

**APPENDIX 3 – CONTRACT
AGREEMENT BETWEEN OWNER AND CONTRACTOR**

THIS AGREEMENT made this _____ day of _____, 201*

BETWEEN:

(the "**Owner**")

AND

(the "**Contractor**")

In consideration of the mutual covenants and agreements herein contained and subject to the terms and conditions set out, the PARTIES AGREE AS FOLLOWS:

**ARTICLE 1
SCOPE OF CONTRACT WORK**

1.1 Scope of Contract Work

The Contractor agrees to perform the Contract Work described in Schedule "A" in accordance with the terms, conditions and stipulations set out in the Contract Documents, and do and fulfill everything indicated by the Contract Documents. The Contractor shall provide such services, labour and material consistent with, covered by or properly inferable from the Contract Documents or from prevailing custom or trade usage as being required to produce the intended result, whether or not specifically called for.

1.2 Schedule

The Contractor shall commence the Contract Work in accordance with a "Notice to Proceed" executed by the Owner indicating the commencement date for the Contract Work (the "**Commencement Date**"), which Commencement Date shall be at least five (5) days after the date of the Notice to Proceed. The Contractor shall complete the Contract Work according the timelines set out in Schedule "B" to this Contract.

The Contractor will update the Schedule on a monthly basis in conjunction with its application for payment and provide a copy of the updated Schedule to the Owner on a monthly basis. Each Schedule will include a statement of anticipated draw requests for the balance of the Contract Work. The Contractor will provide a projected cash flow as soon as possible after the date of the Notice to Proceed.

1.3 Contract Price

The Contract Price is \$_____ (the "**Contract Price**") plus applicable HST. All other taxes and duties are included in the Contract Price. Provided that the Contractor is not in default under this Contract, the Owner agrees to make payments to the Contractor in accordance with the provisions for payment set out in this Contract. All costs, charges and outlays of any kind whatsoever in respect of the Contract

Work are included in the Contract Price, including for greater certainty, the cost of all labour, material and supplies, payments to suppliers and Contractors of any tier, wages and salaries to employees, statutory remittances and deductions, Workplace Safety and Insurance Board deductions, payments required for permits, licences and approvals required to be obtained by the Contractor.

1.4 Standard of Care

The Contractor shall, at its own cost and risk, perform the Contract Work in compliance with all Laws and Regulations, in compliance with the Contract Documents, and in accordance with the standards, methods and practice which demonstrate the degree of skill and care, diligence and prudence and foresight which would reasonably and ordinarily be expected from a qualified, skilled and experienced person engaged in a similar type of undertaking. The Contractor shall devote such time and attention to the Contract Work as shall be necessary to permit the effective performance of the Contract Work. Any representative appointed by the Contractor shall have full authority to bind the Contractor and shall attend such meetings as may be requested by the Owner.

1.5 The Contractor agrees to assign the following “Key Personnel” to the Project:

Role	Name
Project Executive	
Project Manager	

The Contractor may not remove such personnel from the Project, and any proposed replacement must be approved by the Owner.

1.6 Warranty

The warranty period under this Contract is two years from the date of the final certificate for payment for the Contract Work. The Owner shall promptly give the Contractor notice of any observed defects or deficiencies which occur during the two year warranty period. The Contractor shall correct promptly, at the Contractor's expense, defects or deficiencies in the Contract Work which appear during the two year warranty period. The Contractor shall pay for any damage resulting from corrections made under this paragraph.

1.7 Extended Warranties

Any warranties beyond that contemplated in Section 1.6 shall be specifically set out in the Contract Documents. Such extended warranties shall be issued by the warrantor for the benefit of the Owner. The Contractor's responsibility shall be to obtain such extended warranties from the warrantor.

ARTICLE 2
CONTRACT DOCUMENTS

2.1 Contract Documents

The following are the Contract Documents:

- (a) The Articles of Agreement;
- (b) Schedule 1 “Definitions and Interpretations”;
- (c) The General Conditions;
- (d) Supplementary Conditions (if any);
- (e) Schedules:
 - Schedule A – Scope of Contract Work
 - Schedule B – Schedule
 - Schedule C – Insurance Requirements
 - Schedule D – Dispute Resolution
- (f) All documents signed by the Owner and the Contractor amending, modifying or supplementing the Contract Documents.

2.2 Contract Documents Supersede

The Contract Documents listed in this Article 2 constitute the entire agreement between the parties with respect to the matters dealt with herein and supersede all prior negotiations, representations or agreements, whether written or oral, relating in any manner to the Contract Work.

2.3 Definitions and Interpretations

In addition to words defined in the text of the Contract Documents, the definitions and interpretations set out in Schedule 1 to this Contract shall apply to all of the Contract Documents.

ARTICLE 3
PAYMENT

3.1 Applications for Payment

3.1.1. The Contractor shall submit to the Owner by the 20th day of each month or the first Business Day prior if the 20th of the month falls on a weekend or a statutory holiday (but not more than once a month) the amount claimed for payment in respect of the previous month. The amount claimed shall be for that amount of the Contract Price which is proportionate to the work performed to the last day of the payment period.

