.4:
 - 2.3.4 In addition to any other requirement or obligation in the Subcontract or at law, for greater certainty, the term defective or deficient work means work that: (1) is not carried out in a good and workmanlike manner in accordance with the higher of ordinary practices or such practices as are required by the Prime Contract; (2) fails to comply with the Subcontract Documents; (3) involves use of improper Products or materials or the carrying out of improper installations; and/or (4) fails to comply with applicable laws.

- 3. Add new paragraph 2.3.5:
 - 2.3.5 Neither acceptance of the *Subcontract Work* by the *Consultant* or the *Contractor*, nor any failure by the *Consultant* or the *Owner* to identify, observe or warn of defective *Subcontract Work* or any deficiency in the *Subcontract Work*, shall relieve the *Subcontractor* from its responsibility for rectifying such defect or deficiency, at the *Subcontractor*'s sole cost.

SCC 3.2 TEMPORARY SERVICES

- 1. Delete paragraph 3.2.1 and substitute:
 - 3.2.1 Unless otherwise expressly stipulated in the *Appendices*, the *Subcontractor* will provide and pay for all temporary services, including, without limitation, temporary water, power and heat, general purpose lighting and toilet facilities.

SCC 3.3 SUPERVISION

- 1. Add new paragraph 3.3.3:
 - 3.3.3 The Contractor may, at any time during the course of the Subcontract Work, request the replacement of the appointed representative(s) of the Subcontractor, where the grounds for the request involve conduct which jeopardizes the safety and security of the site, the Contractor's operations, or harmonious relations at the Place of Work. Immediately upon receipt of the request, the Subcontractor shall make arrangements to appoint an acceptable replacement.
- 2. Add new paragraph 3.3.4:
 - 3.3.4 The Subcontractor will assign qualified key individuals to the Project including, at a minimum, a full-time superintendent, a construction project manager, two onsite coordinators to fulfill the environmental, safety, and quality requirements of this project and all necessary assistants. Such individuals shall remain assigned to the Project in their respective capacities up to and including the attainment of Total Completion of the Subcontract Work, will dedicate their full working time and attention to the Project and will not be changed or re-assigned to another project without the prior written consent of the Contractor. The Subcontractor's appointed representative(s) must attend weekly coordination and safety meetings at the Place of Work.
- 3. Add new paragraph 3.3.5:
 - 3.3.5 The superintendent and any project manager appointed by the Subcontractor shall represent the Subcontractor at the Place of Work and shall have full authority to act on written instructions given by the Consultant and/or the Contractor. Instructions given to the superintendent or the project manager shall be deemed to have been given to the Subcontractor and both the superintendent and any project manager shall have full authority to act on behalf of the Subcontractor and bind the Subcontractor in day to day matters related to implementing the Subcontract Documents and the Subcontract Work.

SCC 3.4 SUB-SUBCONTRACTORS

<u>1.</u> <u>Insert</u> the following at the end of paragraph 3.4.3:

"at an agreed premium cost".

<u>2.</u> <u>Delete</u> paragraph 3.4.4 in its entirety and substitute:

- 3.4.4 The *Subcontractor* is liable for the acts, omissions, and work of its *Sub-Subcontractors* as if the acts, omissions, and work were that of the *Subcontractor*. The *Subcontractor* shall ensure that its *Sub-Subcontractors* are apprised of and bound by the terms and conditions of this *Subcontract* and the *Prime Contract* as it relates to their own work. Nothing in this *Subcontract* shall create any contractual relationship between the *Contractor* and the *Sub-Subcontractors*.
- 4. Add new paragraph 3.3.4:
 - 3.3.4 The *Subcontractor* will use commercially sourced contractors/suppliers and will not continue to be bound to a specified sub-subcontractor if they demonstrate inability to perform the work

SCC 3.9 PAYMENT OF ACCOUNTS

- 1. Add new paragraphs 3.9.2:
 - 3.9.2 The Subcontractor will promptly pay all costs and expenses incurred in the performance of this Subcontract as they become due and shall furnish evidence satisfactory to the Contractor as requested by Contractor. Without limiting the foregoing, such evidence may include receipts, statutory declarations or other documentation evidencing full and timely payment of the Sub-Subcontractors or Suppliers involved in the Subcontract Work.

SCC 3.10 CONTROL OF THE WORK

- 1. Add new paragraph 3.10.1:
 - 3.10.1 The Subcontractor is responsible for:
 - .1 the construction means, methods, techniques, sequences and procedures of construction and for coordinating all parts of the *Subcontract Work*; and
 - the design, erection, operation, maintenance and removal of temporary structural and other temporary facilities and the design and execution of required construction methods in connection with the *Subcontract Work*.
- 2. Add new paragraph 3.10.2:
 - 3.10.2 The *Contractor* may conduct periodic reviews of the *Subcontract Work* in progress to determine general conformance with the requirements of the *Subcontract Documents*. Such reviews, or lack thereof, shall not give rise to any claims by the *Subcontractor* in connection with construction means, methods; techniques, sequences and procedures, nor in connection with construction safety at the *Place of Work*, responsibility for which vests exclusively in the *Subcontractor*.
- 3. Add new paragraph 3.10.3:
 - 3.10.3 Prior to commencing its work, the *Subcontractor* shall verify, at the *Place of the Work*, all relevant measurements and levels necessary for the proper completion of the *Subcontract Work* and shall further carefully compare such field measurements and conditions with the requirements of the *Subcontract Documents*. Where dimensions are not included or exact locations are not apparent in the *Subcontract Documents*, the *Subcontractor* shall immediately notify the *Contractor* in writing and obtain *Supplemental Instructions* from the *Contractor* before proceeding with any part of the affected *Subcontract Work*.

SCC 3.11 DOCUMENT REVIEW

- 1. Add new paragraph 3.11.1:
 - 3.11.1 The Subcontractor shall review the Subcontract Documents and shall report promptly to the Contractor any error, inconsistency, or omission the Subcontractor may discover. Such review by the Subcontractor shall be undertaken with the standard of care described in paragraph 3.14.1 of the Subcontract. If the Subcontractor does discover any error, inconsistency, or omission in the Contract Documents, the Subcontractor shall not proceed with the work affected until the Subcontractor has received corrected or missing information from the Contractor.
- 2. Add new paragraph 3.11.2:
 - 3.11.2 If, at any time during performance of the Subcontract Work, the Subcontractor finds errors, inconsistencies, or omissions in the Subcontract Documents or has any doubt as to the meaning or intent of any part thereof, the Subcontractor shall immediately notify the Contractor by submitting a request for information. a Supplemental Instruction, Change Order, or Change Directive. The Contractor shall not be responsible for the consequences of any action of the Subcontractor based on oral instructions or the failure of the Subcontractor to seek information, where necessary.
- 3. Add new paragraph 3.11.3:
 - 3.11.3 Notwithstanding the foregoing, errors, inconsistencies and/or omissions shall not include lack of reference on the *Drawings* or in the *Specifications* to labour and/or *Products* that are required or normally recognized within respective trade practices as being necessary for the complete execution of the *Subcontract Work*. The *Subcontractor* shall not use requests for information, issued during execution of the *Subcontract Work*, in and of themselves to establish a change or changes in the *Subcontract Work* pursuant to Part 6 CHANGES IN THE WORK. In the event that a request for information, or the cumulative effect of requests for information, leads to what the *Subcontractor* considers to be a change in the *Subcontract Work*, then the procedure under Part 6 CHANGES IN THE WORK shall be strictly followed.

SCC 3.12 CONSTRUCTION SCHEDULE

- <u>1.</u> <u>Add</u> new paragraphs 3.12.1:
 - 3.12.1 Further to Article 4.1, the *Subcontractor* shall perform and complete the *Subcontract Work* in accordance with the *Schedule*. If the *Subcontractor* fails to comply with the *Schedule*, the *Subcontractor* shall indemnify the *Contractor* for any losses or damages suffered by the *Contractor* and for which the *Contractor* is liable as a result of such failure or delay. These losses and damages include, without limitation, damages assessed by or payable to the *Owner* arising out of the *Prime Contract*.
- <u>2.</u> <u>Add</u> new paragraph 3.12.2:
 - 3.12.2 If, at any time, it should appear to the Contractor that the actual progress of the Subcontractor Work is behind schedule or is likely to become behind schedule, or if the Subcontractor has given notice of such to the Contractor, the Subcontractor shall take appropriate steps to cause the actual progress of the Subcontract Work to conform to the Schedule or minimize the resulting delay, at the Subcontractor's sole cost and expense. The Subcontractor shall produce and present to the Contractor and the Consultant a recovery plan demonstrating how the Subcontractor will achieve the recovery of the Schedule. If the Subcontractor intends to apply for a change in the Subcontract Price in relation to a schedule recovery

plan, then the *Subcontractor* shall proceed in accordance with SCC 6.6 – CLAIMS FOR A CHANGE IN SUBCONTRACT PRICE.

SCC 3.13 LABOUR AND PRODUCTS

- 1. Add new paragraph 3.13.1
 - 3.13.1 The Subcontractor agrees to employ only those Sub-subcontractors set out in the Subcontract Proposal and supply only those Products specified in the Subcontract Documents. The Subcontractor shall not subcontract any other aspects or make any changes or substitutions to the Sub-subcontractor(s), Products, or Construction Equipment that are included in the Subcontract Work or specified in the Subcontract Documents without first obtaining the Contractor's written consent, not to be unreasonably withheld. Notwithstanding any review or approval by the Contractor, the Subcontractor shall be responsible for any additional costs, damages or expenses, including any claims, resulting from substitution of materials or methods requested by and incorporated by the Subcontractor.
- 2. Add new paragraph 3.13.2
 - 3.13.2 Upon receipt of a written notice from the Contractor, the Subcontractor shall take action to rectify any situation involving tradespeople and labourers whose work is unsatisfactory to the Contractor or who are considered by the Contractor, acting reasonably, to be unskilled or otherwise objectionable. If after giving sufficient warning the Subcontractor is not able to reasonably rectify such situation then such tradesmen or labourers shall be dismissed from the Place of the Work.
- 3. Add new paragraph 3.13.3:
 - 3.13.3 Unless otherwise specified in the *Subcontract Documents*, *Products* provided as part of the *Subcontract Work* shall be new and fit for the purpose intended as defined in the drawings and specifications, and shall conform to all current applicable specifications of the Canadian Standards Association, Canadian Standards Board or General Standards Board, ASTM, National Building Code, provincial and municipal building codes, fire safety standards, and all governmental authorities and regulatory agencies having jurisdiction at the *Place of the Work*. *Products* not specified shall be of a quality consistent with those specified and their use shall be acceptable to the *Consultant* and the *Contractor*.

