

**ONTARIO
SUPERIOR COURT OF JUSTICE**

BETWEEN :

R.W. TOMLINSON LIMITED o/a CUMBERLAND READY MIX

Plaintiffs

-and-

LOUIS W. BRAY CONSTRUCTION LIMITED

Defendants

BETWEEN:

LOUIS W. BRAY CONSTRUCTION LIMITED

**Plaintiff by
counterclaim**

-and-

**R.W. TOMLINSON LIMITED o/a CUMBERLAND READY MIX
and CITY OF OTTAWA**

**Defendants to
the counterclaim**

-and-

GENIVAR INC., also known as WSI CANADA INC.

The Third Party

**STATEMENT OF DEFENCE TO FRESH AS
AMENDED THIRD PARTY CLAIM OF THE CITY OF OTTAWA**

1. The third party, GENIVAR INC. (also referred to as WSI Canada Inc.) is presently known as WSP Canada Inc. (and for the purpose of this defence is hereinafter referred to as "GENIVAR").
2. GENIVAR admits the allegations contained in paragraphs 3, 8, 21, 22 and 24 of the Fresh As Amended Third Party Claim of the City of Ottawa ("Third Party Claim").
3. GENIVAR has no or insufficient knowledge of the allegations contained in:
 - (a) paragraph 5, except that it admits that the City of Ottawa ("the City") retained Louis W. Bray Construction Limited ("Bray") as the general contractor for the bridge project;
 - (b) paragraph 6, except that it admits that Bray retained R.W. Tomlinson Limited o/a Cumberland Ready Mix ("Cumberland") to supply the concrete for the tower component of the bridge;
 - (c) paragraphs 14, 15, 19, 41 and 42 of the Third Party Claim.

OVERVIEW

4. GENIVAR as a result of its experience and expertise was retained by the City to design the "Airport Parkway Bridge", also referred to as the design of the Hunt Club Community Pathway Connection and the "Hunt Club Bridge", hereinafter all collectively referred to as the "Project".
5. The City however did not retain GENIVAR for all Construction Administrative services it normally provides for this type of Project. The City acted as the Project Manager, Contract Administrator and managed the construction of the Project.

The City used its own in house engineers and professionals for all the day to day tasks for the project management and construction administration services.

6. The City retained Bray as the general contractor with no input from GENIVAR. In fact after GENIVAR saw the lack of expertise and skill of Bray and its subcontractors and trades, it raised concerns about Bray's qualification and experience to complete the Project. The City also expressed their concerns about Bray to GENIVAR however, despite these discussions and for reasons unknown to GENIVAR the City stubbornly continued to keep Bray on the Project. It was evident early on during construction, that Bray did not have the expertise or work plan in place to undertake the steel assembly fabrication and stay engagement procedure.
7. The Project initiation was delayed while under the sole control of the City for reasons completely unknown to GENIVAR. When the project was finally awarded to GENIVAR, the design phase was already several months behind schedule. GENIVAR delivered the design specifications to the City in accordance and within the design schedule required by the City. During the design phase, GENIVAR provided a construction schedule to the City and advised the City that the construction completion date needed to be extended to reflect the City's internal project start up delays, which occurred solely due to the actions and omissions of the City. The City stubbornly refused and the Project commenced with a construction schedule that from day one was impossible to meet.
8. Bray as part of its contract with the City was solely responsible for all the aspects of construction and given control over construction means, methods, techniques, sequences, and procedures and for all the work of its subcontractors, sub consultants and trades. The City and its employees assumed control over the coordination of the Project, construction administration, inspection of work and contract management. GENIVAR had no role in construction administration.