3.1.2 The Contractor may only claim payment for materials or products that have been delivered to the *Place of the Work* and that is completely incorporated into the *Work* at the time a claim is made. Until then, such materials or products remain at the risk of the *Contractor*, even if title to same has passed to the *Owner*. For example, and without limitation, materials on order, or held at the *Contractor's* yard are not considered as installed or complete, may not be claimed, and shall not be considered for payment certification purposes.

3.1.3 In the event that any payment is certified on the basis of an incorrect assessment of the proportionate share of work performed, such error shall be corrected in the following month or months until the amount of the Contract Price paid is proportionate to the actual work performed.

3.2 Contents of Application for Payment

An application for payment shall be accompanied by the following supporting documentation:

3.2.1 A statement requesting payment based on the Schedule attached as Schedule "B" setting out the amount claimed and supporting evidence, broken down among divisions or as a schedule of values, as the Owner may request, as well as the amount expected to be retained in accordance with Section 4 of this Contract ("**Holdback**").

3.2.2 with the exception of the first application for payment, a statutory declaration signed by the Contractor stating that:

- .1 all accounts for labour, products, machinery, equipment, services and other indebtedness which may have been incurred by the Contractor with respect to the Contract Work have been paid in full, except statutory holdback monies properly retained; and
- .2 it has received no notice of lien under applicable lien legislation and is aware of no liens that may still be preserved against the Contractor.

3.2.3 a Workplace Safety and Insurance Board Certificate stating that the Contractor is in good standing with the Workplace Safety and Insurance Board and that all assessments have been paid by the Contractor to the date of such certificate.

3.3 Set Off Rights

Any payment due to the Contractor may be set off against the cost incurred or to be incurred by the Owner in respect of deficient or defective Contract Work not properly remedied, materials or labour not paid for, or any lien registered or filed against the Place of Work in respect of the Contract Work.

3.4 Payment of Amount Certified

Subject to the provisions of this Article 3, payment in respect of the Contract Work in the amount certified shall be made to the Contractor on the 1st day of the next complete month following the application for payment. For example, if the application for the payment is made on the 20th day of October, payment will be made by the 1st day of December. Certification of the amount payable shall either be completed by the Owner, or an entity designated by it as payment certifier. In the event the Owner designates a payment certifier, it shall so notify the Contractor in writing.

In the event of a dispute, the dispute will be resolved in accordance with the Dispute Resolution Mechanism set out in Schedule "D" to this Contract. For clarity, all amounts not in dispute will be paid in accordance with this section.

ARTICLE 4 HOLDBACK

4.1 Holdback

The Owner shall retain holdback, as required by the *Construction Lien Act* (Ontario).

4.2 Substantial Performance of the Work

When the Contractor considers that Substantial Performance of the Contract Work has been achieved in accordance with the *Construction Lien Act* (Ontario), the Contractor shall deliver to the Owner a comprehensive list of items to be completed or corrected, together with a written application for payment of the holdback amount and a statutory declaration stating that:

- (i) any and all accounts for labour, subcontracts, products or otherwise, and other indebtedness which may have been incurred by the Contractor in the Substantial Performance of the Contract Work, and for which the Owner might in any way be held responsible, have been paid in full, except for amounts properly retained as a holdback or identified as being in dispute; and
- (ii) the Contractor has received no notice of lien under applicable lien legislation and is aware of no liens that may still be preserved against the Contractor.

Failure to include an item on the list of items to be completed or corrected does not alter the responsibility of the Contractor to complete the Contract Work.

4.3 Certification of Substantial Performance

Upon receipt of a satisfactory application for review to establish Substantial Performance, the Owner shall review the Contract Work within 15 Days. If satisfied that Substantial Performance has been achieved in accordance with the *Construction Lien Act* (Ontario) and the requirements of Section 4.2 have been met, the Owner and (if required) the Contractor will issue and, if necessary, publish, a certificate stating the date of Substantial Performance.

4.4 Payment of Holdback

The Owner shall pay the Contractor the amount of the holdback less any holdback for finishing work (as contemplated in the *Construction Lien Act* (Ontario)) on the first Business Day following the expiration of all relevant lien periods stipulated in the *Construction Lien Act* (Ontario). The Owner may retain out of the holdback amount any sums required by law to satisfy any liens against the Contract Work or other third party monetary claims against the Contractor which are enforceable against the Owner. Immediately thereafter the Contractor shall establish a date for final completion of the Contract Work.

4.5 Final Completion

When the Contractor considers that the Contract Work is completed, the Contractor shall submit an application for final payment. The Owner will, no later than ten (10) Days after the receipt of an application for final payment, review the Contract Work to verify the validity of the application and advise the Contractor in writing that the application is valid or give reasons why it is not valid. When the

Owner considers the requirements of Section 4.6 to be satisfied and the Contractor's application for final payment valid, the Owner will promptly issue a final certificate for payment and, subject to the provision of a WSIB clearance letter, shall pay the Contractor the unpaid balance of the Contract Price in accordance with this Agreement within sixty (60) Days after the issuance of the final certificate for payment.

