

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

**PART C**

**SUPPLEMENTARY CONDITIONS TO**

**CCDC 2 STIPULATED PRICE CONTRACT, 2008**

**Rev 4FS Date: 11 September 2019**

The standard Construction Document CCDC 2 Stipulated Price Contract, 2008, English version, consisting of; the Agreement between the *Owner* and *Contractor*, Definitions and General Conditions are hereby made part of these *Contract Documents* with amendments and additions as follows:

**AGREEMENT BETWEEN OWNER AND CONTRACTOR**

**ARTICLE A-1 THE WORK**

1. Delete paragraph 1.3 and replace with the following:

commence the *Work* within 14 calendar days of receipt of the Official Order to Commence Work letter issued by the *Owner* and, subject to adjustment in *Contract Time* as provided for in the *Contract Documents*, attain *Substantial Performance of the Work*, within sixty (60) weeks after issuance by the *Owner* of an Order to Commence Work and complete the *Work* in its entirety within sixty-eight (68) weeks after issuance by the *Owner* of an Order to Commence Work. No *Work* is to be started until the *Owner* has issued an Order to Commence Work letter.

**ARTICLE A-5 PAYMENT**

2. In paragraph 5.1.1, delete "...in the amount certified by the *Consultant*..." and replace with "...in the amount certified by the *Owner*...".
3. Delete paragraph 5.3.1. in its entirety and replace it with:

"Should either party fail to make payments as they become due under the terms of the Contract or in an award by a court, interest on such unpaid amounts shall also become due and payable until payment at the prime rate of interest quoted by Scotiabank for prime business loans."

4. Add new paragraph 5.4:

5.4 "The Contractor shall have no claim for interest on invoiced amounts which have not been certified by the *Owner*."

## ARTICLE A-6 RECEIPT OF AND ADDRESSES FOR NOTICES IN WRITING

5. *Notices in Writing* to the Owner shall be delivered to the Facilities Project Manager and Legal Services.

6. Add new paragraph 6.2:

6.2 Notwithstanding the provisions of paragraph 6.1, documents and notices that are to be given or that may be given under the *Construction Act* shall be given in accordance with section 87 of the *Construction Act*. In accordance with Rule 16.01(b)(iv) of the *Rules of Civil Procedure*, the Owner, Contractor and Consultant consent to receiving documents and notices given under the *Construction Act*, except written notices of lien, by email to the email address set out in paragraph 6.1 as amended from time to time, which emails shall contain the following information:

- (a) The sender's name, address, telephone number, fax number, if any, and e-mail address;
- (b) The date and time of transmission; and,
- (c) The name and telephone number of a person to contact in the event of a transmission problem.

### **DEFINITIONS**

#### **7. Definition 4. Consultant**

Add at the end of the definition:

The *Consultant* may be an employee of the Owner or the Engineer and/or Architect referenced in the Contract Documents. For this *Contract*, the *Consultant* will be Whiteline Architects Inc. and the *Consultant's* representative will be Steven Bernier.

#### **8. Definition 20. Substantial Performance of the Work**

Add to this definition:

The *Work* shall not be considered "ready for use" until the following requirements have been met:

- .1 the complete system has been in trouble free operation for a period of not less than 14 consecutive days, uninterrupted;
- .2 all operating manuals have been submitted to the *Owner*; and

- .3 instructions and/or training, if applicable, have been provided to the *Owner's* Staff to enable the *Owner* to operate the facility.

#### 9. **Definition 26. Working Day**

Add the following to the definition:

The term "Business Day" shall be understood to have the same meaning as *Working Day*, except that Business Days shall also exclude designated holidays recognized by the *Owner*.

#### 10. **Definition 27. Construction Act**

Add new Definition 27:

##### 27. Construction Act

"*Construction Act*" shall mean the *Construction Act*, R.S.O. 1990, c. C.30, as amended, and all regulations under the *Construction Act*.

#### 11. **Definition 28. Intellectual Property**

Add new Definition 28:

##### 28. Intellectual Property

"Intellectual Property" means all domestic and foreign intellectual property rights including, without limitation: (i) patents, applications for patents and reissues, divisions, continuations, renewals, extensions and continuations-in-part of patents or patent applications, (ii) copyrights, copyright registrations and applications for copyright registration and all related rights and including all moral rights, (iii) mask works, mask work registrations and applications for mask work registrations, (iv) designs, design registrations, design registration applications and integrated circuit topographies, (v) trade names, business names, corporate names, domain names, website names and world wide web addresses, common law trade-marks, trade-mark registrations, trade mark applications, trade dress and logos, and the goodwill associated with any of the foregoing, (vi) trade secrets, proprietary information, know-how, technology, inventions, processes, discoveries, data, including computer data, business ideas, drawings, and specifications, and (vii) the right to commence legal proceedings with respect to the past or present infringement of the foregoing, including the right to recover all damages and profits, as provided for herein."

### **GENERAL CONDITIONS OF THE STIPULATED PRICE CONTRACT**

12. Where a General Condition or paragraph of the General Conditions of the Stipulated Price Contract is deleted by these Supplementary Conditions, the numbering of the

remaining General Conditions or paragraphs shall remain unchanged, and the numbering of the deleted item will be retained, unused.