9. Bray and its sub trades including the fabricators were incompetent resulting in many construction deficiencies, substandard work, poor quality work and inordinate Project delays. These problems were further aggravated by the City's total failure to properly supervise the Project and Bray.
10. When the status of the Project became a political embarrassment to the City, it looked for someone to blame. Instead of casting blame on itself and Bray it tried to disparage GENIVAR.
11. The City retained outside consultants to try to find fault with the design of the Project. Despite numerous efforts and in breach of the Professional Engineering protocols no significant design errors or omissions were found in GENIVAR's design. However the City still chose to change the design even though it was proper and safe and asked GENIVAR to advise it on a new design selected by the City for no valid reason. When GENIVAR requested a re-design agreement for this new scope of work, the City wrongfully terminated its contract with GENIVAR. The City also started a campaign with the media to try and deflect its own incompetence onto GENIVAR by leaking false accusations, misquoting engineering reports and partial discussions during confidential meetings to the press in the hope that the press would centre its attention on GENIVAR even though the problems were solely caused by the City and its contractor Bray.

SPECIFICS OF THE DEFENCE

12. Unless specifically admitted, GENIVAR denies the allegations in each and every other paragraph of the Third Party Claim, subject to the clarifications set out in the following paragraphs.
13. In April 2010, the City issued a Request for Qualifications for the Project. On August 25, 2010, GENIVAR was retained to provide Engineer Design services for the Project in accordance with the terms of reference of the Request for Proposal No. 01910-92588-P28 ("RFP") issued on June 21, 2010 ("the Design Contract").

GENIVAR denies it was to provide “ongoing engineering advice and design services during construction” with respect to the Project.

14. Jan Podolak, Luc Monette and V.K.T. Dwivedi were the design engineers involved in the Project on behalf of GENIVAR. Angelo Renon was GENIVAR’s internal Project Manager and main client contact. Francois Lemay was not involved during the preliminary and detail design phase of the Project. Mr. Lemay only became involved with the Project in June 2013.
15. GENIVAR states that its role was limited by the Design Contract to provide design related services. The Design Contract states as follows:

“The City retains the Services of the Consultant and the Consultant hereby agrees to provide the Services described herein under the general direction and control of the City.”

“The City further acknowledges and agrees that the Consultant will not be held liable for any damages / losses of any kind or nature that may result from the use of inaccurate information or data provided to the Consultant by the City. The City agrees to accept full responsibility for the accuracy of all information and data that it provides to the Consultant.”

“The City further acknowledges and agrees that the Consultant cannot warrant the fitness of any records, documents or work product that are (i) incomplete due to early termination or suspension of this agreement; or (ii) altered, revised, amended, or modified without the consent of knowledge of the Consultant.”

16. A further mandate was requested of GENIVAR by the City on July 25, 2011, referenced as Engineering Services during Construction (“ESDC”). The ESDC was requested after construction of the Project had already been commenced by Bray and after the City had already appointed itself the Contract Administrator and inspector using the City’s own staff. Subsequent ESDC’s were requested of

GENIVAR in May 2012, September 2012 and May 2013. The ESDC's covered by these mandates were limited to:

- i) Review of shop drawings (civil, electrical and structural); - (assume 8 hours total/ week for 14 weeks);
- ii) Attend site meetings on a bi-weekly basis – (assume 8 meetings, 4 hours);
- iii) Respond to questions during construction (structural assume 5.5 hours/ week for 132 hours);
- iv) Structural inspection at key milestones (assume 15 days structural inspector work).

17. A Tender Package was assembled by the City following its own policies and guidelines. Drawings and technical specifications were provided by GENIVAR, and included in the Tender Package by the City. The Project schedule included in the Tender Documents was dictated by the City's Project Manager. The Tender package in its entirety was put together by the City and was prepared by the City and issued on May 24, 2011.
18. The original Design Contract and subsequent ESDCs of July 2011, May 2012, September 2012 and May 2013, included only the following tasks to be provided by GENIVAR:
 - a) Provide functional, preliminary and detail design for the Bridge, including all design drawings, specifications and schedule documents. GENIVAR was not requested to provide "studies". Pursuant to the City's own policies and procedures, the City prepared the Tender package, which included GENIVAR's design drawings and specifications. GENIVAR provided a cost estimate and schedule to the City's Project Manager. The City Project Manager then set the project completion dates as he saw fit disregarding GENIVAR's proposed construction timetable.
 - b) The services outlined in paragraph 16 as per the ESDCs.