SCC 3.14 PERFORMANCE BY SUBCONTRACTOR

- 1. Add new paragraph 3.14.1
 - 3.14.1 In performing its services and obligations under the *Subcontract*, the *Subcontractor* shall exercise the standard of care, skill, and diligence that would normally be provided by an experienced, prudent and highly qualified subcontractor supplying similar services for similar projects in an expeditious and efficient manner ("**Standard of Care**"). The *Subcontractor* acknowledges and agrees that throughout the *Subcontract*, the performance of the *Subcontractor*'s obligations, duties, and responsibilities shall be judged against this Standard of Care. The *Subcontractor* shall exercise the same standard of care, skill, and diligence in respect of any *Products*, personnel, or procedures which it may recommend to the *Contractor*.
- 2. Add new paragraph 3.14.2
 - 3.14.2 The Subcontractor further represents, covenants and warrants to the Contractor that:
 - 1. the personnel it assigns to the *Project* are appropriately experienced;

- 2. it has a sufficient staff of qualified and competent personnel to replace any of its appointed representatives, subject to the *Contractor's* approval, in the event of death, incapacity, removal or resignation; and
- 3. there are no pending, threatened or anticipated claims that would have a material effect on the financial ability of the *Subcontractor* to perform its work under the *Subcontract*.

SCC 3.15 SITE SECURITY

- 1. Add new paragraph 3.15.
 - 3.15.1 The Subcontractor will provide at its cost adequate site security at all times during the term of the Subcontract and will ensure that all materials, tools, supplies, temporary works, equipment and property on site or incorporated into the Subcontract Work is not stolen, damaged, altered or removed without authorization. The Contractor will not be responsible for the costs of any such damage, alteration, loss or replacement.

SCC 3.16 RIGHT OF ENTRY

- 1. Add new paragraph 3.16.1
 - 3.16.1 The Contractor shall have the right to enter or occupy the Subcontract Work in whole or in part for the purpose of placing fittings and equipment or for other uses before Substantial Performance of the Subcontract Work, if, in the reasonable opinion of the Contractor, such entry or occupation does not prevent or substantially interfere with the Subcontractor's completion of the Subcontract within the Schedule. Such entry or occupation shall not be considered as acceptance of the Subcontract Work or in any way relieve the Subcontractor from responsibility to complete the Subcontract.
- 2. Add new paragraph 3.16.2
 - 3.16.2 The Subcontractor acknowledges and agrees that the Owner will have active operations near, at or on the Place of the Work for the entire duration of the Subcontract Work. The Subcontractor shall perform the Subcontract Work by such means and in such manner and at such time or times as to ensure that there is no disruption to the Owner's operations. Where, in the opinion of the Contractor, the Subcontract Work may cause disruption or interfere with the Owner's operations, the schedule, manner and means of the Subcontract Work shall be coordinated by the Subcontractor with the Contractor in a manner acceptable to Contractor and the Owner. The Contractor may instruct the Subcontractor to coordinate the Subcontract Work and to perform the Subcontract Work by a means and manner and at time(s) consistent with this paragraph 3.16.2 and other provisions of the Subcontract Documents with no change to the Subcontract Price or Subcontract Time. The Subcontractor represents and warrants that Subcontractor has fully satisfied itself as to the nature and extent of the Owner's operations and has included all costs, expenses and time in connection therewith and as required in this paragraph 3.16.2 in the Subcontract Price and the Subcontract Time.

SCC 4.1 CASH ALLOWANCES

- <u>1.</u> <u>Delete</u> paragraph 4.1.2 in its entirety
- 2. Delete paragraph 4.1.4 in its entirety and substitute new paragraph 4.1.4:
 - 4.1.4 Where the actual cost of the work under any cash allowance exceeds the amount of the allowance, any unexpended amounts from other cash allowances shall be reallocated, at the *Contractor's* direction, to cover the shortfall, and, in that case, there shall be no

additional amount added to the *Subcontract 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 Subcontractor be compensated for the excess incurred and substantiated, plus an amount for overhead and profit on the excess only, as set out in the Subcontract Documents.

- 3. Add new paragraph 4.1.6:
 - 4.1.6 The *Contractor* reserves the right to call, or to have the *Subcontractor* call, for competitive bids for portions of the work, to be paid for from cash allowances.

SCC 5.1 APPLICATIONS FOR PAYMENT

1. <u>Add to the end of paragraph 5.1.5 the following new sentence:</u>

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

- Add new paragraph 5.1.6 as follows:
 - 5.1.6 A *Subcontractor* application for payment (a "Payment Application") shall only be considered "Complete" when the *Subcontractor* satisfies all of the following criteria to the *Contractor's* reasonable satisfaction:
 - .1 For Subcontractor's first Payment Application:
 - (a) All certificates of insurance, or certified copies of policies acceptable to the *Contractor* evidencing that the insurance required pursuant to SCC 11.1 INSURANCE is in effect:
 - (b) Subcontract security documentation as required pursuant to SCC 11.2 CONTRACT SECURITY:
 - (c) A completed Ministry of Labour Form 1000 which shall constitute Appendix "G" of the Subcontract Documents:
 - (d) A document confirming the *Subcontractor's* HST Registration Number which shall constitute Appendix "H" of the *Subcontract Documents*;
 - (e) All of the criteria listed in SCC 5.1.6.2; and
 - (f) Any other documents required for first payment as may be requested by the Contractor.
 - .2 For every Payment Application:
 - (a) A statutory declaration in the form attached at Appendix "E" Statutory Declaration;
 - (b) A certificate under the applicable workers' compensation legislation evidencing that the *Subcontractor* has paid all amounts required to be paid pursuant to such legislation which shall constitute Appendix "F" of the *Subcontract Documents*:

- (c) Updated certificates of insurance, or certified copies of policies acceptable to the *Contractor*, evidencing that the insurance required pursuant to SCC 11.1 – INSURANCE continues to be in effect;
- (d) Subcontract security documentation as required pursuant to SCC 11.2 CONTRACT SECURITY;
- (e) Compliance with all provisions of applicable lien legislation;
- (f) No claims for lien or written notices of lien have been submitted, registered, sent or otherwise given by any Sub-Subcontractor (excluding the Subcontractor, but including any employees or labourers of Subcontractor) in relation to the Project, unless such claims for lien or written notices of lien have all been withdrawn, vacated, discharged or otherwise removed in accordance with SCC 5.5 CONSTRUCTION LIENS prior to the day on which Subcontractor submits its Payment Application;
- (g) The Subcontractor shall have executed and delivered to the Contractor, all such other documents and instruments as may be requested by the Contractor respecting the performance of the Subcontract Work;
- (h) Any and all other documents, information, criteria and requirements of the *Prime Contract* with respect to a *Proper Invoice* that the *Contractor* must give to *Owner*.
- .3 For the final Payment Application:
 - (a) All of the criteria listed in SCC 5.1.6.1 and SCC 5.1.6.2; and
 - (b) Satisfaction of all provisions of SCC 5.4 SUBSTANTIAL PERFORMANCE OF THE CONTRACT WORK.

Add new paragraph 5.1.7 as follows:

5.1.7 Any Payment Application that is not Complete shall be rejected and may, in the Contractor's sole, absolute, unreasonable and arbitrary discretion be rejected and not be considered for inclusion in the Contractor's Proper Invoice to the Owner. In that event, the Subcontractor shall revise and resubmit corrected versions of the Payment Application until the Contractor confirms that the Payment Application is Complete and in compliance with the Subcontract.

Add new paragraph 5.1.8 as follows:

5.1.8 The *Contractor* shall, in its reasonable discretion, include all or a portion of the *Subcontractor's* Complete Payment Application in the *Contractor's Proper Invoice* to the *Owner*.

SCC 5.2 WITHHOLDING OF PAYMENT

- 1. Add new paragraph 5.2.3 as follows:
 - 5.2.3 Upon notice to the *Subcontractor*, the *Contractor* may withhold or retain all or any portion of any payment due to the *Subcontractor* under this *Subcontract* to ensure the performance of the *Subcontract Work* or to protect the *Contractor*'s rights in respect of the events set out in this SCC 5.2.3, but only such portion of any payment as is reasonably necessary for such purpose and no more. The *Contractor* may make such withholding or retention upon the occurrence and continuance of any of the following events or reasons:

- 1. The Subcontractor is in default of any of its material obligations under this Subcontract:
- 2. All or any part of such payment is attributable to *Subcontractor* Work which is defective or not performed in accordance with the *Subcontract Documents*;
- 3. The Subcontractor has improperly failed to make prompt payments to its Sub-Subcontractors respecting Subcontract Work for which the Contractor has made payment to the Subcontractor;
- 4. Any lien has been registered against the *Project*, the *Subcontract Work* or any portion of it or against any *Product* or *Products* and such lien has not been vacated or discharged pursuant to SCC 5.5 CONSTRUCTION LIENS;
- 5. The failure or refusal of *Owner* to pay the *Contractor* for the *Subcontract Work* for which the Payment Application is being made, to the extent of the non-payment;
- 6. All liability that the *Contractor* may have paid, suffered or incurred in respect of which the *Subcontractor* is liable to bear, pay or reimburse to the *Contractor* (including pursuant to any indemnity contained in the *Subcontract*);
- 7. Any liens filed, registered or notice of which has been given to the *Contractor* against the *Place of Work* or neighbouring lands under any applicable lien legislation, unless disposed of in accordance with SCC 5.5 CONSTRUCTION LIENS:
- 8. Overpayment by the *Contractor* to the *Subcontractor*, for which the *Subcontractor* has failed to reimburse the *Contractor*;
- 9. Any amounts found owing from the *Subcontractor* to the *Contractor* in the determination of an adjudicator, unless such amounts have been fully paid by the *Subcontractor* and received by the *Contractor*;
- 10. Any debts owed by the *Subcontractor* to the *Contractor*, unless such debts have been fully paid by the *Subcontractor* and received by the *Contractor*, or
- Any amounts claimed by the Subcontractor for which acceptable backup or supporting documentation has not been provided to substantiate the amount claimed.