## **PART 1      GENERAL PROVISIONS**

### **GC 1.1 CONTRACT DOCUMENTS**

13. Add at the end of paragraph 1.1.6:

Neither the organization nor the arrangement of the *Contract Documents* shall oblige the *Consultant* or the *Owner* to settle disputes regarding the limits of responsibility.

14. Add at the end of paragraph 1.1.7:

The drawings are, in part, diagrammatic and are intended to convey the scope of the Work and indicate general and appropriate locations, arrangement and sizes of fixtures, equipment and outlets. The Contractor shall obtain more accurate information about the locations, arrangement and sizes from study and coordination of the drawings and shall become familiar with conditions and spaces affecting these matters before proceeding with the Work. Where site conditions require minor changes in indicated locations and arrangements, the Contractor shall make such changes at no additional cost to the Owner.

15. Delete paragraph 1.1.7.1 in its entirety and replace it with new 1.1.7.1:

the order of priority of documents, from highest to lowest, shall be:

- Project Specific Supplementary Provisions to CCDC 2, if any
- Supplementary Conditions to CCDC 2
- Agreement between the Owner and the Contractor
- Definitions
- General Conditions
- Contractor's Submission
- Technical Specifications
- Working Blocks
- Contract Drawings

16. Delete paragraph 1.1.8 in its entirety and replace with:

1.1.8 The *Owner* shall provide the *Contractor*, without charge, an electronic version of the drawings and specifications to perform the *Work*. Should the *Contractor* require hardcopies, they may be obtained at the *Contractor's* expense from the *Owner*.

17. Delete paragraph 1.1.9 in its entirety and replace it with:

1.1.9 The Intellectual Property in the *Specifications, Drawings*, models and copies thereof furnished by the Consultant are owned by the Consultant or the Owner depending on the contractual rights between the *Owner* and the *Consultant*, with the exception of the signed *Contract* sets, which shall belong to each party to the *Contract*. All *Specifications, Drawings* and models furnished by the Consultant are to be used by the Contractor only with respect to the Work and are not to be used on other work. These *Specifications, Drawings* and models are not to be copied or altered in any manner by the *Contractor* with the written authorization of the *Consultant* or the *Owner* depending on the contractual rights between the *Owner* and *Consultant*.

18. Add a new paragraph 1.1.11:

1.1.11 One set of signed contract documents shall be retained by each of the Owner and the Contractor.

19. Add a new paragraph 1.1.12:

1.1.12 If an item is shown on one document, and it can be reasonably inferred that it was intended to include work not shown on other related documents, the Contract Price shall nevertheless include for the cost of the item of work, unless the Consultant agrees otherwise.

20. Add a new paragraph 1.1.13:

1.1.13 Wherever in the Contract provision is made for the giving or issuing of any notice, consent, approval, certificate or determination by any person, unless otherwise specified such notice, consent, approval certificate or determination shall be in writing and shall not unreasonably be withheld or delayed.

## **GC 1.2 LAW OF THE CONTRACT**

21. Delete paragraph GC 1.2.1 in its entirety and substitute new 1.2.1:

1.2.1 This Contract shall be governed by and constituted in accordance with the laws in force in the Province of Ontario excluding any conflict of laws principles. The parties hereby irrevocably attorn to the exclusive jurisdiction of the courts of the Province of Ontario for any legal proceedings arising out of this Contract or the performance of the obligations hereunder.”

## **GC 1.4 ASSIGNMENT**

22. Delete GC 1.4.1 in its entirety and substitute new GC 1.4.1:

- 1.4.1 Neither party to the Contract shall assign the Contract or a portion thereof without the written consent of the other, which consent, in the case of the Owner, is at the sole discretion of the Owner. In the event of an assignment of the Contract by the Contractor, such assignment shall not relieve the Contractor from its obligations and liabilities hereunder.

## **PART 2      ADMINISTRATION OF THE CONTRACT**

### **GC 2.2 ROLE OF THE CONSULTANT**

23. Delete paragraph 2.2.5 and replace with:

Based on the *Consultant's* observations and evaluation of the *Contractor's* applications for payment, the *Consultant* will recommend to the *Owner* the amounts owing to the *Contractor* under the *Contract* and the *Owner* will issue certificates for payment as provided in Article A-5 of the Agreement - PAYMENT, GC 5.3 - PROGRESS PAYMENT and GC 5.7 - FINAL PAYMENT.

24. In the first sentence of paragraph 2.2.7, delete "Except with respect to GC 5.1 - FINANCING INFORMATION REQUIRED OF THE OWNER,".

25. Add the following to paragraph 2.2.13:

If, in the opinion of the *Contractor*, a *Supplemental Instruction* requires an adjustment in the *Contract Price* or *Contract Time*, the *Contractor* shall, within 10 *Working Days* of receipt of *Supplemental Instruction*, advise the *Consultant* by *Notice in Writing*. Failure to provide *Notice in Writing* within the time stipulated shall imply acceptance of the *Supplemental Instruction* by the *Contractor* without any change to the *Contract Price* or *Contract Time*.

26. Delete paragraph 2.2.17 and replace with "All certificates will be issued by the *Owner* upon the recommendation of the *Consultant*".