4.6 Conditions Precedent

The following are conditions precedent to the issuance by the Owner of a certificate for final payment:

- (a) all Contract Work shall be complete, including the correction of all deficiencies to the satisfaction of the Owner;
- (b) all required drawings (including as-built drawings), guarantees, affidavits, releases, bonds and waivers shall have been received by the Owner from the Contractor;
- (c) where applicable, the Owner shall have received from the Contractor all permits, licenses, approvals, certificates and authorizations required by any Governmental Authority having jurisdiction over the Contract Work. This may include releases or clearances from the Workplace Safety and Insurance Board. For clarity, the Owner will provide the Contractor with such authorizations as may be necessary to make application for such permits or licenses;
- (d) where applicable, all manufacturers' guarantees, operating manuals, instructions, calibration sheets, operating tools, and replacement parts shall have been received by the Owner and the Contractor shall have completed (or scheduled for completion to the satisfaction of the Owner) all required commissioning and training of the Owner's personnel in respect of the Contract Work; and
- (e) a declaration of the last supply by the Contractor prescribed in subsection 31(5) of the *Construction Lien Act* (Ontario)(Form 5).

ARTICLE 5 **GENERAL**

5.1 Notices

- 5.1.1 Wherever in this Contract provision is made for the giving, making or issuing of any notice, endorsement, consent, request, approval certificate, report or determination by any person (a "**Notice**") unless otherwise specified, such Notice will be in writing and will be duly given if signed by or on behalf of a duly authorized officer of the person giving the Notice, and (i) personally delivered to, or (ii) sent by facsimile transmission to addresses set out below. Any party may change its address or facsimile number for Notice to another address or facsimile number by prior Notice to the other party.

OWNER	CONTRACTOR
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5.1.2 Any Notice will be deemed to have been received if sent by personal delivery, when delivered; and, if sent by facsimile, on the Day of transmittal if sent during normal business hours, and otherwise on the next following Business Day.

5.2 General

5.2.1 - **Governing Law** - This Contract and all work carried out under it will be governed by and construed in all respects in accordance with the laws of the Province of Ontario and the laws of Canada applicable therein.

5.2.2 - **No Amendment** - No amendment, modification or supplement to this Contract will be binding unless it is in writing and signed by the duly authorized representative(s) of each of the parties.

5.2.3 - **Time of Essence** - Time shall be of the essence in this Contract and every part hereof and of the Contract Documents. In the event of any extension of time by a party for the performance of an obligation by the other party under this Contract, time shall continue to remain of the essence hereof notwithstanding such extension.

5.2.4 **Assignment** - The Contractor shall not be entitled to transfer or assign this Contract, directly or indirectly, either in whole or in part to any person without the prior written consent of the Owner.

5.2.5 **Relationship of the Parties** - Nothing herein shall be construed so as to make the Contractor a partner, agent or joint venture with or of the Owner.

5.2.6 **Succession** - This Contract shall enure to the benefit of and be binding upon the parties hereto and their respective heirs, executors, administrators, successors, permitted transferees and permitted assigns.

IN WITNESS WHEREOF the Owner and the Contractor have executed this Contract.

[OWNER]

[CONTRACTOR]

Per: _____

Per: _____

Name:

Name:

Title:

Title:

I have authority to bind the Corporation

I/We have authority to bind the Corporation

SCHEDULE 1

DEFINITIONS AND INTERPRETATIONS

DEFINITIONS

1. For the purposes of this Contract and all Schedules, the following terms when capitalized have the following meanings:

1.1 **“Agreement”** or **“Contract”** means the undertaking by the parties to perform their respective duties, responsibilities, and obligations as set out in the *Contract Documents* and represents the entire Contract between the parties.

1.2 **“Business Day”** means any day other than a Saturday, a Sunday, a statutory holiday in the Province of Ontario or any day on which banks are not open for business in the City of Toronto, Ontario.

1.3 **“Change Order”** means a written amendment to the Contract issued by the Owner setting out: (a) the required change in the Contract Work; and (b) the extent of the adjustment in the Construction Schedule and Contract Price, if any.

1.4 **“Claims”** means all damages, losses, liabilities, claims, actions, costs, expenses (including the cost of legal and/or professional services, with legal costs on a substantial indemnity scale), proceedings, demands and charges.

1.5 **“Contract Documents”** means those documents listed in Article 2 – Contract Documents and amendments agreed upon by the parties.

1.6 **“Contract Work”** means the scope of work described in Schedule "A" to this Contract, and all labour, materials and services necessary to complete the Contract Work, and all items set forth in, required by or reasonable inferable from and/or necessary to produce the results intended by the Contract Documents in order to fully complete the Contract Work.

1.7 **“Day”** means a calendar day of 24 hours measured from midnight to the next midnight. When any period of time is referred to in the Contract Documents by Days, it will be computed to exclude the first and include the last Day of such period. If the last Day of any such period falls on a Saturday or Sunday or statutory holiday in the Province of Ontario, such Day will be omitted from the computation.