- c) Professional Engineering Services for design and preparation of contract drawings however, illumination of the Pathway was not part of the Design Contract, but was requested by the City at a later date.
19. The following services were not within GENIVAR's scope of work:
- a) Project management assistance during construction was not part of the Design Contract or ESDCs requested by the City at any time; in fact, the City undertook all contract administration duties including the supply of a full-time inspector.
 - b) All surveys during the construction phase of the Project were the responsibility of Bray and the City's Contract Administrator and not the responsibility of GENIVAR.
20. GENIVAR did not have a central role in the construction of the Project. Bray and the City's Contract Administrators played central roles in the construction of the Project. There were no actions by GENIVAR that caused delays or resulted in the completion date not being met. GENIVAR did not breach its contract with the City.
21. GENIVAR answered all questions in a timely manner, provided insight and comments and all appropriate assistance throughout its involvement in the design of the Project and the City's further scope changes, to assist Bray and the City in the construction of the Project. Furthermore, GENIVAR met with Bray and the City at their every request.

FAILURES OF THE CITY and BRAY

22. The City was responsible for inspection of key milestones and quality assurance. It failed in this responsibility as it allowed Bray to install an unchecked, uncertified, warped and crooked assembly, which was hoisted and installed; after

learning of the non-compliance, the City failed to order Bray to remove the assembly and address the non-compliance issues.

23. The City was responsible for arranging and chairing all site meetings. The City often neglected to properly supervise and inspect the work of Bray and failed to properly advise GENIVAR of the state of construction and key milestones.
24. The City selected Bray as contractor even though it did not have the skill or past similar expertise to properly complete the Project as designed which was Bray's obligation in the contract it executed with the City. GENIVAR had no role in the choice of the contractor to build the Project. GENIVAR advised the City that Bray was not qualified and not have the experience and expertise to fulfill the requirements of the Project, despite this, the City continued to stubbornly employ Bray.

Phase One: The Lower Tower Pour

25. The lower tower had to be removed and re-poured due to the failure by Bray to follow specifications and its own shop drawings, which resulted in an inferior concrete product being used. Bray's own Condition Assessment Report identified numerous issues relating to poor materials and poor workmanship. The period of time from the detection of severe defects by the City and the release of the Condition Assessment Report by Bray's consultant, which included recommendations for the demolition of the lower portion of the tower, was more than 5 months. The City and Bray are both responsible for this delay.
26. GENIVAR set out the design specifications and ensured that the concrete proposed by Bray complied with the colour, strength and durability specifications.
27. GENIVAR was never provided with, nor did it review the actual mix composition of concrete used on the Project as this was provided only to the City. The City never provided the actual mix composition to GENIVAR.

28. GENIVAR states that if the mix composition did not meet the specifications set by it, the City is responsible for this deficiency. The placement rate, addition of special additives and rate of pour are the responsibility of Bray and its agents. The second attempt at pouring the lower tower undertaken by Bray was completed with no issues in relation to the concrete mix. The issue with the first pour was the use of defective concrete and its placement, the responsibility for which fully rests with Bray and the City.
29. GENIVAR set the specifications for the reinforcing steel (“rebar”) spacing and the permissible limits for that spacing as per its design. Bray was responsible for preparing all shop drawings outlining all the detailing of reinforcing and placement of reinforcing in conformance with GENIVAR’s design specifications. Thereafter, GENIVAR’s responsibility was to review the shop drawings prepared by Bray to ensure that it included all reinforcing steel specified. The City was responsible to ensure that Bray retained a Quality Verification Professional Engineer (“QVE”) that verified and ensured the field installed reinforcing steel and a certificate was issued. Once the certificate was received, the City was responsible for directing and permitting Bray to place the concrete.
30. GENIVAR states that the design spacing of the rebar on the Project was at all times in conformity with the *Canadian Highway Bridge Design Code, CAN/CSA-S6-00 (R2005)* (“Bridge Code”). GENIVAR in fact responded to a request from Bray regarding the constructability of the rebar placement on November 11, 2011. Bray was apparently satisfied with the response and explanation, and proceeded to finalize the rebar spacing and continued with the construction of the lower tower. Unfortunately, Bray and the City did not have the skill necessary to complete the assignment competently.