SCC 5.4 SUBSTANTIAL PERFORMANCE OF THE SUBCONTRACT WORK

- 1. Add new paragraphs 5.4.1:
 - 5.4.1 Upon attaining Substantial Performance of the Subcontract Work, the Subcontractor, in consultation with the Contractor, shall establish reasonable dates for finishing the Subcontract Work and correcting deficiencies.
- 2. Add new paragraphs 5.4.2 and 5.4.3:
 - 5.4.2 As a condition of attaining *Substantial Performance of the Subcontract Work*, the *Subcontractor* shall submit to the *Contractor* all documents required to be provided by the *Subcontractor* under the *Subcontract Documents*, including such documents as:
 - 1. guarantees;
 - 2. warranties;

- certificates:
- as-built drawings;
- spare parts;
- 6. maintenance manuals;
- existing reports and correspondence from authorities having jurisdiction in the Place of the Work;

and other materials or documentation required to be submitted under the *Subcontract*, together with written proof acceptable to the *Contractor* that the *Subcontract Work* has been substantially performed in conformance with the requirements of municipal, governmental, and utility authorities having jurisdiction in the *Place of the Work*.

- 5.4.3 If the *Subcontractor* fails to deliver the documents and materials described in paragraph 5.4.2, then, provided that none of the missing documents and materials interferes with the use and occupancy of the *Project* in a material way, the *Contractor* shall retain from payments otherwise owing to the *Subcontractor* under this *Subcontract* the amount of \$25,000.00 and retain such amount until such documents and materials are delivered.
- 5.4.4 When the *Subcontractor* considers that the *Subcontract Work* is substantially performed, the *Subcontractor* will prepare and submit to the *Contractor* and the *Consultant* a comprehensive list of items to be completed or corrected and will prepare and submit to the *Contractor* and the *Consultant* a certificate of *Substantial Performance of the Subcontract Work* for verification by the *Consultant*. Failure to include an item on the list does not alter the responsibility of the *Subcontractor* to complete the *Subcontract Work*.
- 5.4.5 After the submission by the *Subcontractor* of a certificate of *Substantial Performance of the Subcontractor Work*, the *Consultant* will conduct an inspection and assessment of the *Subcontract Work* in order to verify the validity of the certificate. After its inspection, the *Consultant* will notify the *Subcontractor* in writing of its approval or reasons for disapproval of the certificate.
- 5.4.6 Following the approval of the certificate of Substantial Performance of the Subcontract Work, the Consultant will issue a list of deficiencies and incomplete Subcontract Work remaining to be done. These deficiencies will be valued by the Consultant in conjunction with the Contractor and the Subcontractor at a rate of two (2) times normal construction value. The Contractor will be entitled to retain a deficiency holdback, in addition to any other holdbacks, which deficiency holdback will be held by the Contractor until all deficiencies have been completed to the satisfaction of the Consultant and Contractor. In the event that the Subcontractor requests an inspection and the deficiencies are found to be incomplete, any costs incurred by the Consultant and Contractor for additional inspections will be borne by the Subcontractor.
- 5.4.7 Immediately following the approval of the certificate of Substantial Performance of the Subcontract Work, the Subcontractor in consultation with the Contractor and Consultant will establish a reasonable date for finishing the Subcontract Work and provide written confirmation of the date to the Contractor. Such date (being the date of Total Completion of the Subcontract Work) must be acceptable to the Contractor and will not under any circumstances be greater than sixty (60) days from the date of Substantial Performance of the Subcontract Work.
- 5.4.8 In the event that all deficiencies are not completed by the *Subcontractor* in accordance with the *Subcontract Documents* and to the satisfaction of the *Contractor* and *Consultant* within the time established by paragraph 5.4.7, the *Contractor* will have the right to have the

deficiencies completed by another subcontractor and recover or set-off the costs of such completion work from the *Subcontractor* as permitted by this *Subcontract* or otherwise at law. If any deficiency remains uncompleted or unfulfilled as at the date of *Total Completion of the Subcontract Work*, the value of such deficiency as previously determined will become a deduction from the *Subcontract Price* and may be recovered or set-off against monies otherwise due or accruing due to the *Subcontractor* as permitted by this *Subcontract* or otherwise at law. In the event that the *Subcontractor* fails to remedy a deficiency within the time established by paragraph 5.4.7 once the *Contractor* has proceeded with any activities necessary to remedy the deficiency, the *Subcontractor* will be liable to and will indemnify the *Contractor* for all corrective actions taken by any parties performed in respect of such deficiency and such corrective actions will not constitute a waiver of any of the *Subcontractor*'s warranty obligations.

SCC 5.5 CONSTRUCTION LIENS

- 1. Add new SCC 5.5 CONSTRUCTION LIENS as follows:
 - 5.5.1 Notwithstanding anything else in this PART 5 PAYMENT, in the event a claim for lien is registered against the *Project* lands, or the *Contractor* receives any written notice of lien, the *Contractor* shall be entitled to withhold any payment otherwise due to the *Subcontractor* until such time as such claims have been dealt with as provided below.
 - 5.5.2 In the event that a written notice of a lien from the performance of the *Subcontract Work* is received by the *Contractor*, the *Subcontractor* shall, within ten (10) calendar days, at its sole expense, arrange for the withdrawal or other disposal of the written notice of a lien pursuant to the *Construction Lien Act* (Ontario).
 - 5.5.3 If a construction lien arising from the performance of the *Subcontract Work* is registered against the *Project* lands, the *Subcontractor* shall, within ten (10) calendar days, at its expense, vacate or discharge the lien from title to the *Project* lands. If the lien is merely vacated, the *Subcontractor* shall, if requested, undertake the *Contractor* 's defence of any subsequent action commenced in respect of the lien at the *Subcontractor* 's expense.
 - 5.5.4 If the Subcontractor fails or refuses to vacate or discharge a construction lien or written notice of lien within the time prescribed above, the Contractor shall, at its option, be entitled to take all steps necessary to vacate and/or discharge the lien, and all costs incurred by the Contractor in doing so (including, without limitation, legal fees on a solicitor and his own client basis and any payment which may ultimately be made out of or pursuant to security posted to vacate the lien) shall be for the account of the Subcontractor, and the Contractor may deduct such amounts from the amounts otherwise due or owing to the Subcontractor.
 - 5.5.5 Without limiting any of the foregoing, the *Subcontractor* shall satisfy all judgment and pay all costs resulting from any construction liens or any actions brought in connection with any liens, or in connection with any other claim or lawsuit brought against the *Contractor* by any person that provided services or materials to the *Project* lands which constituted part of the *Subcontract Work*, and the *Subcontractor* shall indemnify the *Contractor* for any and all costs (including, without limitation, legal fees on a solicitor and client basis) the *Contractor* may incur in connection with such claims or actions.
 - 5.5.6 This SCC 5.10 CONSTRUCTION LIENS does not apply to construction liens claimed by the *Subcontractor*, nor does it apply if the *Contractor* has failed to pay the amounts properly due under the *Subcontract*.

SCC 6.1 CONTRACTOR'S RIGHT TO MAKE CHANGES

1. <u>Amend</u> paragraph 6.1.2 by adding the following to the end of that paragraph:

"This requirement is of the essence and it is the express intention of the parties that any claims by the *Subcontractor* for a change in the *Subcontract Price* and/or *Subcontract Time* shall not be approved unless there has been strict compliance with PART 6 – CHANGES IN THE WORK."

SCC 6.2 CHANGE ORDER

1. Add the following to paragraph 6.2.1:

"The *Subcontractor* shall also provide quotations submitted by the *Sub-Subcontractor*s, and the *Subcontractor* shall have a complete breakdown for all items of material, a total number of hours for labour, and a dollar rate applied against individual material items and labour quantities."

- <u>2.</u> <u>Delete from line 2 of paragraph 6.2.2 "or to the method to be used to determine the adjustments".</u>
- 3. Add new paragraph 6.2.3:
 - 6.2.3 The Subcontractor shall comply with all requirements of the *Prime Contract* with respect to adjustments of the *Subcontract Price*, including, without limitation, rates, mark-ups, and substantiation required.
- 4. Add new paragraph 6.2.4:
 - 6.2.4 The *Subcontractor* shall not be entitled to any additional compensation arising out of changes to the *Subcontract Work* aside from the amounts determined and agreed to under this SCC 6.2, or as provided in SCC 6.3.
- 5. Add new paragraph 6.2.5:
 - 6.2.5 All indirect and impact costs related to and or resulting from the *Subcontractor's* implementation of a particular authorized change, are deemed to be included in the amount stated on that particular *Change Order* as the sum by which, and only which, the *Subcontract Price*, and *Subcontract Time* if applicable, will be adjusted. The *Subcontractor* is not entitled to any additional compensation other than the adjustments in the *Subcontract Price* and the *Subcontract Time* specifically recorded on *Change Orders*.