1.8 **“Dispute Resolution Mechanism”** means the procedure set out in Schedule D.

1.9 **“Environmental Laws”** means all Laws and Regulations relating to the protection of the environment, environmental assessment, plant, animal or human health, including occupational health, management of waste and safety and transportation of dangerous goods.

1.10 **“Governmental Authority”** means any federal, provincial, territorial, regional, municipal, or local governmental authority, quasi-governmental authority, court government or self-regulatory organization, commission, board, tribunal, or any regulatory administrative or other agency, or a

political or other subdivision, department or branch of any of the foregoing, having jurisdiction in any way over or in respect of any aspect of the performance of the Contract.

1.11 **“Hazardous Substance”** means, but is not limited to any solid, liquid, gas, odour, heat, sound, vibration, radiation or other substance or emission which is a contaminant, pollutant, dangerous substance, toxic substance, hazardous waste, toxic waste, hazardous material or hazardous substance which is or becomes regulated by Environmental Laws or which is classified as hazardous or toxic under Environmental Laws.

1.12 **“Laws and Regulations”** means any and all requirements under or prescribed by the common law and the law of equity and any enactments, statutes, regulations, laws, court orders or judgments, decrees, writs, administrative interpretations, ordinances, orders in council, by-laws, codes (including design and construction codes), orders, injunctions, directives, guidelines, rules or policies of any Governmental Authority affecting, applicable to or otherwise relating to any of the parties, the Place of Work, the Contract Work, or any part thereof or the use thereof.

1.13 **“Place of Work”** means the designated site of the Contract Work, being:
6550 / 6600 Kalar Rd., Niagara Falls, ON L2H 2T4

1.14 **“Sole Discretion”** means sole, absolute and unfettered discretion which may be arbitrarily exercised and in respect of the exercise of which it is not necessary to provide any explanation or rationale whatsoever.

1.15 **“Substantial Performance”** is as defined in the *Construction Lien Act* (Ontario).

1.16 **“WHMIS”** means the system for the labelling and warning of Hazardous Substances used in the workplace, commonly referred to as a Workplace Hazardous Materials Information System, prescribed by Laws and Regulations over the delivery, storage and use of Hazardous substances in the Province of Ontario.

2. INTERPRETATION OF CONTRACT DOCUMENTS

Unless expressly provided otherwise herein, this Contract will be interpreted according to the following provisions:

2.1 The table of contents, heading and sub-heading, marginal notes and references to them in the Contract are for convenience of reference only, and shall not be taken into consideration in the interpretation or construction of, or affect the meaning of, the Contract.

2.2 All references to any statute or statutory provision (including any subordinate legislation) include any statute or statutory provision which amends, extends, consolidates or replaced by the same and include any orders, regulations, by-laws, ordinances, codes of practice, instruments or other subordinate legislation.

2.3 Words importing the singular include the plural and vice versa; Words importing a particular gender include all genders.

- 2.4 Any requirement for any thing or action to be “in accordance with” or “in compliance with” or “pursuant to” any standard, code, specification, guideline or other requirement or stipulation means that such thing or action is to exceed or at least equal that standard, code, specification, guideline or other requirement or stipulation.
- 2.5 The words of the Contract are to be given their natural meaning. The parties have had the opportunity to take legal advice on the Contract and no term is, therefore, to be construed *contra proferentum*.
- 2.6 A reference to persons for whom a party is in law responsible includes that party’s employees, agents, Contractors and Contractors of any tier, advisors and any other persons for whom the party is in law responsible or over whom that party could reasonably be expected to exercise control.
- 2.7 If the time for doing an act falls or expires on a Day that is not a Business Day, the time for doing such act will be extended to the next following Business Day.
- 2.8 Each provision of the Contract will be valid and enforceable to the fullest extent permitted by law. If any provision of the Contract is held to be invalid, unenforceable or illegal to any extent, such provision may be severed and such invalidity, unenforceability or illegality will not prejudice or affect the validity, enforceability and legality of the remaining provisions of the Contract. If any such provision of the Contract is held to be invalid, unenforceable or illegal, the parties will promptly endeavour in good faith to negotiate new provisions to eliminate such invalidity, unenforceability or illegality and to restore the Contract as nearly as possible to its original intent and effect.
- 2.9 Words and abbreviations that have well known technical or trade meanings are used in the Contract Documents in accordance with such recognized meanings.
- 2.10 No implied terms or obligations of any kind by or on behalf of the Owner shall arise from anything in the Contract and the express covenants and agreements therein contained and made by the Owner are the only covenants and agreements upon which any rights against the Owner are to be founded.
- 2.11 Except as expressly provided in the Contract Documents, the duties and obligations imposed by the *Contract Documents* and the rights and remedies available thereunder shall be in addition to and not a limitation of any duties, obligations, rights, and remedies otherwise imposed or available by law.
- 2.12 No action or failure to act by the Owner or Contractor shall constitute a waiver of any right or duty afforded either of them under the Contract, nor shall any such action or failure to act constitute an approval of or acquiescence in any breach thereunder, except as may be specifically agreed in writing. No payment made under this Contract shall be conclusive evidence of the performance of this Contract either in whole or in part, and no payment shall be construed as an acceptance of defective or improper work.