### **GC 2.3 REVIEW AND INSPECTION OF THE WORK**

27. Throughout paragraph 2.3.2, delete the word "reasonable" and replace with "at least 3 *Working Days*".

### **GC 2.4 DEFECTIVE WORK**

28. Add new sub-paragraphs as follows:

2.4.1.1 The *Contractor* shall rectify, in a manner acceptable to the *Owner* and the *Consultant*, all defective work and deficiencies throughout the *Work*, whether or not they are specifically identified by the *Consultant* or the *Owner*.

2.4.1.2 The *Contractor* shall prioritize the correction of any defective work which, in the sole discretion of the *Owner*, adversely affects the day to day operation of the *Owner*.

### **PART 3      EXECUTION OF THE WORK**

#### **GC 3.1 CONTROL OF THE WORK**

29. Add new paragraph as follows:

3.1.3 Prior to commencing individual procurement, fabrication and construction activities, the *Contractor* shall verify, at the *Place of the Work*, all relevant measurements and levels necessary for the proper and complete fabrication, assembly and installation of the *Work* and shall further, carefully compare such field measurements and conditions with the requirements of the *Contract Documents*. Where dimensions are not included or exact locations are not apparent, the *Contractor* shall immediately notify the *Consultant* in writing and obtain written instructions from the *Consultant* before proceeding with any part of the affected *Work*.

#### **GC 3.2 CONSTRUCTION BY OWNER OR OTHER CONTRACTORS**

30. Delete paragraph 3.2.2.2 in its entirety.

31. Add new paragraphs as follows:

3.2.7 Entry by the *Owner's* own forces and by other contractors shall not mean acceptance of the *Work* and shall not relieve the *Contractor's* responsibility to complete the *Work*.

3.2.8 Placing, installation, application and connection of *Work* by *Owner's* own forces or by other contractors on and to, the *Work* shall not relieve the *Contractor's* responsibility to provide and maintain the specified warranties.

3.2.9 Placing, installation, application and connection of *Work* by *Owner's* own forces or by other contractors, shall not mean acceptance of the *Work* and shall not relieve the *Contractor's* responsibility as *Constructor* for the *Project*, including all requirements of the Occupational Health and Safety Act.

#### **GC 3.4 DOCUMENT REVIEW**

32. Delete paragraph 3.4.1 in its entirety and replace with the new paragraph as follows:

3.4.1 The *Contractor* shall review the *Contract Documents* and shall report promptly to the *Consultant* any error, inconsistency or omission the

*Contractor* may discover. Such review by the *Contractor* shall comply with the standard of care described in paragraph 3.14.1 of the *Contract*. Except for its obligation to make such review and report the result, the *Contractor* does not assume any responsibility to the *Owner* or to the *Consultant* for the accuracy of the *Contract Documents*. The *Contractor* shall not be liable for damage or costs resulting from such errors, inconsistencies, or omissions in the *Contract Documents*, which the *Contractor* could not reasonably have discovered. If the *Contractor* does discover any error, inconsistency or omission in the *Contract Documents*, the *Contractor* shall not proceed with the *Work* affected until the *Contractor* has received corrected or missing information from the *Consultant*.

33. Add new paragraph as follows:

3.4.2 If the *Contractor* finds discrepancies in and/or omissions from the *Contract Documents* or has any doubt as to the meaning or intent of any part thereof, the *Contractor* must immediately notify the *Consultant*, who will provide written instructions or explanations. Neither the *Owner* nor the *Consultant* will be responsible for oral instructions.

### **GC 3.5 CONSTRUCTION SCHEDULE**

34. In subparagraph .1 of paragraph 3.5.1, delete the words “prior to the first application for payment” and replace with the following:

“No later than two weeks after the receipt by the *Contractor* of:

- (1) the *Owner’s* written Order to Commence Work, or
- (2) a Purchase Order issued by the *Owner*, or
- (3) the *Contract*, executed by the *Owner* and the *Contractor*,

whichever is the earlier,”

35. In subparagraph .1 of paragraph 3.5.1, after the word “schedule” in the first line add the words “in the form acceptable to the *Owner*.”

36. Add new paragraphs as follows:

3.5.2 If the *Contractor* fails to complete a major activity, critical event or milestone by the date indicated in the latest update to the construction schedule and such failure is anticipated to extend the *Contract Time* or milestones, the *Contractor* shall, within 7 calendar days of such failure, submit an updated construction schedule with a narrative clearly indicating how the *Contractor* intends to correct the non-performance and return to the accepted construction schedule. Actions by the *Contractor* to complete the *Work* within the *Contract Time* (and milestones) shall not be justification for an

adjustment to the *Contract Time* or *Contract Price* unless such failure is due to a delay in accordance with the provisions of GC 6.5 - DELAYS.

3.5.3 The *Owner* may, at no additional cost to the *Owner*, order the *Contractor* to increase *Construction Equipment*, labour force or working hours if the *Contractor* fails to:

- .1 Complete a milestone activity by its schedule completion date, or
- .2 Satisfactorily perform the *Work* as necessary to prevent delay to the overall completion of the *Work*,

but only to the extent required to return to the agreed upon construction schedule.

3.5.4 In the event of a conflict between the *Contractor's* performance of the *Work* and the *Owner's* requirements to operate an operational facility, the operation of the facility shall always take precedence.