Phase Two: Stay Anchorage Assembly – Upper Tower

31. The design of the Project called for a stay anchorage assembly at the top of the tower. Bray was required to fabricate the steel anchorage dimensions in conformity with the shop drawings. If the steel anchorage had been fabricated correctly, it would be aligned by the use of surveying, and the construction could have proceeded smoothly.
32. Bray was responsible to manufacture the stay anchorage assembly to the tolerances specified and to install it square on top of the tower. The City's Contract Administrator failed to ensure that the stay anchorage assembly was manufactured to tolerances and inspected before placement. To GENIVAR's knowledge the City did not ensure that Bray performed the necessary QVE of the stay anchorage assembly as required by the Design Contract, pursuant to the City's General Provisions D-023. Rather, it allowed an unchecked and unverified stay anchorage assembly to be hoisted and installed.
33. In early 2013, Bray had to change the fabricator of the assembly due to fabrication issues. The second fabricator also encountered difficulty in fabricating the stay anchorage assembly and therefore the City was aware that the assembly may not be in conformity when it arrived on site. Furthermore, the City's Contract Administrator failed to make a reasonable, prudent and timely decision to remove the unsuitable assembly for verification and rectification once the deficiencies were noted. GENIVAR recommended to the City that the stay anchorage assembly be removed from the tower and properly rectified. The City did not follow GENIVAR's recommendation.
34. Bray's shop drawings indicated all fabrication angles to the 100th of a degree, which indicated to GENIVAR that Bray understood the degree of care and accuracy required for fabrication of the stay anchorage assembly at the time of the preparation of the shop drawings. However, Bray and its fabricator did not have the skill and expertise to fabricate in accordance with the design. With proper preparation, a qualified steel fabricator should not have had any difficulties to complete the stay anchorage assembly. As there was no QVE

undertaken, the City failed to determine whether in fact the stay anchorage assembly was properly fabricated before it was hoisted onto the tower.

THE CITY'S WRONGFUL TERMINATION OF GENIVAR'S SERVICES

35. On or about June 28, 2013, after 24 months of construction, the City chose to undertake a design review of the Project.
36. On June 28, 2013, the City decided to stop work on the stay alignment, which resulted in additional delays. It was not GENIVAR's decision to stop the work nor was it due to any actions by GENIVAR. At this juncture, the Project was already significantly behind schedule because of project management and construction issues. These delays and issues were not caused by GENIVAR but by Bray and the City.
37. The tone of the June 28, 2013, letter from the City to GENIVAR demonstrates that the City, despite the limited information in hand about the construction issues and concerns, had already prematurely concluded that the Project issues were the responsibility of GENIVAR.
38. GENIVAR states that the City is a very knowledgeable client which employs engineers at many different authoritative levels. The City ought to have known how to read, interpret and understand the limitations of Buckland & Taylor's comments and conclusions and that the City's decision to suspend work and later request design changes were in both instances, premature and unwarranted in light of the information available to the City.
39. The City did not follow proper engineering protocols in conducting an independent review. In fact the City often made unfounded allegations regarding GENIVAR's services based on these reviews which turned out to be erroneous and false. The initial Buckland & Taylor letter dated June 26, 2011 raised concerns, but the author of report carefully stated "*these comments were based upon a very brief review and should be seen as preliminary in nature.*"