GENERAL CONDITIONS

GC 1.1 CONTRACT DOCUMENTS

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

1.1.2 In the event of discrepancies or conflicts between Contract Documents, the following order of priority, from highest to lowest, shall apply.

- .1 any amendment of the Contract that is made in accordance with the provisions of the Contract;
- .2 the executed Agreement;
- .3 Schedule 1 to the Contract entitled "Definitions and Interpretations";
- .4 Supplementary Conditions (if any);
- .5 the document entitled "General conditions";
- .6 the Engineering Report; and
- .7 the Schedules to the General Conditions in the following order:

Schedule A – Scope of Contract Work
Schedule B – Schedule
Schedule C – Insurance Requirements
Schedule D – Dispute Resolution

1.1.3 Interpreting the Contract Documents:

- .1 Drawings of larger scale shall govern over those of smaller scale of the same date;
- .2 figured dimensions shown on a drawing shall govern even though they may differ from dimensions scaled on the same drawing; and
- .3 notwithstanding the foregoing, documents of later date shall always govern.

1.1.4 The Contractor shall review the *Contract Documents* and shall report promptly to the *Owner* any error, inconsistency, or omission the Contractor may discover. Such review by the Contractor shall be to the best of the Contractor's knowledge, information, and belief and in making such review the Contractor does not assume any responsibility to the *Owner* or the *Consultant* for the accuracy of the review. If the Contractor does discover any error, inconsistency, or omission in the *Contract Documents*, the Contractor shall not proceed with the work affected until the Contractor has received corrected or missing information from the *Owner*

GC 1.2 USE OF DOCUMENTS

1.2.1 All documents and data furnished by the *Owner* to the Contractor are and shall remain the property of the *Owner*, with the exception of the signed contract sets belonging to each party to the Contract. The Contractor may, at its cost, copy, use and communicate any such documents for the purposes of the Contract. Such documents shall not, without the written authorization of the *Owner*, be used, copied or communicated to a third party by the Contractor, except as necessary for the purposes of the Contract.

GC 1.3 REFERENCE STANDARDS

- 1.3.1 Except as may be otherwise specifically provided in the Contract Documents, reference to standards, specifications manuals or codes of any technical society, organization or association, manufacturer's instructions or other reference documents or Laws and Regulations of any Governmental Authority, whether explicit or implied, shall mean the most current edition of such standards, specifications, manuals, codes, instructions or Laws and Regulations in effect on the date hereof, whether or not the current edition is specified.
- 1.3.2 Work will be carried out in accordance with the standards, practices, methods and procedures conforming to Laws and Regulations and will demonstrate the degree of skill and care, diligence prudence and foresight which would reasonably and ordinarily be expected from a qualified, skilled and experienced person engaged in a similar type of undertaking under the same or similar circumstances.

GC 2.1 CHANGES TO THE CONTRACT WORK AND DELAYS

- 2.1.1 The Owner shall not be responsible for any changes in the Contract Work unless the same have been authorized by a written Change Order signed by the Owner. If the Contractor is of the opinion that a change in the Contract Work is required, it shall submit to the Owner a written request for a change within three (3) Business Days of becoming aware of the event or circumstances giving rise to the change, clearly setting out required changes to the construction schedule and/or the Contract Price. Requests for changes to the Contract Price that are not submitted in a timely manner or that are not submitted until completion of the Contract Work will not be considered for compensation. No changes in the Contract Work shall be implemented without a Change Order and no payment shall be made unless and until the contemplated work is completed. No representations, warranties or agreements by the Owner, whether written or oral, shall constitute a waiver of the requirement of a written Change Order signed by the Owner.
- 2.1.2 If the Contractor is delayed in the performance of a critical path activity by
- .1 labour disputes, strikes, lock-outs (including lock-outs decreed or recommended for its members by a recognized Contractors' association, of which the Contractor is a member or to which the Contractor is otherwise bound),
 - .2 fire, unusual delay by common carriers or unavoidable casualties,
 - .3 abnormally adverse weather conditions, or
 - .4 any other cause beyond the Contractor's control, other than one resulting from a default of or breach of Contract by the Contractor,

then the time for performance of the Contract Work shall be extended for such reasonable time as the *Owner* may agree. The extension of time shall not be less than the time lost as the result of the event causing the delay, unless the Contractor agrees to a shorter extension. The Contractor shall not be entitled to payment for costs incurred by such delays unless such delays result from actions by the *Owner*. Notwithstanding the foregoing, the Contractor shall use its best efforts to minimize the impact of such event upon the performance of the Contract Work and the construction schedule.