### **GC 3.6 SUPERVISION**

37. Add new paragraphs as follows:

3.6.3 The *Contractors* appointed representatives shall be satisfactory to the *Owner* and must be maintained on the job full time until all deficiencies have been corrected and completion of all *Works* under the *Contract* has been reached. Applications to replace any appointed representatives during the *Work* of this *Contract* or prior to completion will not be considered, except for valid reason.

3.6.4 The *Owner* may, at any time during the course of the *Work*, request the replacement of an appointed representative, where the grounds for the request involve conduct which jeopardizes the safety of the *Owner's* operations. Immediately upon receipt of the request, the *Contractor* shall make arrangements to appoint an acceptable replacement.

### **GC 3.7 SUBCONTRACTORS AND SUPPLIES**

38. Add the following sentences to the end of paragraph 3.7.2:

“In the event that the *Contractor* wishes to change any of such *Subcontractors* or *Suppliers*, the *Contractor* shall advise the *Consultant* in writing giving the reasons for the change. No change may be made without prior written approval of the *Owner*. Any change made by the *Contractor* without such approval will be considered a breach of the *Contract*.”

39. Add the following to paragraph 3.7.5:

“...unless specifically required to do so in the *Contract Documents*.”

### **GC 3.8 LABOUR AND PRODUCTS**

40. In paragraph 3.8.3, delete “...*Contractor’s* employee’s...” and replace with “...*Contractor’s, Subcontractors’ and Suppliers’* employees...”

41. Add the following to paragraph 3.8.3:

“The *Consultant* shall have the right to order the removal of any person employed by the *Contractor* or his *Subcontractors* or *Suppliers* from the *Contract* for failure to comply with this requirement.”

42. Add new paragraphs as follows:

3.8.4 If the *Consultant* or the *Owner* determines that any worker employed on the *Work* is incompetent, as defined by the Occupational Health and Safety Act, or exhibits unacceptable conduct, of which the *Consultant* shall be the sole judge, then the *Consultant* shall provide *Notice in Writing* to the *Contractor* and the *Contractor* shall immediately remove the worker from the *Place of the Work*. Such worker shall not return to the *Place of the Work* without the prior written authorization from the *Consultant*.

3.8.5 The *Contractor* shall ensure that all materials are delivered to the *Place of the Work* in original containers and packages with labels and seals intact and that they are protected from the elements and visible for inspection. All *Products* must be protected from inclement weather and stored at temperatures in accordance with the manufacturer’s requirements.

3.8.6 Manufactured *Products* which are specified by their proprietary names or by part or catalogue numbers must be provided. No substitute for the *Products* specified will be allowed unless written approval of substitute *Products* are authorized by the *Owner*.

3.8.7 The *Contractor* shall use and install all proprietary *Products* in strict accordance with the manufacturer’s printed instructions. The *Contractor* shall provide to the *Consultant* a copy of all manufacturers’ printed instructions and supplementary directions prior to use or installation.

3.8.8 Whenever more than one *Product* is specified for one use, the *Contractor* may select for this use any of the *Products* so specified unless the Specifications or Drawings indicate otherwise. The *Contractor* shall assume all responsibility for liabilities and additional costs that may arise as a result of his choice to use one of the named *Products*.

- 3.8.9 After the acceptance of a tender, the *Contractor* may apply to the *Consultant* to substitute as a “reviewed equivalent”, another *Product* or group of *Products*. Such application shall be in writing and shall indicate reasons why the *Contractor* has proposed the substitution (e.g. significant delay in delivery, strikes, unavailability, improved quality or field service, amount of contract cost reduction, etc.). The *Contractor’s* application for a substitution shall be accompanied by sufficient descriptive and technical information, specifications, references and samples for the *Consultant* to thoroughly compare the proposed substitute *Product* or group of *Products* with that specified.
- 3.8.10 The *Consultant’s* assessment of proposed substitutions shall include, but not be limited to, criteria such as quality and durability, performance, ease of operation, safety features, technical support, service and parts, availability and estimated cost of warranty and adherence to minimum specifications. Failure to comply with this requirement to the *Consultant’s* satisfaction may result in rejection of the proposed substitution due to insufficient information or time to evaluate the proposal. All applications and submissions related to the proposed substitution shall only be made by the *Contractor* and not by any *Subcontractors* or *Suppliers*.
- 3.8.11 The approval or rejection of a proposed substitution shall be at the discretion of the *Consultant* whose decision shall be final. Regardless of the *Consultant’s* decision on a proposed substitution, the *Owner* reserves the right to assess to the *Contractor* all costs of the *Consultant* and the *Owner* related to their review of the proposed substitution.
- 3.8.12 The *Contractor’s* Lump Sum Tendered Price shall be based on the *Products* specified. No tender shall be based on a presumed acceptance by the *Consultant* of a substitute *Product*.
- 3.8.13 Acceptance by the *Consultant* of a “reviewed equivalent” shall apply to this *Contract* only.
- 3.8.14 The *Contractor* shall assume all responsibility for liabilities and additional costs that may subsequently arise as a result of his proposed substitution being accepted by the *Consultant*.
- 3.8.15 Any design or construction changes necessitated by the use of substituted *Products* shall be at the expense of the *Contractor*. The *Contractor* shall be responsible for assuring the proper fit and matching of all substituted *Products* to the surrounding pipe, equipment or materials.