SCC 6.4 CONCEALED OR UNKNOWN CONDITIONS

- 1. <u>Add</u> new paragraphs 6.4.5, 6.4.6, 6.4.7 and 6.4.8:
 - 6.4.5 Notwithstanding SCC 6.4.1, the Subcontractor represents and warrants that it has examined the Place of the Work and surrounding area and the Subcontract Documents and other documents provided by the Contractor and Owner, and it has satisfied itself as to the scope and character of the Subcontract Work, all conditions and information affecting the Subcontract Work, and how the Subcontract Work is to be completed, including the nature and location of the Subcontract Work, working areas, storage areas, local features including private property and utilities, access to and at the Place of the Work, and weather conditions, and any other factors which influence the performance of the Subcontract Work and/or the pricing of the Subcontract Work or that, not having carried out such examination, the Subcontractor has assumed and does hereby assume all risk of conditions now existing or arising in the course of the Subcontract Work which might or could make the Subcontract Work more expensive or more onerous to fulfil, and which the Subcontractor using the Standard of Care, would have discovered. The costs, expenses, and time of all conditions referred to in this paragraph 6.4.5 which the Subcontractor, using the Standard of Care, would have discovered, form part of the Subcontract Price and the Subcontract Time and shall not be the basis for an increase in the Subcontract Price or an extension in the Subcontract Time.

- 6.4.6 The Subcontractor declares that in tendering for the Subcontract Work and in entering into this Subcontract, it did not and does not rely exclusively upon information furnished by the Contractor, the Consultant or the Owner respecting the nature or confirmation of the ground at the site of the Subcontract Work, or the location, character, quality or quantity of the materials to be removed or to be employed in the construction of Subcontract Work, or the character of the construction machinery and equipment or facilities needed to perform the Subcontract Work, or the general and local performance of the Subcontract Work under the Subcontract and expressly waives and releases the Contractor, the Consultant and the Owner from all losses, costs, damages and expenses with respect to the said information with respect to the Subcontract Work.
- 6.4.7 Notwithstanding paragraphs 6.4.5 and 6.4.6, in the event the *Contractor* is determined to be entitled to relief or compensation under the *Prime Contract* in relation to concealed or unknown conditions, then, if the *Subcontractor* was also affected, any adjustment to the *Subcontract Price* or extension to the *Subcontract Time* shall be subject to ARTICLE 10 EQUIVALENT PROJECT RELIEF.
- 6.4.8 For greater certainty, any adjustment to the *Subcontract Price* or extension to the *Subcontract Time* shall be subject to ARTICLE 10 EQUIVALENT PROJECT RELIEF.

SCC 6.5 DELAYS

- <u>1.</u> <u>Delete</u> the period at the end of paragraph 6.5.1, and <u>substitute</u> the following words:
 - ", but excluding any consequential, indirect or special damages. The *Subcontractor* acknowledges and agrees that any reimbursement is subject to the provisions of ARTICLE 10 EQUIVALENT PROJECT RELIEF and Article 6.6."
- <u>2.</u> <u>Delete</u> the period at the end of paragraph 6.5.2, and <u>substitute</u> the following words:
 - ", but excluding any consequential, indirect or special damages. The *Subcontractor* acknowledges and agrees that any reimbursement is subject to the provisions of ARTICLE 10 EQUIVALENT PROJECT RELIEF and Article 6.6."
- 3. Add the following to paragraph 6.5.3:

"Notwithstanding paragraph 6.5.3.1 and 6.5.3.3 above, where the *Subcontractor* claims a delay occurred due to abnormally adverse weather conditions, the *Subcontractor's* claim must be documented by data substantiating that weather conditions were abnormal for the claimed period of time, are not Reasonably Anticipated Weather Conditions, and had an adverse impact on the critical path of the *Schedule*. For the purposes of paragraph 6.5.3.3, ice, precipitation, snow, water levels, flooding, current, waves, undertow and other circumstances in connection with the environment shall be considered a "weather condition". The term "Reasonably Anticipated Weather Conditions" means those conditions that have a probable statistical recurrence interval of 100 years, as determined from a minimum of 20 years of daily weather data from the national weather bureau station (or other similarly recognized authority) closest to or most applicable to the *Subcontract Work*. The *Subcontractor's* claim for delay may be denied or reduced if, in the opinion of the *Contractor*, the *Subcontractor* failed to take reasonable measures to properly plan and protect the *Subcontract Work* and to mitigate such delays. Any extension of time or adjustment to the *Subcontract Price* pursuant to paragraph 6.5.3 is subject to ARTICLE 10 – EQUIVALENT PROJECT RELIEF."

4. Add the following sentence to the end of paragraph 6.5.4.

"Any claim by the *Subcontractor* for an increase in the *Subcontract Price* under SCC 6.6 – CLAIMS FOR A CHANGE IN SUBCONTRACT PRICE associated with the delay shall be brought within the same time period. The notice requirements set out in this SCC 6.5.4 are of

the essence and a pre-condition to any entitlement. If the *Subcontractor* fails to provide the notice of the cause of delay or any claim for additional costs associated with such delay within the time prescribed by this SCC 6.5, the *Subcontractor* shall not be entitled to any extension of time or any additional costs associated with the delay. The *Subcontractor*'s entitlement to an adjustment in the *Subcontract Price* and an extension in the *Subcontract Time* shall be subject to ARTICLE 10 – EQUIVALENT PROJECT RELIEF and Article 6.6.

<u>5.</u> <u>Add</u> new paragraph 6.5.6:

6.5.6 No authorization, other than an express authorization by the *Contractor* that is expressly provided for in the *Subcontract*, will be made by the *Contractor* for any adjustment to the *Subcontract Price*, or *Subcontract Time*, for any extra expense or any loss, or damage incurred or sustained by or through the *Subcontractor*.

6. Add new paragraph 6.5.7:

6.5.7 Subject to SCC 6.5.9, if the Subcontractor anticipates incurring or sustaining, any extra expense, loss or damage or loss of time that is directly and solely attributable to any neglect or unreasonable delay on the part of the Contractor, Consultant or Owner failing to perform any term of the Subcontract which is the responsibility of the Contractor, Consultant or Owner, the Subcontractor will promptly advise the Contractor and the Consultant in writing of the particulars of such extra expense, loss or damage and the cause thereof within ten (10) days of the event of delay which causes or is anticipated to cause the Subcontractor incurring such extra expense, loss or damage. The Subcontractor will afford the Contractor, Consultant and the Owner an opportunity to rectify any such situation or circumstance which has given rise to or is anticipated to cause the Subcontractor to incur or sustain any such extra expense, loss or damage and will not claim for any such extra expense, loss or damage until the expiration of such ten (10) day period if the Contractor has not rectified such situation or circumstance. A Notice in Writing as aforesaid must be provided by the Subcontractor to the Contractor for each and every event of delay and a continuing notice of delay will not constitute proper Notice in Writing.

7. Add new paragraph 6.5.8:

6.5.8 The *Notice in Writing* required to be provided by the *Subcontractor* will contain a sufficient description of the facts and circumstances of the occurrence or omission that is the subject matter of the extra expense, loss or damage in order to enable the *Contractor* to readily and fully determine the nature and extent of the circumstance and whether or not the claim is justified and proper. The *Subcontractor* will promptly provide the *Contractor* with such other additional information as may be required by the *Contractor*.

8. Add new paragraph 6.5.9:

6.5.9 If the Subcontractor is delayed in the performance of the Subcontract Work under this Subcontract, to the extent such delay impacts the critical path of the Schedule and is caused by an act or omission of the Owner, Contractor, or anyone employed or engaged directly by the Owner or Contractor, contrary to the provisions of the Subcontract Documents and for which a workaround is not feasible, then, subject to ARTICLE 10 – EQUIVALENT PROJECT RELIEF and provided that the Subcontractor has complied with this SCC 6.5, the Schedule shall be equitably extended in consultation with the Contractor. Subject to ARTICLE 10 – EQUIVALENT PROJECT RELIEF, the Subcontractor shall not be entitled to payment for costs incurred by such delay unless such delay impacts the critical path of the Schedule and results directly and solely from the unreasonable or negligent actions or omissions of the Contractor, Consultant or the Owner or anyone employed or engaged directly by the Contractor, in which case, subject to ARTICLE 10 – EQUIVALENT PROJECT RELIEF and provided that the Subcontractor has complied with SCC 6.5, the Subcontractor shall be reimbursed by the Contractor for reasonable and justifiable

increased costs incurred by the *Subcontractor* to the extent they are directly caused by such unreasonable or negligent actions or omissions. In the event that this *Subcontract* is novated by the *Contractor* to another party as provided in the bid documents (the "**Novated Party**") then in respect of a claim for delay to the extent directly attributable to the wrongful acts, errors or omissions of the Novated Party and which delay does not relate to an act, error or omission of the *Owner* or *Consultant*, the *Subcontractor's* claim shall not be subject to *Equivalent Project Relief*.

SCC 6.6 CLAIMS FOR A CHANGE IN SUBCONTRACT PRICE

- 1. Add the following words to paragraph 6.6.1 after the word "timely":
 - "...which in the case of the *Subcontractor* shall not exceed seven (7) days of the event or circumstance giving rise to the claim,..."
- 2. Add the following words to paragraph 6.6.3 after the words "reasonable time":
 - "...which in the case of the *Subcontractor* shall not exceed thirty (30) days of the event or circumstance giving rise to the claim or such earlier time required by SCC 6.2, SCC 6.3, SCC 6.4, SCC 6.5 or ARTICLE 10 EQUIVALENT PROJECT RELIEF...."
- 3. Add new paragraph 6.6.7:
 - 6.6.7 The Contractor's liability to the Subcontractor for any claim by the Subcontractor under this SCC 6.6 which relates to any act or omission of the Owner or the Consultant or those for whom they are responsible in law, shall be limited to the amount, if any, for which such Owner or Consultant party is found liable, and is further limited to the amount, if any, recovered from such party, in accordance with ARTICLE 10 EQUIVALENT PROJECT RELIEF and Article 6.6.
- 4. Add new paragraph 6.6.8:
 - 6.6.8 The notice requirements set out in this SCC 6.6 CLAIMS FOR A CHANGE IN SUBCONTRACT PRICE are of the essence and a pre-condition to any entitlement. If the Subcontractor fails to provide the notice of the intent to claim or detailed account of any claim for a change in the Subcontract Price within the time prescribed by this SCC 6.6, the Subcontractor shall not be entitled to any increase in Subcontract Price, additional compensation or an adjustment to the Subcontract Time."
- SCC 7.1 CONTRACTOR'S RIGHT TO PERFORM THE SUBCONTRACT WORK, TERMINATE THE SUBCONTRACTOR'S RIGHT TO CONTINUE WITH THE SUBCONTRACT WORK OR TERMINATE THE SUBCONTRACT.
- <u>1.</u> <u>Delete 7.1.5.1</u> in its entirety and substitute with the following:
 - 7.1.5.1 take possession of the Subcontract Work and Products at the Place of Work; subject to the rights of the third parties; finish the Subcontract Work by whatever method the Contractor may consider expedient but without undue delay or expense.
- <u>2.</u> <u>Add</u> new paragraphs 7.1.7 and 7.1.8:
 - 7.1.7 Notwithstanding the foregoing, where this *Subcontract* is terminated or suspended by reason of termination or suspension by the *Owner* under the *Prime Contract* through no fault of the *Contractor*, subject to ARTICLE 10 EQUIVALENT PROJECT RELIEF, the *Contractor* shall have no obligation to pay *Subcontractor* for any damages sustained as a result of such termination or suspension.