- 2.1.3 No extension shall be made for delay unless notice in writing of the cause of delay is given to the Owner not later than 2 Business Days after the commencement of delay.
- 2.1.4 Extension of the construction schedule shall be deemed to be in full and final satisfaction of any Claims whatsoever sustained or incurred by the Contractor arising by reason of any delay caused by climatic or other conditions reasonably beyond the control of the Contractor.
- 2.1.5 If the Contract Work becomes behind schedule for reasons other than those contemplated in this Section, the Contractor shall use its best efforts to bring the Contract Work back on schedule, at its sole cost and expense, including by increasing its labour force and equipment and expediting of the Contract Work, or working overtime as may be necessary to keep the Contract Work on schedule.

GC 3.1 PERMITS, LICENCES AND APPROVALS

- 3.1.1 The Contractor shall be responsible to obtain all permits required in connection with the Contract Work, the cost of which is included in the Contract Price. The Contractor will provide the Owner with copies of all permits obtained in connection with the Work. The Contractor shall give the required notices in a timely fashion and comply with all applicable Laws and Regulations.

GC 4.1 SITE SECURITY

- 4.1.1 In the event the Contract Work includes sub-surface work, before commencing any work, the Contractor shall determine the location of all underground utilities and structures located at, on or under the Place of Work.
- 4.1.2 The *Contract Price* shall include all necessary tarps and protective equipment required to prevent damage to any existing monitoring wells, adjacent property, or existing trees.
- 4.1.3 Should the Contractor in the performance of the Contract damage, or cause environmental contamination of, the Work, the Owner's property, or property adjacent to the Place of Work, the Contractor shall be responsible for making good such damage or environmental contamination to the satisfaction of the Owner, at his Sole Discretion, at the Contractor's expense.

GC 5.1 SITE SAFETY

- 5.1.1 The Contractor shall provide, erect and maintain proper warning signals, signs, lights, barricades, fences, flag persons and police supervision, if required, on and in respect to the Contract Work and shall take all other necessary precautions for the protection of the work and the safety of the public, the works and other persons carrying out the Contract Work, all in conformance with the *Occupational Health and Safety Act* (Ontario). The Contractor shall be responsible for receiving and safeguarding materials delivered to or for the Contract Work and the Owner shall not be in any way responsible therefor.
- 5.1.2 The Contractor shall be solely responsible for construction safety at the Place or the Work and for compliance with the rules, regulations, and practices required by the applicable construction

health and safety legislation and shall be responsible for initiating, maintaining, and supervising all safety precautions and programs in connection with the performance of the Work. The Contractor will submit a Health and Safety Plan to the *Owner* in a timely fashion.

- 5.1.3 The Contractor acknowledges that it is intended that it will be the “constructor” within the meaning of the *Occupational Health and Safety Act (Ontario)* and the Contractor undertakes to carry out the duties and responsibilities of the constructor with respect to the Work. In the event that the Owner is deemed to be the “constructor”, the Contractor agrees to fulfill, on behalf of the Owner, all of the obligations and responsibilities of the “constructor” within the meaning of the *Occupational Health and Safety Act (Ontario)*. In this regard, if the Contractor allows any person to have access to the Place of Work, the Contractor shall be responsible for all health and safety issues related to that person. The Contractor shall indemnify and hold harmless the Owner from any liability for claims, damages or penalties, including reasonable legal fees to defend any offences, arising from the Contractor’s failure to comply with the duties, responsibilities and obligations of the "constructor" under the *Occupational Health and Safety Act (Ontario)*.
- 5.1.4 The Owner agrees to contractually obligate any other Contractors to report to the Contractor before entering the Place of Work, and to comply with the Contractor’s health and safety instructions while on the Place of Work.

GC 6.1 HAZARDOUS SUBSTANCES

- 6.1.1 The Contractor agrees to comply with applicable Environmental Laws and any obligation to obtain any approval or permit required under Environmental Laws in respect of the Contract Work, and further agrees to handle and dispose of all materials in accordance with such Laws and Regulations.
- 6.1.2 The Contractor shall provide the Owner with complete documentation as required by WHMIS, regarding Hazardous Substances to be used to complete the Contract Work, in a timely fashion. The Contractor’s employees shall be trained in the implementation of WHMIS.

GC7.1 OWNER’S RIGHT TO PERFORM CONTRACT OR TO TERMINATE CONTRACT

- 7.1.1 If the Contractor should become bankrupt or insolvent or makes a general assignment for the benefit of creditors because of its insolvency; or if a receiver is appointed because of its insolvency; or if the Contractor transfers, assigns or otherwise disposes of its interest in the Contract or any part thereof without the written authority of the Owner or if the Contractor ceases the Contract Work for a period of 30 Days or more (other than for delays for which an extension of the construction schedule is permitted under this Contract); or if the Contractor fails to comply immediately with a direction of the Owner under GC 6.1 Hazardous Substances, the Owner, without prejudice to any other right or remedy it may have, may by giving the Contractor or the receiver or trustee in bankruptcy written notice:

- .1 terminate this Contract; or

- .2 take all or any part of the Contract Work out of the Contractor's hands and employ such means as it may see fit to complete the Contract Work and may deduct the cost thereof from the Contract Price due or that may become due to the Contractor hereunder.
- 7.1.2 If the Contractor should neglect to prosecute the Contract Work properly, or otherwise fails to comply with the requirements of this Contract, the Owner may notify the Contractor in writing that it is in default of its contractual obligations and instruct it to correct the default within 5 Business Days of the receipt of such notice or where immediate action is required, in such lesser time as may be specified in the notice.
- 7.1.3 If the default by the Contractor cannot be corrected within 5 Business Days or lesser time specified in the notice from the Owner, where immediate action is required, the Contractor shall be in compliance with the Owner's instructions if it:
- .1 immediately commences and thereafter diligently continues to remedy the breach and to mitigate any adverse effects on the Owner and the performance of its obligations hereunder;
 - .2 puts forward, within 3 Days of receipt of notice of such breach from the Owner, a reasonable plan and schedule acceptable to the Owner, acting reasonably, for diligently remedying the breach and mitigating its effect, which plan and schedule shall specify in reasonable detail the manner in which and the latest date by which such breach is proposed to be remedied, which latest date shall, in any event be within 45 Days of notice of such breach, or if such breach is not capable of being rectified in such period, then such longer period as is reasonable in the circumstances; and
 - .3 thereafter, performs its obligations to achieve all elements of such plan and schedule in accordance with its terms within the time for the performance of its obligation thereunder.
- 7.1.4 If the Contractor fails to correct the default in the manner set out above, the Owner may, without prejudice to any other right or remedy it may have, correct such default and deduct the cost thereof from the Contract Price due or that may become due to the Contractor or terminate this Contract, in whole or in part, upon notice to the Contractor having immediate effect.
- 7.1.5 If the Owner terminates this Contract, the Owner shall be entitled to;
- .1 take possession of the premises and all materials, equipment, tools, construction equipment and machinery owned by the Contractor and finish the Contract Work by whatever method it may consider expedient;
 - .2 assume and become liable for all obligations, commitments and unliquidated claims that the Contractor may have, in good faith, and with the Owner's approval, undertaken or incurred in connection with the Contract Work;

- .3 withhold further payment to the Contractor until final certificate for payment is issued; and
- .4 charge the Contractor the amount by which the full cost of completing the Contract Work, as certified by an independent cost consultant, together with compensation to the cost consultant for the cost consultant's services and a reasonable allowance as determined by the Owner to cover the cost of corrections to the Contract Work, exceeds the unpaid balance of the Contract Price.

7.1.6 The Contractor shall execute and deliver all such papers and take such action, including the legal assignment of its contractual rights, as the Owner may require for the purpose of fully vesting in itself the rights and benefits of the Contractor under the obligations or commitments to be assumed by the Owner.

GC8.1 INDEMNIFICATION BY CONTRACTOR

8.1.1 The Contractor shall indemnify the Owner, and their respective directors, officers, servants, contractors, employees and their respective successors and assigns (collectively, the "Owner Indemnified Parties"), and save them harmless from and against any and all Claims made against or suffered or incurred by the Owner Indemnified Parties, directly or indirectly and which arise from or are connected with:

- .1 any failure or alleged failure by the Contractor (or anyone for whom the Contractor may be responsible) to comply with any applicable Laws and Regulations in the performance of its obligations under this Contract;
- .2 any breach by the Contractor of any of the provisions of this Contract; and
- .3 any wilful act, omission or negligence of the Contractor (or anyone for whom the Contractor may be responsible in law) or any of their respective directors, officers, servants, contractors or employees.

GC9.1 THIRD PARTY CLAIMS

9.1.1 The parties shall respond to and deal with all third-party Claims in a prompt, courteous and efficient manner. The parties shall contact all third-party claimants and acknowledge receipt of all third-party Claims by telephone within 1 Business Day, and in writing within 3 Business Days upon being notified in writing of the third-party Claim. Each party shall immediately upon receipt of any third-party Claim, provide the other with notice of the third-party Claim and copies of all correspondence between such party or its agents and the third-party claimant.

GC10.1 INSURANCE

10.1.1 The Contractor shall comply with the insurance requirements set out in Schedule "C" to this contract.

GC 11.1 OTHER PROVISIONS

CONSTRUCTION LIENS

11.1.1 In the event that a construction lien (other than a lien by the Contractor) is registered arising from the performance of the Work, the Contractor shall promptly, and in any event within ten (10) Working Days, at its sole expense, vacate or discharge the lien from title to the premises. If the lien is merely vacated, the Contractor shall undertake the Owner's defence of any subsequent lawsuit commenced in respect of the lien at the Contractor's sole expense. In the event that the Owner determines, acting reasonably, that the Contractor is not satisfactorily defending the Owner's interests, the Owner shall defend the claim and the Contractor shall indemnify the Owner for all costs thereof, including, without limitation, legal fees on a solicitor and client basis.