### **GC 3.11 USE OF THE WORK**

43. Add new paragraphs as follows:

3.11.3 If working or storage areas in addition to areas provided at the *Place of the Work* are required, the *Contractor* shall be responsible for making arrangements to obtain such additional areas, whether adjacent to the *Place of the Work* or not, and for obtaining all permits and making rental payments that may be required for such additional areas.

3.11.4 Upon completion of the *Contract*, the *Contractor* shall provide the *Consultant* with two copies of a Property Owner's Release, in a form satisfactory to the City Solicitor, signed by each property owner upon whose land he has entered for any purpose in conjunction with the *Contract*.

3.11.5 The *Owner* shall have the right to enter and occupy the building in whole, or in part, for the purpose of operating the facility before completion of the *Contract*. Such entry and occupation shall not be considered as acceptance of the *Work* or in any way relieve the *Contractor* from responsibility to complete the *Contract*.

### **GC 3.13 CLEAN-UP**

44. Add new paragraphs as follows:

3.13.4 The *Owner* shall have the right to back charge cleaning costs to the *Contractor* if not done by the *Contractor* within 24 hours of notice to clean.

3.13.5 The *Owner* shall have the right to back charge to the *Contractor* the cost of repairs of damage to the site caused by *Contractor* transportation in and out of the site if not repaired before final payment.

45. Add new Articles as follows:

### **GC 3.14 LIQUIDATED DAMAGES**

3.14.1 It is agreed by the Parties to the *Contract* that in case the *Work* is not completed within the time for achievement of substantial performance of the entire *Work*, as specified in ARTICLE A-1 - THE WORK as amended in these Supplementary Conditions, damages will be sustained by the *Owner* and the parties hereto agree that the *Contractor* will pay to the *Owner* the sum of One thousand Dollars (\$\_1,000) for each and every calendar day beyond the *Contract Time* specified that the substantial performance of the *Work* remains uncompleted. It is agreed that this amount is a genuine pre-estimate of the damages to the *Owner* which will accrue during the period in excess of the prescribed completion time, including but not limited to, cost for site inspection, survey crew, staffing, administration and consulting services. The *Owner* shall calculate the actual costs that are incurred by the *Owner* as a result of the delay and shall assign these costs to the

*Contractor*. The amount payable under this paragraph are in addition to and without prejudice to any other remedy, action or other alternative that may be available to the *Owner*.

3.14.2 The *Owner* may deduct any amount due under this Article from any monies that may be due or payable to the *Contractor* on this or any other *Contract* with the *Owner*.

3.14.3 The *Contractor* shall not be assessed with the amounts in section 3.14.3 for any delay caused by events beyond the control of the Contractor, beyond the control of a party, which may include war, interference by civil or military authorities, civil insurrection, local or national emergency, blockade, seizure, riot, sabotage, vandalism, terrorism, adverse weather conditions which are materially more adverse than could reasonably be expected, earthquake, flood, act of God, accident, fire, nuclear or other explosion, disease, epidemic, quarantine restriction, strike, lockout or other labour disturbance, governmental embargo, or changes in the Laws or government priorities, provided such event is not caused by the affected party's negligence or failure to exercise reasonable diligence. Such event or cause does not include an inability to pay or a lack of financial resources.

### **GC 3.15 PERFORMANCE BY CONTRACTOR**

3.15.1 In performing its services and obligations under the *Contract*, the *Contractor* shall exercise a standard of care, skill and diligence that would normally be provided by an experienced and prudent contractor supplying similar services for similar projects. The *Contractor* acknowledges and agrees that throughout the *Contract*, the *Contractor's* obligations, duties and responsibilities shall be interpreted in accordance with this standard. The *Contractor* shall exercise the same standard of due care and diligence in respect of any *Products*, personnel, or procedures which it may recommend to the *Owner*.

3.15.2 The *Contractor* further represents, covenants and warrants to the *Owner* that:

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

- .4 the *Contractor's* workload is not over extended such that would have an adverse effect on the *Contractor's* ability to perform its *Work* under the *Contract*.

### **GC 3.16 RIGHT OF ENTRY**

3.16.1 The *Owner* shall have the right to enter or occupy the *Work* in whole or in part for the purpose of placing fittings and equipment or for other uses before *Substantial Performance of the Work*, if, in the opinion of the *Consultant* and *Contractor*, such entry or occupation does not prevent or substantially interfere with the *Contractor* in completion of the *Contract* within the *Contract Time*. Such entry or occupation shall not be considered as acceptance of the *Work*, or in any way relieve the *Contractor* from responsibility to complete the *Contract*.

## **PART 4      ALLOWANCES**

### **GC 4.1 CASH ALLOWANCES**

46. Add at the end of paragraph 4.1.2:

“The maximum markup for the *Contractor's* overhead and profit on a cash allowance shall be five percent (5%).”

47. In paragraph 4.1.3, add “in writing” after the word “authorized”.

48. In the first sentence of paragraph 4.1.4., delete “plus an amount for overhead and profit on the excess as set out in the *Contract Documents*.” In the second sentence of paragraph 4.1.4, delete “but not for the *Contractor's* overhead and profit on such amount.” Delete the third sentence of paragraph 4.1.4 in its entirety.