40. GENIVAR again states that the City is a very knowledgeable client which employs engineers at many different authoritative levels. The City did not retain GENIVAR to complete the contract administration as the City had appointed its own internal qualified and knowledgeable Project Managers and Contract Administrators in bridge design to complete this Project.
41. During the summer months of June and August 2013, GENIVAR continued supplying the City with responses to all their requests and providing information so that the Project could proceed on a timely basis. GENIVAR was proactive in the independent design review process, offered its collaboration and meetings were attended with minimal notice. The City acknowledged GENIVAR's responsiveness on numerous occasions during these summer months.
42. GENIVAR participated in a teleconference on August 16, 2013, during which the City read the recommendations of the Draft Buckland & Taylor report but did not provide the written report or the reasons behind the recommendations to GENIVAR. The City instructed GENIVAR not to question the findings and recommendations of the report and requested GENIVAR to immediately commence implementation of Buckland & Taylor's recommendations. GENIVAR addressed and responded to all points raised during the Buckland & Taylor review process and GENIVAR advised the City that it did not agree with the Buckland & Taylor recommendations and conclusions but was willing to implement the requested changes to allow the Project to move forward, provided that GENIVAR not be held responsible for any additional delays and costs related to implementation of these unnecessary changes.
43. For clarity of what was expected, GENIVAR requested formal written directives be issued and the City advised these would be provided early the following week upon receipt of the final report from Buckland & Taylor.

44. In the interim GENIVAR attended a site meeting on August 21, 2013, wherein a high level option analysis for options for the completion of the Project was requested by the City.
45. GENIVAR provided the high level option analysis on August 23, 2013, without delay.
46. On August 26, 2013, GENIVAR received a letter from the City directing it to proceed with 5 recommendations outline by Buckland & Taylor and providing formal instructions to modify the original design ("redesign"). The directives did not completely align with the issues raised during the August 16, 2013 conference call and were predominantly outside the scope of GENIVAR's obligations under the Design Contract or subsequent ESDCs. In good faith, GENIVAR was prepared to undertake these recommendations in an effort to cooperate with the City.
47. A meeting was held on August 29, 2013, with representatives from GENIVAR and the City. The objective of the August 29, 2013, meeting was the development of a Mutual Release to protect GENIVAR from any associated additional construction costs and delays resulting from the redesign and to ensure that all parties agreed to the overall principles and new objectives of the Project. GENIVAR assumed responsibility for the technical aspects of the original design and the redesign. This in fact was achieved at the meeting and the City requested that GENIVAR draft the Mutual Release and a budget for the redesign. GENIVAR began drafting the Mutual Release immediately after the meeting with the City, expecting to deliver a draft the following week.
48. For reasons unknown to GENIVAR, on August 30, 2013, less than 24 hours after the productive meeting with the City, the City suspended GENIVAR's services. The City requested that GENIVAR stop all work, including the preparation of the Mutual Release it had started the day before. The City officially terminated GENIVAR's services on September 5, 2013, with no further avenue for

reconsideration or discussion. The preponderant reason provided for the termination of GENIVAR's services was the time delay involved in the redesign.

49. GENIVAR attempted to reach out to the City several times and at various levels of authority, to engage communication and discussion to understand the City's rationale for terminating its services and in order to find a resolution to move the Project forward again.
50. GENIVAR states that at all times, it acted in good faith in its dealings with the City, it met the standard of care required for engineers and complied with the requests from the City and its obligations to the City. The suspension and later termination of GENIVAR's services was unjustified and demonstrates either that the City did not manage this Project well, or that the City acted in bad faith to GENIVAR and terminated its services without cause.
51. As to paragraph 40, GENIVAR agrees that the City terminated the services of GENIVAR in relation to the Project on September 5, 2013, and states that this was done without cause.