7.1.8 In the event it is found by the courts or other authority with jurisdiction to resolve disputes between the parties that the *Subcontract* was wrongfully terminated by the *Contractor*, the *Subcontractor*'s entitlement to payment for such damages shall be as set out in paragraph ARTICLE 10 – EQUIVALENT PROJECT RELIEF and the *Subcontractor* shall be limited to recovery of payment for all *Subcontract Work* performed and reimbursable expenses incurred and for such damages as the *Subcontractor* may have sustained as a result of the termination."

SCC 7.2 SUBCONTRACTOR'S RIGHT TO SUSPEND THE WORK OR TERMINATE THE CONTRACT

- 1. Delete paragraphs 7.2.1 and 7.2.2.
- 2. Delete the last sentence of paragraph 7.2.6 in its entirety and substitute:
 - 7.2.6 If the termination was the result of the default of the *Contractor*, then the respective rights of the parties shall be as if the *Subcontractor* had terminated under any of the above conditions. If the termination was a result of the default of the *Owner* under the *Prime Contract* then the entitlement of the *Subcontractor* under paragraph 7.2.5 shall be limited to the amount, if any, received by the *Contractor* from the *Owner* on account of damages in relation to the termination of the *Subcontract*, in accordance with ARTICLE 10 EQUIVALENT PROJECT RELIEF.

SCC 8.2 NEGOTIATION, MEDIATION AND ARBITRATION

1. Delete paragraph 8.2.10 in its entirety and substitute:

"Should any dispute or portion of any dispute between the *Contractor* and *Subcontractor* relate to a dispute between the *Owner* and the *Contractor*, such dispute or portion thereof as between the *Contractor* and *Subcontractor* shall be disposed of as is provided for under the *Prime Contract* at the same time in the same proceedings using the same Project Mediator and by the same Arbitration Tribunal as are appointed to resolve the dispute between the *Owner* and the *Contractor*, and the *Subcontractor* agrees to attorn to and be bound by such dispute resolution proceedings.

- 1. Add new paragraphs 8.2.12 and 8.2.13:
 - 8.2.12 Notwithstanding the foregoing, where a dispute between the Subcontractor and Contractor is related to or integrated with a dispute between the Contractor and the Owner, at the election of the Contractor such dispute shall be resolved pursuant to the dispute resolution provisions of the Prime Contract and at the same time as the dispute between the Owner and the Contractor, and the Subcontractor agrees to participate as a party and be bound by such proceedings.
 - 8.2.13 As time is of the essence, the *Subcontractor* shall continue performance of the *Subcontract Work* notwithstanding any dispute and shall ensure its *Sub-Subcontractors* also do so. Accordingly, in the event of a dispute, any associated work stoppage by the *Subcontractor*, any *Sub-Subcontractor*, or any others for whom the *Subcontractor* is responsible will constitute a breach of the *Subcontract* entitling the *Contractor* to damages on account of any delay affecting the schedule of the *Subcontract Work* or the *Schedule*.

SCC 9.4 CONSTRUCTION SAFETY

- 1. <u>Add</u> new paragraphs 9.4.2, 9.4.3, 9.4.4, 9.4.5 and 9.4.6:
 - 9.4.2 Prior to the commencement of the *Subcontract Work*, the *Subcontractor* shall submit to the *Contractor* for approval: (a) evidence of workers' compensation compliance; (b) copies of

the *Subcontractor*'s insurance policies or certificates of insurance evidencing applicable insurance coverages for the Work, (c) documentation setting out the *Subcontractor*'s inhouse health and safety program, including its health and safety plan for the *Subcontract Work*, and (d) copies of any documentation or notices to be filed or delivered to the authorities having jurisdiction for the regulation of occupational health and safety at the *Place of the Work*.

- 9.4.3 The Subcontractor shall arrange regular safety meetings, and shall supply and maintain, at its expense, at its office or other accessible location at the Place of Work any safety equipment as prescribed by applicable legislation and regulations at the Place of the Work, including, without limitation, articles necessary for administering first-aid to any person and an emergency procedure for the immediate removal of any injured person to a hospital or a physician's care.
- 9.4.4 The Subcontractor promptly shall report in writing to the Contractor all accidents arising out of or in connection with the performance of the Subcontract Work, whether on or adjacent to the Place of Work, giving full details and statement of witnesses. If death or serious injuries or property damage or loss are caused, the accident shall be promptly reported by the Subcontractor to the Contractor by telephone in addition to any reporting required under the applicable safety regulations.
- 9.4.5 The Subcontractor shall indemnify and hold harmless the Contractor and its directors, officers and employees from and against all claims, demands, actions, suits or proceedings by any of the employees of the Subcontractor or Sub-Subcontractors with respect to workers' compensation insurance claims This indemnity shall survive the completion of the Subcontract Work or the termination of the Subcontract for any reason whatsoever.
- 9.4.6 The Subcontractor shall indemnify and hold harmless the Contractor and its directors, officers and employees and for any costs incurred by the Contractor in respect of any fine, penalty, charge, offence, prosecution, civil litigation or other proceeding arising out of or related to the Subcontractor's violation of any applicable health and safety legislation, as the same maybe amended from time to time, or any regulations thereunder.

SCC 10.2 LAWS, NOTICES, PERMITS, AND FEES

1. Add the following wording at the end of paragraph 10.2.3:

"The Subcontractor represents and warrants that it understands the requirements of all environmental permits, approvals, authorizations, consents and licenses applicable to the Subcontract Work, and that the costs, expenses and time to comply with all of the foregoing form part of the Subcontract Price and the Subcontract Time and shall not be the basis for an increase in the Subcontract Price or an extension in the Subcontract Time."

<u>2.</u> <u>Delete</u> the first sentence in paragraph 10.2.5 and replace with the following:

"Subject to SCC 3.11 and the *Subcontractor's* Standard of Care, the *Subcontractor* shall not be responsible for verifying that the *Subcontract Documents* are in compliance with the applicable laws, ordinances, rules, regulations, or codes relating to the *Subcontract Work."*

SCC 11.1 INSURANCE

- 2. Delete 11.1.1 in its entirety and substitute with the following:
 - 11.1.1 The *Subcontractor* shall comply with its obligations with respect to the provision of insurance which are set out in Appendix D Insurance. In the event that the *Subcontractor* does not or cannot obtain insurance coverage to satisfy its obligations under the *Subcontract*, the *Subcontractor* shall provide *Notice in*

Writing to the Contractor setting out the insurance coverage deficiency and shall not proceed with the Subcontract Work without written authorization from the Contractor.

<u>Delete</u> 11.1.2, 11.1.3, 11.1.5, 11.1.8, 11.1.9, and 11.1.10 in their entirety.

- <u>3.</u> <u>Add</u> new paragraphs 11.1.11, 11.1.12, 11.1.13, 11.1.14 and 11.1.15:
 - 11.1.11 It is the responsibility of the *Subcontractor* to satisfy itself as to the adequacy of any All Risks Builder's Risk Insurance or Course of Construction Insurance procured by the *Contractor*. If Wrap Up Liability Insurance is procured by the *Contractor*, the *Subcontractor* shall still be required to maintain Commercial General Liability Insurance for any claims arising from the operations of the *Subcontractor* away from the *Place of Work* or any claims arising from the *Subcontract Work* performed by or on behalf of the *Subcontractor* if such claims arise after the specified Products and Completed Operations period in the Wrap Up Liability Insurance.
 - 11.1.12 The *Subcontractor* and its Sub-*Subcontractors* shall be responsible for any deductible amounts to the extent arising from or where it caused, is responsible for or has, a claim in relation to the All Risks Builder's Risk Insurance, Course of Construction Insurance and/or the Wrap Up Liability Insurance. The *Subcontractor* shall be responsible for any increase in premiums for insurance where such increase is caused by the *Subcontractor* or any of its *Sub-Subcontractors*.
 - 11.1.13 The insurance requirements of *Subcontractor* support, but shall not limit the *Subcontractor*'s duties, obligations, and liabilities under any other provision of this *Subcontract*, including but not limited to the insurance requirements of the *Prime Contract*.
 - 11.1.14 The *Subcontractor* shall be responsible for securing its own tools, equipment, and, until they have been incorporated into the *Subcontract Work*, building materials against any eventuality, including theft and vandalism. The *Contractor* shall not be responsible for any loss to them, whether caused by the negligence of the *Contractor*, or otherwise. The *Subcontractor* shall obtain appropriate insurance to insure this risk.
 - 11.1.15 The *Subcontractor* shall purchase and maintain any additional insurance which it is required to carry by law or which it considers necessary to cover risks not otherwise covered by insurance specified in this section. The *Subcontractor* shall also purchase and maintain, and cause each *Sub-Subcontractor* of any tier, to purchase and maintain, such other insurance, or amendments to the foregoing policies, as the *Contractor* may reasonably require and direct. The *Subcontractor* shall ensure that all *Sub-Subcontractor* maintain and adhere to the requirements specified in this Article 11.