49. Delete paragraph 4.1.5 in its entirety and replace it with:

4.1.5 The unexpended total cash allowance amount will be deducted from the final certificate of payment.

50. Add new paragraph as follows:

4.1.8 The *Contractor* may be required by the *Contract Documents* or by the *Owner* or *Consultant* during the *Work* to obtain bids from three or more bidders, at no additional cost to the *Owner*, for work for which payment is made from Cash Allowances. Award of such competitive bid shall be made in consultation with the *Owner* and in accordance with the *Owner's* purchasing practices.

### **GC 4.2 CONTINGENCY ALLOWANCE**

51. Delete GC 4.2 in its entirety.

## **PART 5      PAYMENT**

### **GC 5.1 FINANCING INFORMATION REQUIRED OF THE OWNER**

52. Delete paragraphs 5.1.1 and 5.1.2 in their entirety.

### **GC 5.2 APPLICATIONS FOR PROGRESS PAYMENT**

53. Delete paragraph 5.2.4 and replace with the following:

5.2.4 The *Contractor* shall submit to the *Owner* a completed Schedule of Sections and Prices, as required in the Form of Tender.

54. Delete paragraph 5.2.5 and replace with the following:

The schedule of values shall be supported by such evidence as the *Consultant* may reasonably direct and when accepted by the *Owner*, shall be used as the basis for applications for payment, unless it is found to be in error.

55. Add the following to paragraph 5.2.7:

The *Owner* shall not be obligated to pay for any *Products* not yet incorporated into the *Work* but may do so at the *Owner's* sole discretion for major equipment. The *Contractor* shall deliver the *Products* to a site approved by the *Consultant* and the *Contractor* shall, in advance of receipt of the shipment of the *Products*, arrange for adequate and proper, secure storage facilities. Such *Products* shall remain at the risk of the *Contractor* who shall be responsible for any loss, damage, theft, improper use, or destruction of the *Products* however caused. Where the *Owner* makes advance payments for *Products*, such payment shall not constitute acceptance of the *Products* by the *Owner*.

56. Add new paragraphs as follows:

5.2.8 The *Contractor* shall include with each application for payment, a satisfactory Certificate of Clearance from the Workplace Safety and Insurance Board (WSIB).

5.2.9 The *Contractor* shall include with the second and all subsequent applications for payment, a sworn statement that all accounts for labour, subcontracts, *Products*, construction machinery and equipment, and other indebtedness which may have been incurred by the *Contractor* for work performed and *Products* supplied under the *Contract* 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 as an identified amount in dispute.

5.2.10 The *Owner* shall not have an obligation to make any payment to the *Contractor* if either a registered lien or a notice of lien has been received by the *Owner* until such lien is discharged.

### **GC 5.3 PROGRESS PAYMENT**

57. Delete subparagraphs .2 and .3 of paragraph 5.3.1 and replace with the following:

.2 the *Consultant* will issue to the *Owner* and copy to the *Contractor*, no later than 5 calendar days after the receipt of the application for payment, a recommendation for payment in the amount applied for, or in such other amount as the *Consultant* determines to be properly due. If the *Consultant* amends the application, the *Consultant* will promptly advise the *Owner* in writing giving reasons for the amendment.

### **GC 5.4 SUBSTANTIAL PERFORMANCE OF THE WORK**

58. Delete .2 of paragraph 5.4.2 and replace with the following:

5.4.2 recommend to the *Owner*, with a copy to the *Contractor*, certification of *Substantial Performance of the Work* or a designated portion of the *Work* and the date upon the *Work* or a designated portion of the *Work* was substantially performed.

59. Renumber paragraph 5.4.3 and 5.4.4 and insert new paragraph 5.4.3 as follows:

5.4.3 Upon receipt of the *Consultant's* recommendation for certifying *Substantial Performance of the Work*, the *Owner* shall:

- .1 advise the *Contractor* in writing that the *Work* or the designated portion of the *Work* is not substantially performed giving reasons for such decision, or
- .2 state the date of *Substantial Performance of the Work* or a designated portion of the *Work* in a certificate and issue a copy of that certificate to the *Contractor* and the *Consultant*.

The *Owner* will consider costs of supplying specified spare parts, maintenance manuals, "as-built" drawings, warranty certificates and test results in determining whether or not the *Work* is substantially performed.

### **GC 5.5 PAYMENT OF HOLDBACK UPON SUBSTANTIAL PERFORMANCE OF THE WORK**

60. Add new subparagraphs .3 and .4 of paragraph 5.5.1 as follows:

5.5.1.3 submit a release letter, releasing the *Owner* from all further claims relating to the *Contract* for all work performed up to and including the date of

*Substantial Performance of the Work.* Such final claim shall itemize all outstanding and unsettled claims by the *Contractor*. The release letter shall be in a form satisfactory to the City Solicitor.

5.5.1.4 submit a satisfactory Certificate of Clearance from the Workplace Safety and Insurance Board (WSIB).