11.1.2 In the event that the Contractor fails or refuses to vacate or discharge a construction lien, within the time prescribed above, the Owner shall, at its option, be entitled to take all steps necessary to vacate and/or discharge the lien, and all costs incurred by the Owner in so doing (including, without limitation, legal fees on a solicitor and client basis) shall be for the account of the Contractor, and the Owner may deduct such amounts from amounts otherwise owing to the Contractor.

Dust and Mud Control

11.1.3 The Contractor will be solely responsible for controlling dust nuisance resulting from their operations, both within the right-of-way and elsewhere. The Contractor shall apply water and/or calcium for the prevention of dust nuisance or hazard to the public. Should the Contractor refuse or neglect to carry out proper dust control, the Owner may authorize the work to be carried out by other persons, and the cost of such work shall be deducted from any payments to the Contractor.

Shop Drawings

11.1.4 The Contractor shall provide all shop drawings to the Owner in paper and electronic format and shall, upon instruction from the Owner, or its designate, make changes to the Shop Drawings as required.

Statements

11.1.5 - The Contractor shall not make any statement with respect to the Contract or the procurement process leading to the Contract without the written consent of the Owner, which may be unreasonably withheld.

Confidentiality

11.1.6 - All information provided by or obtained from the Owner in any form in connection with this Contract:

- i. is the sole property of the Owner and must be treated as confidential;

- ii. must not be disclosed without prior written authorization from the Owner; and
- iii. shall be returned by the Contractor to the Owner immediately upon the request of the Owner.

Confidential Information shall not include:

- i. information generally available to the public other than as a result of a breach of these confidentiality obligations;
- ii. information that becomes available to either party through no breach of any contract or law;
- iii. information that either party develops independent of the information provided to it by the other party; or
- iv. information that is required to be disclosed by any applicable Laws and Regulations.

SCHEDULE A –THE CONTRACT WORK

Subject to Section 1.1 of this Contract, the Contract Work shall consist of the following, which Work is to be performed for the Contract Price:

Contract Work

[INSERT DESCRIPTION OF CONTRACT WORK]

SCHEDULE B – SCHEDULE

A detailed schedule, with a completion date of November 15, 2018 shall be provided at the kick-off meeting for the Owner's review and approval.

SCHEDULE C – INSURANCE REQUIREMENTS

Insurance

- a) **General Liability Insurance:** The Contractor shall obtain General Liability Insurance in its name and will add the Owner as an additional insured to the General Liability Insurance policy. The limits of this insurance are set at **Five Million Dollars (\$5,000,000.00)** inclusive per occurrence for bodily injury and property damage including loss of use thereof and Ten Million in Aggregate. The policy will remain in effect from the effective date of this contract and terminate upon final payment.
- b) **Automobile Insurance:** The Contractor shall maintain automobile insurance acceptable to the Owner with a third party liability limit of not less than **Two Million Dollars (\$2,000,000.00)** inclusive per occurrence.
- c) Such policies shall:
 - i) Be issued by an insurance company licensed to conduct business in the Province of Ontario.
 - ii) Constitute primary coverage and not merely coverage in excess of, or co-coverage with, any insurance otherwise available to the Owner.
 - iii) Contain cross-liability and severability of interest provisions.
 - iv) Be endorsed to provide the Owner with at least thirty (30) days' prior written notice of any cancellation or adverse change in coverage other than cancellation for non-payment of premium, in which case the advance notice time shall be ten (10) days.
 - v) Name the Owner as an additional insured.
- d) Upon request, the Contractor shall provide the Owner with a certificate of the insurance coverage described in paragraph (a) and (b).

SCHEDULE D – DISPUTE RESOLUTION

1. If a dispute arises under the Contract, the claimant shall give written notice of such dispute to the other party.
2. A meeting shall be held promptly between the parties, attended by individuals with decision-making authority regarding the dispute, to attempt in good faith to negotiate a resolution of the dispute. The parties shall make frank, candid and timely disclosure of relevant facts, information and documents to facilitate these discussions.
3. If, within 10 business days after such a meeting, the parties have not succeeded in negotiating a resolution of the dispute, they agree to submit the dispute to mediation and to bear equally the costs of the mediation.
4. The parties agree to participate in good faith in the mediation and negotiations relating thereto for a period of 10 business days. If the parties are not successful in resolving the dispute through mediation or if the parties have been unable to agree on a mutually acceptable mediator within the time allotted in this subparagraph, then the parties, if they agree, may refer the dispute to be finally resolved by arbitration before a single arbitrator in accordance with the Arbitrations Act (Ontario). An appeal from an award made in an arbitration may only be made in respect of errors of law or jurisdiction. The place of arbitration shall Toronto, Ontario. In the event the parties do not agree to arbitrate, either party may pursue its rights at law.
5. Unless both parties agree, the Contractor shall not stop the Work, or any part of the Work pending the resolution of any dispute under the Contract between the Parties.
6. The Contractor shall ensure that any subcontract requires the subcontractor to cooperate and participate in any mediation and/or arbitration between the Owner and the Contractor.”