SCC 11.2 CONTRACT SECURITY

- 1. <u>Delete SCC 11.2</u> in its entirety and <u>substitute</u>:
 - Subject to any additional requirements provided in Appendices, and if requested by the Contractor, the Subcontractor will prior to commencement of the Subcontract Work, pay for and provide to the Contractor a Performance Bond in the amount of 100% of the Subcontract Price covering the performance of the Subcontract including the requirements of G.C 12.3 WARRANTY and a Labour and Material Payment Bond in the amount of 100% of the Subcontract Price. The Contractor will not be obligated to provide any payment to the Subcontractor until such time as the Performance Bond and the Labour and Materials Payment Bond have been delivered to the Contractor by the Subcontractor.

SCC 12.1 INDEMNIFICATION

- 1. <u>Delete SCC 12.1 in its entirety and substitute:</u>
 - 12.1.1 To the fullest extent permitted by law, the *Subcontractor* shall indemnify the *Contractor*, *Owner* and any other party required by the *Prime Contract* in accordance with the provisions of the *Prime Contract* incorporated herein by reference. In addition to such duty to indemnify under the *Prime Contract* and to the fullest extent permitted by law, the *Subcontractor* shall indemnify and hold harmless the *Contractor* and *Owner* and each of their respective employees, officers, directors, representatives from and against all claims, demands, losses, costs, damages, expenses, actions, suits and proceedings (including reasonable legal fees and costs on a dollar for dollar basis) that arise out of or are attributable to:
 - any breach, non-observance, non-performance of any representation, warranty, term, provision or conditions of this *Subcontract* by the *Subcontractor* or any party that the *Subcontractor* is responsible for;
 - .2 any act or omission by the *Subcontractor* or any party that the *Subcontractor* is responsible for that is not permitted by this *Subcontract*;
 - .3 all claims by the Owner or others against the Contractor based on any defects or deficiencies in the Subcontract Work or improper performance of Subcontract Work;
 - .4 any negligent or intentional act or omission of the *Subcontractor* or any party that the *Subcontractor* is responsible for; and
 - .5 third party claims arising out of, or attributable to this *Subcontract* or the *Subcontract Work*, including but not limited to claims for lien, bodily injury, sickness, disease or death, or injury to or destruction of tangible property (including loss of use resulting therefrom).
- 2. Add new paragraph 12.1.2:
 - 12.1.2 Without limiting the generality of the foregoing and without prejudice to any other right or remedy the *Contractor* may have against the *Subcontractor* in law, the *Subcontractor* shall indemnify and hold harmless the *Contractor* from and against claims made by the *Owner* as a result of any delay in completion of the *Subcontract Work* which arises out of, or is attributable to, the *Subcontractor*'s delay in performance of the *Subcontract Work* caused by, or within the control of, the *Subcontractor* or anyone for whose acts the *Subcontractor* may be liable is responsible.
- 3. Add new paragraph 12.1.3:
 - 12.1.3 The *Subcontractor* waives its rights to recover from the *Contractor* any consequential, indirect, or incidental damages (including, but not limited to, loss of use, income, profits, financing or reputation) arising out of, or related to, this *Subcontract*, the *Subcontract Work* or the *Project*.

SCC 12.2 WAIVER OF CLAIMS

- 1. Delete SCC 12.2 in its entirety and substitute:
 - 12.2.1 As of the date of the final certificate for payment of the *Subcontract Work*, the *Subcontractor* expressly waives and releases the *Contractor* from all claims against the *Contractor* including, without limitation, those that might arise from the negligence or breach of this *Subcontract* by the *Contractor* except:

- 1. those for which a *Notice in Writing* was submitted prior to the *Subcontractor*'s application for final payment and still unsettled; and
- those arising from the provisions of SCC 9.2 TOXIC AND HAZARDOUS SUBSTANCES AND MATERIALS or SCC 10.3 – PATENT FEES.
- 12.2.2 To the extent that the *Contractor* is subject to any waiver or release of claims under the *Prime Contract*, the *Subcontractor* shall be equally bound by such waiver or release to the extent applicable to claims arising under this *Subcontract* and performance of the *Subcontract Work*.

SCC 12.3 WARRANTY

- <u>1.</u> <u>Delete</u> paragraph 12.3.1 in its entirety and replace with the following:
 - 12.3.1 Except for extended warranties as described in paragraph 12.3.6, the warranty period under this *Subcontract* is the greater of the warranty period required by the *Prime Contract* or one year from the date of *Substantial Performance of the Subcontract Work*.
- <u>2.</u> <u>Delete from the first line of paragraph 12.3.2 the word, "The" and <u>substitute</u> the</u>

words: "Subject to paragraph 3.11.1, the...".

- <u>3.</u> <u>Delete</u> the words "one year" in paragraph 12.3.6.
- 4. Add new paragraph 12.3.7:
 - 12.3.7 The *Subcontractor* will ensure that it maintains skilled personnel to dedicate to the performance of both remedial and warranty work. Remedial work will include the reexecution of defective *Subcontract Work* as provided for in SCC 2.3. All such remedial and warranty work will be executed at times convenient to the *Contractor* and this may require work at the *Subcontractor*'s expense outside of normal Working Day hours."
 - .1 If any remedial or warranty Work presents a potential emergency, risk, or disruption to the normal operation, the *Subcontractor* will carry out such remedial or warranty Work within twenty-four (24) hours of notification from the *Consultant* or the *Contractor* of the necessity or the *Subcontractor* to perform such remedial or warranty Work.
 - .2 Should an emergency condition at the facility requiring immediate remedial/emergency repairs occur outside of normal working hours, and the *Contractor* is unable to contact the *Subcontractor*, the *Contractor's* operation or maintenance staff will respond. Any such remedial or warranty Work will be at the cost of the *Subcontractor*.
 - .3 Prior to performing such remedial or warranty work in all other situations which do not involve an emergency, risk or disruption as aforesaid, the Subcontractor will submit to the Consultant, or the Contractor subject to the Contractor's direction, for their prior approval, a schedule indicating the time frame in which such remedial or warranty Work is to commence and be fully completed to the satisfaction of the Contractor.

Add New PART 13 as follows

PART 13 OTHER PROVISIONS

SCC 13.1 OWNERSHIP OF MATERIALS

13.1.1 All Subcontract Work and Products delivered to the Place of the Work by the Subcontractor shall be the property of the Contractor once paid for through the payment process of the Subcontract. The Subcontractor shall remove all surplus or rejected materials when notified in writing to do so by the Contractor.

SCC 13.2 RECORDS/DAILY REPORTS/DAILY LOGS

13.2.1 The *Subcontractor* shall maintain and keep accurate *Project* records (which means all tangible records, documents, computer printouts, electronic information, books, plans, *Drawings*, *Specifications*, accounts or other information relating to the *Subcontract Work*) in its office in accordance with requirements of law, but in any event for not less than six (6) years from *Substantial Performance of the Subcontract Work* or until all claims have been settled. During this time, the *Subcontractor* shall allow the *Contractor* to access to the *Project* records during normal business hours upon the giving of reasonable notice.

SCC 13.3 ENVIRONMENT

- 13.3.1 If the Subcontract Work requires the transfer by the Subcontractor of any chemical substance or mixture, or any material which may generate or release a chemical substance or hazardous material, the Subcontractor shall provide, before or with each such transfer, a Material Safety Data Sheet in a form which complies with applicable health and safety regulations and is acceptable to the Contractor, and container labels, which include current, accurate, and complete information relating to product hazards and precautions for safe use. The Subcontractor will not bring, use, store, transport, remove, dispose of or destroy any hazardous substances on the Place of Work, except with the prior written consent of the Contractor and then only to the extent specifically required for performance of the Subcontract Work. The Subcontractor agrees to maintain an emergency response plan to deal with any discharge, release or spill of hazardous substances.
- 13.3.2 The Subcontractor will conduct all its operations in such a way as to minimize any disturbance or damage to the environment, including all governing federal, provincial and local laws, regulations and bylaws. The Subcontractor shall fully comply with all permits, licenses, authorizations, approvals or consents applicable to the Subcontract Work. The Subcontractor shall not destroy, remove or clear trees, timber or shrubs or disturb watercourses to any extent greater than is necessary for the performance of the Subcontract Work.
- 13.3.3 The *Subcontractor* shall comply with any directions given by the *Contractor* or the *Consultant* or the *Owner* to protect and preserve the environment.
- 13.3.4 The *Subcontractor* shall be fully responsible for and shall indemnify and save harmless the *Contractor*, the *Owner* and any other party required by the *Prime Contract* from all penalties, costs, loss and damages resulting from the failure of the *Subcontractor* to comply with all environmental laws, permits or regulations during performance of the *Subcontract Work*, including but not limited to payment of all legal and expert costs arising out of legal proceedings in respect of such failure and all remediation costs to remedy such failure to the standards required by environmental authorities.

SCC 13.4 QUALITY ASSURANCE

13.4 The *Subcontractor* shall prepare a quality assurance program for the *Subcontract Work* and submit the quality assurance program to the *Contractor* for approval, and the *Subcontractor* shall cause the *Subcontract Work* to be performed in accordance with the quality assurance program.

SCC 13.5 COMPLIANCE WITH LAWS

The *Subcontractor* shall give all required notices and comply with all laws, ordinances, rules, regulations, codes, and orders of all authorities having jurisdiction that are or become in force during the performance of the *Subcontract* and that govern the *Subcontract Work*, including, without limitation, all policies, procedures and requirements of the *Owner* and the *Contractor* with respect to the *Project*, all applicable security clearance related requirements of the *Prime Contract*, all laws relating to personal information as defined in the Personal Information Protection and Electronic Documents Act (Canada) and the Corruption of Foreign Public Officials Act (Canada), as amended. The *Subcontractor* must give all notices and obtain and pay for all permits, licenses, tests and official inspections necessary to the *Subcontractor's* performance under this *Subcontract*.