61. Delete paragraph 5.5.2 and replace with the following:

5.5.2 After the receipt of an application for payment from the *Contractor*, and the submissions as required in paragraph 5.5.1, the *Owner* will issue a certificate for payment of the holdback amount.

62. Delete paragraph 5.5.3 in its entirety.

63. Delete the first and second sentences in paragraph 5.5.4 and replace with the following:

The holdback amount authorized by the certificate for payment of the holdback amount is due and payable 30 calendar days following the expiration of the holdback period stipulated in the lien legislation applicable to the *Place of Work*.

#### **GC 5.6 PROGRESSIVE RELEASE OF HOLDBACK**

64. Renumber paragraphs 5.6.1, 5.6.2 and 5.6.3 as paragraphs 5.6.2, 5.6.3 and 5.6.4 respectively.

65. Add the following as paragraph 5.6.1:

5.6.1 Upon application by the *Contractor* for release of a *Subcontractor's* or *Supplier's* holdback, the *Contractor* shall provide the *Consultant* with;

- .1 the extent of all additions to, or deductions from, the *Work* of the *Subcontractor* or of the *Supplier* as a result of *Change Orders* or *Change Directives*,
- .2 a letter or certificate from the Workplace Safety and Insurance Board (WSIB) stating that the *Subcontractor* or *Supplier* has paid all assessments to the Board up to the date of application for partial release of holdback covering the *Work* of the *Subcontractor* or *Supplier* and,
- .3 a statutory declaration made by the *Subcontractor* or the *Supplier* in the form of CCDC 9B-2001 Document.

66. In the third line of paragraph 5.6.2, delete the words "the *Owner* shall pay the *Contractor* the holdback amount retained" and replace with "the *Owner* may, at its

sole discretion, pay the *Contractor* the holdback amount retained". The *Owner* shall not be obligated to release any holdback for the *Work* of a *Subcontractor* or *Supplier* prior to *Substantial Performance of the Work* as a whole unless specified in the *Contract Documents*.

67. Add the following to paragraph 5.6.2:

When the *Owner* agrees to release the holdback amount retained for subcontracted work, or for *Products* supplied, the *Contractor* shall, within 30 calendar days of receipt of such payment, submit to the *Owner* written confirmation of payment of such holdback to the applicable *Subcontractor* or *Supplier*. If the *Contractor* fails to submit such written confirmation, the *Owner* shall retain the right to withhold from any amount due or which may become due to the *Contractor* the amount of the released holdback until such written confirmation is received or until payment becomes due for the holdback on the *Work* as a whole, whichever is earlier.

### **GC 5.7 FINAL PAYMENT**

68. Delete all paragraphs and replace with the following new paragraphs:

5.7.1 A final certificate for payment will be issued by the *Owner* at the end of the Warranty Period, as may be extended in accordance with the *Contract Documents*, and such final certificate for payment shall include payment of the Warranty Security Holdback amount withheld in accordance with the *Contract Documents*, less any deductions made in accordance with the *Contract Documents*.

5.7.2 The *Owner* shall, no later than 30 days after the expiration of the Warranty Period, pay the *Contractor* the final payment amount as provided in Article A-5 of the Agreement - PAYMENT.

### **GC 5.8 WITHHOLDING OF PAYMENT**

69. Add new paragraph as follows:

5.8.2 All monies payable to the *Owner* by the *Contractor* in accordance with the *Contract Documents*, may be retained out of any monies due from the *Owner* to the *Contractor* under this or any other *Contract* with the *Owner*. Such monies may also be recovered from the *Contractor* or his surety jointly or severally in any court of competent jurisdiction, as a debt due to the *Owner* and the *Owner* shall have full power to withhold any estimate or certificate, if circumstances arise which may indicate to it the advisability of so doing, though the sum to be retained may be unascertained.

70. Add the following new Article:

## **GC 5.10 CONSTRUCTION LIENS**

- 5.10.1 The *Contractor* shall give the *Owner Notice in Writing*, immediately, of all lien claims or potential lien claims coming to the knowledge of the *Contractor* or his agents.
- 5.10.2 The *Contractor* shall, at the *Contractor's* expense, remove any liens arising out of this *Contract* and registered or filed against the *Place of the Work*, provided such liens represent a claim for work performed, or materials supplied, after commencement of construction.
- 5.10.3 If, at any time, the *Owner* receives notice of a lien from any person, firm, corporation, or other entity, the *Owner* may withhold 125% of the lien amount from any payments due under the *Contract* until such lien is satisfied or security has been paid into or posted with the court by the *Contractor* to vacate the lien and, where necessary, any certificate of action in respect of such lien. No interest shall be payable on any payments withheld under this paragraph.
- 5.10.4 At the option of the *Owner* and without imposing any obligation whatsoever on the *Owner* to do so, the *Owner* may pay into court an amount sufficient to vacate any lien and, where necessary, any certificate of action in respect of such lien. Any such payment and the costs of so doing, including legal costs on a solicitor and client basis together with all interest, costs and expenses incurred by the *Owner*, shall be charged to and paid by the *Contractor* or, at the option of the *Owner*, may be treated as a payment to the *Contractor* under the *Contract* and deducted from amounts otherwise owing to the *Contractor* by the *Owner* on this or any other *Contract*.
- 5.10.5 The *Contractor* agrees that all costs incurred by the *Owner* relating to liens filed by contractors, workers, or material or equipment suppliers, including legal fees on a solicitor and client basis, shall be paid by the *Contractor* to the *Owner* on demand or, at the option of the *Owner*, may be treated as payment to the *Contractor* under the *Contract* and deducted from amounts otherwise owing to the *Contractor* by the *Owner* on this or any other *Contract*.
- 5.10.6 Where any lien claimant asks from the *Owner* the production for inspection of the *Contract Document* or the state of the accounts between the *Owner* and the *Contractor*, the *Contractor* shall be liable for an administration fee of up to Two Hundred Dollars (\$200.00) for each request made as compensation for the preparation of such accounting or for the preparation of the *Contract Documents*, or both, as the case may be.
- 5.10.7 Where an application is brought to a judge of a competent jurisdiction to compel production of any particular document to a lien claimant, the