THE NEGLIGENCE OF THE CITY:

52. GENIVAR states that if the City sustained any damages or losses which is not admitted but denied, the damages or losses were caused or contributed to by the City's own negligence, particulars of which include but are not limited to the following:
 - a) Assigning contract administration to unqualified personnel;
 - b) Hiring unskilled or incompetent employees, agents or contractors who failed to follow standard construction practices;
 - c) Failing to execute and supervise the construction work properly or at all;
 - d) Failing to properly manage the Project;
 - e) Failing to address construction issues in a timely manner;

- f) Failing to address issues regarding delay of construction in a timely manner or at all;
- g) Failing to ensure that the concrete in the design mix met with the specifications required by the GENIVAR design;
- h) Failing to inspect the concrete and ensuring it had not expired before it was poured;
- i) Failing to ensure proper placement, pour and recording of the start and finish times of the pour;
- j) Failing to ensure Bray undertook a QVE of the anchorage stay system prior to placement;
- k) Failing to remove the deficient anchorage stay system when it knew or ought to have known it was deficient;
- l) Failing to ensure the construction schedule was met by Bray;
- m) Failing to follow the schedules provided by GENIVAR;
- n) Knowingly and in full acceptance of the consequences, specifying completion dates that have no bearing with reality;
- o) Failure of the Contract Administrator to ensure the execution of the work as designed;
- p) Failing to appreciate that the contractor was unqualified to undertake this project and failing to remove Bray and replace it with a qualified contractor;
- q) Failure to ensure that Bray would expedite the schedule and carry out its duties in an appropriate and timely manner;
- r) Basing decisions on unfounded and incomplete information;
- s) Drawing conclusions based on unsupported information, which required further analysis and study before reasonable and accurate decisions could be made;
- t) Relying on opinions at different stages of the Project from consulting engineers who the City knew or ought to have known, were not independent and did not have the experience, background and/or information to provide independent and meaningful design review;

- u) Such further and other particulars of negligence that are within the knowledge of the City and will be proven at the trial of this action.
53. GENIVAR denies that it was negligent in providing its services to the City as alleged or at all and states that at all material times it acted in a competent and prudent manner in accordance with the skill and expertise of a professional engineer in the area of bridge design.
54. GENIVAR denies that the City has suffered any damages as the result of any action taken by GENIVAR.
55. GENIVAR denies all the allegations in paragraph 47 and specifically states:
- a) The drawings and specifications provided by GENIVAR are in conformity with City policies and accepted and recognized industry standards;
 - b) The drawings were sufficient, complete and accurate, coordinated and in compliance with recognized and generally accepted bridge design standards;
 - c) The bridge design was compliant with recognized or generally accepted bridge standards;
 - d) As the design did comply with recognized and generally accepted bridge design standards, GENIVAR had no need to advise the City of any non-compliance;
 - e) At all times, GENIVAR fully, professionally and adequately coordinated its agents and employees;
 - f) The design was both workable and constructible, as evidenced by the opinion of another contractor and by the simple fact that multiple construction

bids were received with no questions raised regarding constructability or workability;

- g) With respect to paragraph 47(g), GENIVAR denies the allegations therein and more specifically states that there was no other bridge with similar problems and additionally with respect to the other project, the City entered into a Confidentiality Agreement which by reference herein is a breach of said agreement. It is pleaded that the City has not only breached Confidentiality Agreements but has leaked inaccurate and erroneous information to the press in an effort to obtain unwarranted benefits by jeopardizing the reputation of GENIVAR;
- h) The tolerances in the design documents are acceptable and adequate;
- i) GENIVAR in fact agreed to carry out design changes requested by the City despite the fact that there were not any significant safety or constructability concerns with the GENIVAR design;
- j) It is the responsibility of Bray to fabricate the anchorage stay assembly so that when properly aligned and secured, it would be in the correct position; The City's construction administrator allowed the contractor to proceed with the installation of the assembly without having it verified for compliance;
- k) GENIVAR provided all required drawings, which were complete and in compliance with the City's policies and procedures, Bridge Code and industry standards;
- l) Any amendment to the calculation of the amount of steel required for the Parapet Wall Railing was minor and would be dealt with by the Contract Administrator as part of his duties;
- m) Any amendment to the calculation of the surface area of concrete was minor and would be dealt with by the Contract Administrator as part of his duties;

