

THE CORPORATION OF THE CITY OF NIAGARA FALLS

APPENDIX E: SAMPLE FORM OF AGREEMENT

REQUEST FOR TENDER
RFT (Actual RFT Number)
ACTUAL RFT DESCRIPTION

THIS AGREEMENT made in quadruplicate the day of , 20 . (Date
of Council Report awarding Contract)

B E T W E E N:

NAME OF CONTRACTOR

Hereinafter referred to as the “Contractor”,

and

THE CORPORATION OF THE
CITY OF NIAGARA FALLS

Hereinafter referred to as the “Corporation”

WHEREAS the Corporation has awarded to the Contractor the contract to perform the whole of the work and furnish all the labour, materials and equipment necessary for the (brief description of works to be completed, ie. design, supply, delivery and installation of), in accordance with the Request for Tender, Addendum Nos. (Addendum numbers if applicable) and other documents and papers listed in paragraph 4 of this Agreement (all of which are herein referred to as the “Contract Documents”), copies of which are hereto attached, the Contractor having put in a Tender therefor, a copy of which is hereto annexed, which said Tender has been accepted by the Council of the Corporation;

NOW THEREFORE THIS AGREEMENT WITNESSETH that the Contractor and the Corporation hereby mutually covenant and agree each with the other with respect to the said work as follows:

1. The Contractor covenants and agrees with the Corporation to execute and perform the whole of the work and furnish all the labour, materials and equipment necessary for the (brief description of works to be completed, ie. design, supply, delivery and installation of [as in paragraph above]) and (detailed description of works to be completed, ie. design, supply and install the ... [as described in RFT]), together with all other works and appurtenances as specified in the Contract Documents and Tender, for the total consideration of (Figure in words) **DOLLARS (\$Figure in numbers)** (excluding applicable transaction taxes) and with due expedition and in a thoroughly workmanlike manner in strict accordance

with the provisions of this Agreement and the said Contract Documents and Tender and thereafter to maintain the work and provide all warranties as required by the Contract Documents and Tender and that in the execution and performance of the said work the Contractor will carry out, perform, observe, fulfil and abide by all the covenants, agreements, stipulations, provisoes and conditions mentioned and contained in the said Contract Documents and Tender to be carried out, performed, observed and fulfilled by the Contractor to the same extent and as fully as if each of them was set out and specifically repeated in this Agreement.

2. The Contractor further covenants and agrees with the Corporation as follows:
 - (a) The said Contract Documents and Tender are intended to cover and provide for first class completed work in all respects and everything necessary to carry out this intent and which may reasonably be implied from the said Contract Documents and Tender shall be done by the Contractor although not particularly referred to therein;
 - (b) To commence work upon notification from the Director of Municipal Works or his duly authorized representative and to proceed continuously to completion and to complete all the work in accordance with the requirements of the Contract Documents;
 - (c) That the Contractor has examined the site of the work and has satisfied itself as to the working conditions, the nature and kind of work to be done, the special risks associated therewith and as to any and all matters which may be necessary in order to form a proper conception of the conditions under which the work will require to be performed;
 - (d) To provide a Performance Bond for the full and due performance of the work provided for herein at the unit prices as specified and for the maintenance of the said work for a period of one year after acceptance thereof, payable to the Corporation for **(Figure)**% of the bid price;
 - (e) To provide a Labour and Material Payment Bond for **(Figure)**% of the bid price on all labour and material purchased by the Contractor and used in the performance of the work;
 - (f) To provide, in lieu of the Performance Bond and Labour and Material Payment Bond as set out in paragraphs 2(d) and (e) above, an Irrevocable Standby Letter of Credit for **(Figure)**% of the bid price;
 - (g) To indemnify and save harmless the Corporation from and against all claims, actions, losses, expenses, costs, demands, suits and other proceedings or damages of every nature and kind whatsoever which the Corporation, its employees, officers or agents may suffer as a result of the negligence of the Contractor, its employees, officers or agents in performance of this Agreement;

- (h) To indemnify and keep indemnified and save harmless the Corporation and each of its officers, servants and agents from and against all actions, suits, claims, executions and demands which may be brought against or made upon the Corporation, its officers, servants and agents and from all loss, costs, charges, damages, liens and expenses which may be paid, sustained or incurred by the Corporation, its officers, servants and agents by reason of or on account or in consequence of the execution and performance of the said work or of the non-execution or imperfect execution thereof or of the supply or non-supply of plant or material therefor;
- (i) To indemnify and save harmless the Corporation from and against all claims, actions, losses, expenses, costs or damages of every nature and kind whatsoever which the Corporation, its employees, officers or agents may suffer as a result of misuse, misappropriation or alleged misuse or misappropriation by the Contractor, its employees, officers or agents of intellectual property in the performance of this Agreement;
- (j) To deliver to the Corporation on or before the execution of this Agreement, the policies of insurance in accordance with the provisions in the Contract Documents and to provide the Corporation with Certificates of Insurance in form satisfactory to the City Solicitor, as proof of such policies of insurance;
- (k) To provide evidence that all the Contractor's employees are covered by the provisions of the Workplace Safety & Insurance Board Act and to pay all assessments in respect thereof;
- (l) To pay to the Corporation and to such officer, servant or agent thereof, on demand, any loss, costs, damages or expenses which may be paid, sustained or incurred by the Corporation or any of its officers, servants or agents in consequence of any such action, suit, claim, lien, execution or demand and any monies paid or payable by the Corporation or any of its officers, servants or agents in settlement or in discharge thereof or on account thereof and that in default of such payment all such loss, costs, damages and expenses and any monies so paid or payable by the Corporation, its officers, servants or agents and also any monies payable by the Contractor under any of the terms and conditions of this Contract may be deducted from any monies of the Contractor then remaining in the possession of the Corporation on account of this or any other contract or may be recovered from the Contractor or the Surety or Sureties named in the said Bonds in any court of competent jurisdiction as monies paid at their request or from any insurer under a Contract of Insurance; and
- (m) And the Contractor hereby authorizes and empowers the Corporation or its Solicitor for the time being, to defend, settle or compromise any of such actions, suits, claims, liens, executions or demands as the Corporation or