SCC 13.6 MISCELLANEOUS

- 13.6.1 Any provision of this *Subcontract* which contemplates performance or obligations subsequent to completion of the *Subcontract Work* or termination of this *Subcontract*, including but not limited to indemnification, warranty, confidentiality and limitations on liability, will survive such completion or termination.
- 13.6.2 Each of the rights and remedies of the *Contractor* provided for in this *Subcontract* shall be in addition to and not in substitution for any of the other rights and remedies of the *Contractor* provided for in this *Subcontract* or available to the *Contractor* at law or in equity and none of such rights and remedies shall be construed so as to limit, prejudice or adversely affect any other of such rights and remedies.
- 13.6.3 Any provision, to the extent it is found invalid, unlawful or unenforceable, will be ineffective without affecting any other provision in this *Subcontract*, so that the *Subcontract* will be deemed to be a valid and binding agreement enforceable in accordance with its terms as if such invalid, illegal or unenforceable provision had never been contained therein.
- 13.6.4 The Contractor's failure to insist, in one or more instances, upon the performance of any of the terms, covenants or conditions of this Subcontract, or to exercise any right or privilege herein, or its waiver of any breach or default, shall not be construed as a waiver or relinquishment of such term, covenant, condition or right as respects further performance.
- 13.6.5 This *Subcontract* shall enure to the benefit of and be binding upon the parties hereto, their successors, executors, administrators or permitted assigns.
- 13.6.6 The *Contractor* and the *Subcontractor* have each had full opportunity of obtaining legal advice and accordingly any rule of construction to the effect that any ambiguity is to be resolved against the drafting party shall not be applicable in the interpretation of this *Subcontract*.

END OF DOCUMENT



APPENDIX A DOCUMENTS

The following plans, specifications and documents form part of this subcontract:

[PROJECT/SUBCONTRACT DESCRIPTION]

- a) Amendments to Agreement and Definitions and Supplementary Conditions to the Subcontract Conditions of the Standard Construction Document CCA 1 2008 Stipulated Price Contract
- b) Appendix B Scope of Work
- c) Appendix C -Subcontractor Health and Safety Procedure
- d) Appendix D Insurance (Naming Gazzola Paving Limited as additional named insured)
- e) Appendix E Statutory Declaration
- f) Appendix F Current Workers Compensation Certificate of Clearance
- g) Appendix G Ministry of Labour Form 1000
- h) Appendix H Subcontractor HST Registration Number



APPENDIX B SCOPE OF WORK

The Subcontractor and the Contractor agree that the materials to be furnished and the work to be done by the Subcontractor are:

To supply all labour, material, plant and equipment as required to complete the entire project scope as outlined in the *Subcontract Proposal*

(a) More specifically, the work includes, but is not limited to the following:

Subcontractor scope of work as set out in the attached Gazzola Paving Limited Purchase Order No. [XXXXXX] dated [DATE]

(b) The following work is expressly excluded and will be performed by others:

[eg. Obtaining MOL Notice of Project]
[eg. Quality Assurance Testing]
[Not applicable]

(c) In general:

- 1. All work to meet and be in accordance with all applicable codes.
- 2. All work to be of top quality, material and workmanship.
- 3. Subcontractor to ensure that materials, products and workmanship meet or exceed requirements of the reference standards specified. In the event of conflict between documents specified herein, execute the work in accordance with the most stringent requirements.
- 4. Provide and maintain any equipment necessary to complete own work.
- 5. Include for all incidental items not specifically shown for a complete system.
- 6. Ample time must be given for submittals on all long lead items required on site to perform work and must account for the Contractor and/or Consultant's review time frames. If delays in supply of products are foreseeable, notify the Contractor of such, so that remedial action may be authorized in reasonable time to prevent delays in performance of work.
- 7. All necessary mobilizations and demobilizations are to be included.
- 8. The Subcontractor is to provide a full-time competent site superintendent who will not be replaced without written approval by the Contractor.
- Ensure that sufficient trained labour is available to complete the work quickly and efficiently.
 No equipment may be removed from site without permission of the Contractor's site superintendent.
- 10. The Subcontractor agrees to work Saturdays if deemed necessary by the Contractor to fulfill the Project schedule commitments.
- 11. Subcontractor to attend site co-ordination meetings and Project meetings as required as directed by Contractor's site superintendent and project manager.
- 12. It is imperative that the Subcontractor clean up and dispose its own refuse and waste off-site on a daily basis. The Contractor will NOT supply garbage bins.
- 13. The Subcontractor is to ensure that debris from construction and material packaging is controlled at all times as not to become a hazard.
- 14. The Subcontractor shall comply with all specifications and compliance plans regarding waste management and disposal.



- 15. Receiving, off-loading and storage of all materials to complete the Subcontract is the sole responsibility of the Subcontractor.
- 16. The Subcontractor shall follow all by laws including speeding, school zones, noise control and use the designated routes only. No compression engine brakes will be allowed.
- 17. The Subcontractor shall keep a record of modifications to its shop drawings on site. Preparation of as-built drawings will be ongoing during the Subcontract Work.
- 18. Time is of the essence on this project. The Subcontractor MUST have the workforce available to complete the work within the schedule allocated to them.
- 19. Provide all reasonable assistance to inspectors conducting a review/inspection on own work.
- 20. Subcontractor to advise Contractor of large equipment deliveries and items as requested in writing by Contractor. Subcontractor to provide procurement and fabrication times in tender schedule of all custom fabrication items for the project.
- 21. Subcontractor to provide offices, lunch and break facilities for workers as required.
- 22. Subcontractor will coordinate traffic control as required for all deliveries and equipment and install of Subcontract Work items.
- 23. Subcontractor to provide all proof of safety training required by provincial/federal legislation and as required by the Contractor
- 24. Subcontractor is to provide layout of existing utilities as well as protect existing utilities
- 25. All surface preparation and cleaning as required is included in Subcontract Price.
- 26. Disposal and cleanup of all surface preparation and coating activities is included in the Subcontract Price.
- 27. Provide all labour and equipment to properly deliver, store and handle Subcontract materials.
- 28. Provide lifts, scaffolding and access to work as required.
- 29. All surfaces disturbed by Subcontract Work shall be restored to original conditions or better.
- 30. Subcontractor is responsible for all permits or agreements to access work sites through private property. All construction works outside construction work area limits should also be coordinated with the Contractor prior to commencement
- 31. If Subcontract Work is to occur during winter months, no additional payments will be made for any required climate control of work areas.
- 32. Subcontractor to provide timely response (ie. Less than 4 hrs. in non-emergency situations) to any inquiry by the Contractor.



APPENDIX C

SUBCONTRACTOR HEALTH AND SAFETY PROCEDURE

PURPOSE

The purpose of the *Subcontractor* Procedure is to set a minimum standard for all those that work under the *Contractor* in a contractual capacity. This procedure is to ensure that all *Subcontractors* follow the requirements of the *Occupational Health and Safety Act*, R.S.O. 1990, c. O.1 (the "Act") (including all applicable regulations and successor legislation) and the *Contractor's* Health & Safety Program requirements.

SCOPE

- Pertaining to the health, safety, and environment portion of each entity or Subcontractor working directly for the Contractor.
- Pertaining to the health, safety, and environment portion of each entity or Subcontractor working under any other entity or subcontractor working for the Contractor.

RESPONSIBILITIES

Contractor's Health and Safety Coordinator Responsibilities:

- Ensuring Subcontractors are following the Contractor's Health & Safety Program.
- Ensuring Subcontractors have provided all appropriate Health & Safety documentation.
- Assist in the Subcontractors' review procedure as required.
- Maintain an updated list of the approved Subcontractors based on the results of the Subcontractor Review.

Contractor's Senior Management Responsibilities:

- Reviewing the *Subcontractor's* performance review completed by the project manager and the site superintendent.
- Reviewing the list of the accepted Subcontractors.

Contractor's Project Manager Responsibilities:

- Determining which Subcontractors are to perform work on projects.
- Advising the Health & Safety Coordinator and Site Superintendent of the Subcontractor information and contract details.
- Completing the Subcontractor review form with input from the Site Superintendent and the Health & Safety Coordinator.
- Ensure communication of the requirements under this procedure is scheduled with all site level personnel including workers and *Subcontractors*.
- Requesting *Subcontractor* documents to ensure all *Subcontractors* can demonstrate competency and implement the site specific workplace requirements.
- Review workplace specific requirements under the forms required on this procedure

Contractor's Superintendent Responsibilities:

 Conducting Site Orientations and updating Subcontractors on the Contractor's Policies and Procedures.

- Ensuring submittal of subcontractor's daily/weekly paperwork, such as hazard assessments, site
 inspections, toolbox talks, etc.
- Conducting inspections of sites, documenting findings and sharing relevant information with *Contractor's* senior management.
- Review findings with each Foreman to ensure that corrective measures are taken.
- Follow-up on the findings and implement recommendations for each unsafe condition.

Contractor's Foreman Responsibilities:

- Ensure, where reasonably possible, that every Subcontractor, worker and visitor at the workplace complies with the Act and all applicable Regulations.
- Conducting inspections of sites, documenting findings and sharing relevant information with the Contractor's Superintendent
- Review findings with the superintendent and implement the corrective measures required.

Contractor's Workers' Responsibilities:

- Working in conjunction with *Subcontractor* employees.
- Ensuring Subcontractors are following the Contractor's Health & Safety Program.