- n) Any use of foam sealer or other material to prevent granular backfill from falling out was minor and would be dealt with by the Contract Administrator as part of his duties;
 - o) The drainage of the West Pathway was designed based on survey data provided by the City which pursuant to the Design Contract, GENIVAR was entitled to rely upon;
 - p) Any requirement for a culvert for drainage of the West Pathway was designed based on survey data provided by the City, which pursuant to the Design Contract, GENIVAR was entitled to rely upon;
 - q) All engineers assigned to this project by GENIVAR are highly qualified and experienced in their respective field of expertise. GENIVAR submitted a RFQ at the beginning of the design proposal stage, at which time GENIVAR's staff are identified and their bridge design experience was accepted by the City;
 - r) With respect to paragraph 47(r) GENIVAR denies the allegations and relies on paragraph 47(g) referenced above.
 - s) GENIVAR did in fact accept the design changes proposed by the City, and denies that these changes were requested for constructability and safety reasons.
56. The design engineers at GENIVAR were not terminated by GENIVAR but rather continued to work as sub-consultants on the Project for GENIVAR after they left the employ of GENIVAR on a voluntary basis.
57. GENIVAR states that the warranties set out in paragraph 58 were not breached by GENIVAR. GENIVAR fulfilled its obligations by designing a buildable structure to be constructed at a reasonable cost in accordance with accepted

construction practices. The structure was fully fit for the intended purpose and was structurally sound.

58. GENIVAR states that the original design was structurally sound and safe.
59. GENIVAR denies that it was negligent or breached its contract with the City, and denies that it is liable for any damages which the City may owe to Bray or Cumberland.
60. The City's review did not find significant design errors. Any increased costs for reviews, analysis, additional engineering support, additional construction and design costs or welding inspection services were as a result of the inability of Bray to carry out the construction of the Project and the City's deficient management of the Project, and is not the fault of GENIVAR.
61. GENIVAR did properly account for materials required for the Project as part of its design. Any increased costs or change orders are not due to the design provided by GENIVAR.
62. As to paragraph 66, GENIVAR relied on the survey provided to it by the City in determining the appropriate drainage for the West Pathway.
63. GENIVAR pleads and relies upon the following statutory and regulatory provisions:
 - i) *Negligence Act*, R.S.O. 1990, c. N-1, as amended, and the applicable regulations made thereunder;
 - ii) *Professional Engineers Act*, R.S.O. 1990, c. P.28, as amended, and the applicable regulations made thereunder;
 - iii) *Canadian Highway and Bridge Code*, CAN/CSA-S6-00 (R2005);
 - iv) *The Courts of Justice Act*, R.S.O. 1990, c. C. 43;
 - v) *The Rules of Civil Procedure*, R.R.O. 1990, Reg. 194 and all amendments thereto.

64. GENIVAR denies that the City has sustained any damages or losses as alleged in the Third Party Claim or at all. If the City has sustained any damages or losses, which is not admitted but denied, the City has failed, refused or neglected to take any reasonable, prudent or proper steps to mitigate its damages as required by law. In the alternative the damages or losses alleged are remote or excessive in law.
65. Wherefore, GENIVAR requests that this Third Party Action be dismissed, with costs on a substantial indemnity basis.

Dated: November 7, 2014

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Genivar Inc.
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PROCEEDING COMMENCED AT
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STATEMENT OF DEFENCE TO
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NOV 07 2014