its said Solicitor may deem expedient and also hereby agrees to ratify and confirm all the acts of the Corporation or its Solicitor in that behalf and to pay to the Corporation, on demand, all reasonable costs of defending, settling or compromising any such actions, suits, claims, liens, executions or demands as the Corporation may deem it expedient to defend, settle or compromise and that in default of such payment the same may be deducted from any monies payable by the Corporation to the Contractor on any account whatever. Provided, however, that the Contractor may at the expense of the Contractor, take charge of and conduct the defence in the name of the Corporation to any such action, claim or suit.

3. The Corporation covenants and agrees with the Contractor to make payments for the due and proper execution of the work at the times and in the manner specified in the provisions of the Contract Documents.
4. It is mutually understood and agreed between the parties hereto as follows:
 - (a) That the documents and papers set forth below shall form part of this Agreement, namely:
 - i. Request for Tender No. *(Actual RFT Number)*;
 - ii. Addendum #1 *(If applicable)*; and
 - iii. Addendum #2 *(If applicable)*;herein referred to as the "Contract Documents", and
 - iv. Tender of *(Name of Contractor)*;herein referred to as the "Tender";
 - (b) That the Contract Documents and Tender, hereinafter referred to as the "Master Documents", shall be filed with a fully executed copy of this Agreement with the City Clerk and in the event of any dispute between the parties as to the validity of any copy of the Master Documents are any part thereof, the Master Documents filed with the City Clerk shall be deemed to be the true and accurate form of same;
 - (c) If there is a conflict within this Agreement and the Master Documents, the order of priority of documents, from highest to lowest, shall be:
 - i. This Agreement between the Contractor and the Corporation;
 - ii. The Contract Documents; and
 - iii. The Tender;

- (d) That the work as hereinbefore set forth shall be performed and completed to the satisfaction of the Director of Municipal Works;
- (e) Any condonation or failure by the Corporation to enforce the rights and remedies available to it under this Agreement arising from failure by the Contractor to observe or perform any provisions of this Agreement shall not be deemed a waiver of the Corporation's rights hereunder nor shall such failure or condonation preclude the Corporation from enforcing its rights and remedies against the Contractor for any subsequent breach or non-performance;
- (f) This Agreement and the Master Documents constitutes the entire Agreement of the parties hereto and supersedes any prior agreements, undertakings, declarations, representations and understandings, both written and verbal, in respect of the subject matter hereof;
- (g) This Agreement cannot be changed or modified except by another agreement in writing signed by the parties;
- (h) Reference to an official of the Corporation in this Agreement is deemed to include a reference to the official of the Corporation who performs the duties of such referenced official from time to time;
- (i) Time is of the essence in this Agreement;
- (j) This Agreement shall be construed and enforced in accordance with the laws of the Province of Ontario and the laws of Canada applicable therein from time to time and shall be treated in all respects as an Ontario Agreement;
- (k) Each obligation or agreement of the Corporation or of the Contractor contained in this Agreement, even though not expressed as a covenant, is considered for all purposes to be a covenant;
- (l) The invalidity or unenforceability of any provision or covenant contained in this Agreement shall not affect the validity or enforceability of any other provision or covenant herein contained and any such invalid provision or covenant shall be deemed severable;
- (m) Each covenant in this Agreement is a separate and independent covenant and a breach of a covenant by any party shall not relieve the other party from the obligation to perform each of its covenants, except as expressly provided herein;
- (n) No supplement, modification, amendment, waiver or termination of this Agreement shall be binding unless executed in writing by the parties;

- (o) No waiver of any of the provisions of this Agreement shall be deemed or shall constitute a waiver of any other provisions (whether or not similar) nor shall any waiver constitute a continuing waiver, unless otherwise provided;
- (p) That this Agreement shall extend to and be binding upon and enure to the benefit of the successors and assigns of the Contractor and the Corporation; and
- (q) That the word "Contractor" wherever used in this Agreement and the documents listed in clause (a) hereof, shall, where the context or the party or parties hereto so require, be construed as if the plural had been used and the rest of the sentence shall be construed as if all other changes thereby rendered necessary had been made.

IN WITNESS WHEREOF the parties hereto have hereunto affixed their corporate seals duly attested by the hands of the proper signing Officers in that behalf and the said signing Officers certify that they have authority to bind their Corporation.

NAME OF CONTRACTOR

Per: _____

Name:

Title:

Name:

Title:

**THE CORPORATION OF THE
CITY OF NIAGARA FALLS**

Per: _____

James M. Diodati, Mayor

_____ **Dean Iorfida, City Clerk**