Subcontractor's Responsibilities:

- Ensure compliance to all applicable health and safety regulatory requirements and relevant procedural requirements outlined within the *Contractor's Health & Safety* manual.
- Conduct Toolbox Talks or an equivalent Subcontractor's safety meeting with the Subcontractor's
 employees at least once a week. A copy of the toolbox talk is to be forwarded to the Contractor's
 Site superintendent on a weekly basis.
- Inspect all equipment and work site conditions prior to beginning work.
- Maintain all tools and equipment shall in safe operating condition.
- Ensure that all necessary PPE/ clothing for employees is provided and used appropriately.
- Report any injuries requiring medical attention to the Contractor's Site Superintendent and required regulatory agencies.
- Undertake an investigation of all incidents and near misses and forward a copy of all related reports to the *Contractor* within 24 hours.
- Attend and participate, in mandatory weekly health & safety meetings as determined by the Contractor.
- Ensure compliance with instructions regarding corrective actions issued by the Contractor.
- Ensure that employees attend orientation training prior to beginning work.
- Subcontractor are responsible for advising all their employees of the requirements outlined within this procedure.

PROCEDURE

- Contractor's Project Manager to determine which and when subcontractor will be working on a project site.
- Contractor's Project Manager to communicate subcontractor details to Health and Safety Coordinator and Site Superintendent.
- 3. *Contractor's* Project Manager to provide direct Subcontractor with a copy of the *Contractor's* Health & Safety Program (or applicable/relevant portions).
- 4. *Contractor's* Senior Management or Project Manager to provide subcontractors with a complete subcontract agreement outlining the scope of work, timelines, milestones and payment details.

- 5. *Contractor's* Senior Management or Project Manager to provide subcontractor with a copy of this procedure.
- 6. Subcontractor to provide all Subcontractor Mandatory Health & Safety Job Start Up Document Submissions prior to beginning work.
- 7. Subcontractor to complete transfer of the Contractor's Health & Safety Program details and required documentation to any party under they employ and direction, whether directly or via a subcontract.
- 8. Subcontractor to ensure that all persons under their direction or employ, whether directly or via subcontract, shall be fully aware and remain compliant with this policy and all appropriate transfer of policy and expectation is completed.
- 9. The *Contractor's* Health and Safety Coordinators and Site Superintendents/Foremen shall inspect and monitor the ongoing activities of the Subcontractor.
- 10. Subcontractor to always complete necessary modifications when noted to remain compliant to all policies and legal requirements.
- 11. The Contractor's Health and Safety Coordinators to note any subcontractor violations relative to health, safety, and environmental and bring to the attention of the Contractor's senior management. This includes direct and indirect subcontractors. Non-compliant entities will be warned of the infraction and held accountable as required. This will be accomplished using various methods, including, but not limited to, progressive corrective actions or contract removal.
- 12. *Contractor's* senior management, in conjunction with the Project Manager to review the *Subcontractor* upon completion of the work. The Approved *Subcontractor* List to be updated based on results of the review.

Contractor/Subcontractor Review Procedure

- 1. Project Manager to complete the subcontractor review form. (Form 18-5)
- 2. Advise Senior Management of any issues that were identified during the review process.
- 3. Keep a record of the review in the job file.
- 4. Update the approved *Subcontractor* list rating based on the most recent review.
- 5. Arrange a meeting with the Subcontractor to discuss any performance issues if planning on using the subcontractor again.
 - Make minutes of the meeting and distribute to Contractor's Senior Management, Project Manager(s) and the Subcontractor.

Subcontractor Mandatory Health & Safety Job Start Up Document Submissions

The Subcontract work shall not proceed until the Subcontractor submits the following documents to the Contractor:

- Subcontractor Health and Safety Agreement (Form 18-1)
- Fully signed contract
- Hazard acknowledgement letter (Form 18-2)
- Subcontractor Adherence to Contractors Health and Safety Program (Form 18-3)

- Form 1000
- WSIB clearance certificate
- Liability insurance certificate
- Competent Supervisor Form (Form 18-4)
- SDS Sheets and Proof of Worker(s)WHIMS training
- Additional Training Certificates as Required by all legislative acts and regulations relevant to the scope of their work (Ex. Work at Height)
- Copy of Subcontractor's Health & Safety Policy
- Copy of Subcontractor's Workplace Violence & Harassment Policy
- Pre-Start JHA (Refer to Form 19-1-1)

Gazzola Paving Ltd. Subcontractor Health & Safety Daily and Weekly Submission Requirements

Daily

- 1. Daily Job Hazard Assessment (Refer to Form 26-1-1)
- 2. Pre-Dig Utility Checklist/Locates (Form 18-6)
- 3. Traffic Protection Plan

Weekly

- 1. Weekly Site Inspection (Refer to Form 6-1-1)
- 2. Record of Toolbox Talk (Refer to Form 5-1)

DISTRIBUTION

The *Contractor's* Project Manager will ensure distribution of this documentation when requested and gathering of all pertinent information during the procurement process.

The *Contractor's* Project Manager and Superintendent will also be responsible for the distribution and gathering pertinent information to or from the *Subcontractor* during the Site Orientation.

RECORDS

All information gathered during the hiring process and the orientation process shall remain on file for a period of at least five years.

^{*} Subcontractor may submit its own Daily and Weekly forms subject to receiving pre-approval of any such forms by the Contractor as to form and content. The approval of any alternative form shall be in the and absolute discretion of the Contractor.



APPENDIX D INSURANCE

1.0 INSURANCE

Without limiting any of the obligations and liabilities of the *Subcontractor* under this agreement or at law or in equity, the *Subcontractor*, and its *Sub-Subcontractors*, agrees to maintain at its own cost and expense during the term of this Agreement the following minimum insurance with insurance companies acceptable to *Contractor*. Should the *Subcontractor* fail to maintain insurance as detailed herein, *Contractor* shall have the right, but is not obligated, to provide the required insurance. All premiums, deductibles and other costs incurred by the *Contractor* will be paid by the *Subcontractor* on demand or, failing payment, may be deducted by the *Contractor* from any amount then or thereafter due to the *Subcontractor*.

Subcontractor shall provide to the *Contractor* a certificate of insurance, evidencing such insurance prior to commencing work hereunder, and periodically as needed thereafter to show continuing coverage; such insurance coverage's shall be independent of the indemnity provisions of this Agreement, and are not designed solely to guarantee payment of the *Contractor's* indemnity obligations.

All policies with the exception of Workers' Compensation, Professional Liability and Automobile Liability shall be endorsed to include the *Contractor*, its directors, officers, employees and agents as additional insured, and others as required, and these policies will respond as primary to and not in excess of any other insurance available to the *Contractor*.

a. Workers' Compensation Insurance

Workplace Compensation insurance covering all personnel of *Subcontractor* in accordance with the statutory requirements of the jurisdiction in which the Services are being performed. The *Subcontractor* shall provide a clearance certificate as proof of insurance.

b. Commercial General Liability Insurance (written on an Occurrence basis)

Commercial General Liability insurance on an occurrence form with a combined single limit of \$5,000,000 each occurrence, and annual aggregates of \$5,000,000 or limits otherwise agreed to by *Contractor*, for bodily injury and property damage, including coverage for, blanket contractual liability, broad form property damage, personal injury liability, independent contractors, products/completed operations, cross liability / severability of interest, non-owned automobile, hired automobile, and sudden & accidental pollution liability unless a separate Pollution Liability policy is available. Policy shall be primary and non-contributory, and provide a Waiver of Subrogation in favour of **the** *Contractor*.

c. Automobile Liability Insurance

Automobile Liability Insurance, covering all owned and leased vehicles with a minimum combined single limit for bodily injury and property damage of \$5,000,000 or limits otherwise agreed to by the *Contractor*.

d. Umbrella Liability Insurance

To achieve the desired limits in (b.) and (d.) above, the *Subcontractor* may carry or arrange Umbrella Liability insurance. Coverage under the Umbrella Liability insurance must provide follow form coverage over all of the underlying terms.

e. Subcontractor's Equipment, if used in the performance of the services

The *Subcontractor* shall maintain "all risk" insurance on all equipment whether the equipment is owned, leased or rented. No insurance will be provided by the *Contractor*. This insurance shall also extend to cover Rental Expense costs incurred in the case of a loss.

The *Subcontractor* shall waive its rights of any recovery or subrogation against the *Contractor* and will have its Insurers waive their rights of subrogation against the *Contractor* in the event of loss or damage to the equipment owned by, leased by or rented to the *Subcontractor*.

f. Other Insurance

The *Subcontractor* is required to provide, at its own cost, such additional coverage, as may be required by law or which the *Subcontractor*, in its sole and absolute discretion, considers necessary.

Subcontractor shall be responsible for any deductible or self-insured retention amounts under the insurance, and shall bear the cost of insurance required under this section. This will apply to any project insurance policies that may be placed by the *Contractor* or other parties involved in the project.

All the above noted policy(s) shall be endorsed to provide the *Contractor* with 30 days written notice of cancellation.

At any time during this agreement the *Contractor* may request and shall be provided certified copies of the policies for review.

APPENDIX E

Statutory Declaration of Progress Payment Distribution by Subcontractor

Standard Construction Document

CCDC 9B - 2018

To be made by the Subcontractor as a condition for either	Application for payment number
second and subsequent progress payments; or release of holdback.	dated is the last
	application for payment for which the Subcontractor has
Information Appearing in the Subcontract	received payment.
Documents	
Name of Project	
Date of Subcontract:	
Name of Contractor	Name of Subcontractor
Declaration	
I solemnly declare that, as of the date of this declaration, I am an authorized signing officer, partner or sole proprietor of the Subcontractor, and as such have authority to bind the Subcontractor, and have personal knowledge of the fact that all accounts for labour, sub-subcontracts, products, services, and construction machinery and equipment which have been incurred directly by the Subcontractor in the performance of the work as required by the subcontract, and for which the Contractor might in any way be held responsible, have been paid in full as required by the subcontract up to and including the latest progress payment received, as identified above, except for: 1) holdback monies properly retained, 2) payments deferred by agreement, or 3) payment withheld by reason of legitimate dispute which has been identified to the party or parties from whom payment has been withheld.	
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 in this _	day of in the year
City/Town and Province	
Name	
Title	
Signature (A	A Commissioner for Oaths, Notary Public, Justice of the Peace, etc.)

The making of a false or fraudulent declaration is a contravention of the Criminal Code of Canada, and could carry, upon conviction, penalties including fines or imprisonment.

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