*Contractor* further agrees to indemnify the *Owner* from reasonable legal fees on a solicitor and client basis incurred in appearing on such an application and in addition agrees to pay to the *Owner* its reasonable costs incurred in producing such documents to the extent that the same is made necessary under the disposition of the matter by such judge.

5.10.8 Any and all fees, costs, or expenses of any nature whatsoever which are the responsibility of the *Contractor* under this Article shall be deductible from monies otherwise payable to the *Contractor* under the terms of the *Contract Documents*.

## **PART 6      CHANGES IN THE WORK**

### **GC 6.2 CHANGE ORDER**

71. Add the following to paragraph 6.2.1:

The method used to determine the amount of adjustment to the *Contract Price*, if any, for the proposed change in the *Work* shall be one of the following:

- .1      Negotiated lump sum,
- .2      Unit price, as set out in the *Contract Documents* or subsequently agreed upon, or,
- .3      Cost-Plus (Time and Materials), in accordance with paragraph 6.3.6 of GC 6.3 - CHANGE DIRECTIVE.

### **GC 6.3 CHANGE DIRECTIVE**

72. The “*Contractor’s fee*” as provided in paragraph 6.3.6 of GC 6.3 - CHANGE DIRECTIVE shall only apply where the method of adjustment to be used is the Cost-Plus (Time and Materials) method.

73. The “*Contractor’s percentage fee*” as provided in paragraph 6.3.6 of GC 6.3 - CHANGE DIRECTIVE shall be based on the following:

- .1      For *Work* performed directly by the *Contractor’s* forces: 10%.
- .2      For *Work* performed by a *Subcontractor*: 10% for the *Subcontractor*, plus 10% for the *Contractor*, not compounded.
- .3      No further mark-up shall be applied regardless of the extent to which the *Work* is assigned or sublet to others. If *Work* is assigned or sublet to an associate, as defined by the Securities Act, no *Subcontractor* mark-up whatsoever shall be applied.

74. Add the following to paragraph 6.3.9:

The *Contractor's* proposal for adjustment of the *Contract Price*, if any, shall include a breakdown of the labour, *Construction Equipment, Products* and *Subcontractor Work* which is anticipated to be required by the change in the *Work*. Allowable mark-ups on labour, *Construction Equipment, Products* and *Subcontractor Work* shall be in accordance with GC 6.3 as amended.

#### **GC 6.4 CONCEALED OR UNKNOWN CONDITIONS**

75. Add new paragraph as follows:

6.4.5 The *Contractor* confirms, that prior to bidding the *Project*, it carefully investigated the *Place of Work* and applied to that investigation the degree of care and skill described in paragraph 3.14.1, given the amount of time provided between the issue of the bid documents and the actual closing of bids, the degree of access provided to the *Contractor* prior to submission of bid, and the sufficiency and completeness of the information provided by the *Owner*. The *Contractor* is not entitled to compensation or to an extension of the *Contract Time* for conditions which could reasonably have been ascertained by the *Contractor* by such careful investigation undertaken prior to the submission of the bid.

#### **GC 6.5 DELAYS**

76. Delete the period at the end of paragraph 6.5.1 and add the following words: "..., but excluding any consequential, indirect or special damages."

77. Add new paragraph as follows:

6.5.6 If the *Contractor* is delayed in the performance of the *Work* by an act or omission of the *Contractor* or anyone employed or engaged by the *Contractor* directly or indirectly, or by any cause within the *Contractor's* control, then the *Contract Time* shall be extended for such reasonable time as the *Consultant* may decide in consultation with the *Contractor*. The *Owner* shall be reimbursed by the *Contractor* for all reasonable costs incurred by the *Owner* as a result of such delay, including all services required by the *Owner* from the *Consultant* as a result of such delay by the *Contractor* and, in particular, the cost of the *Consultant's* service during the period between the date of *Substantial Performance of the Work* stated in Article A-1 herein as the same may be extended through the provisions of these General Conditions and any later, actual date of *Substantial Performance of the Work* achieved by the *Contractor*.

#### **GC 6.6 CLAIMS FOR A CHANGE IN THE CONTRACT PRICE**

78. In paragraph 6.6.1, delete “shall give timely *Notice in Writing*” and replace with “shall, within 7 calendar days of the commencement of any part of the *Work* that may be affected by the situation, give *Notice in Writing*”.

79. Delete paragraph 6.6.3 and replace with the following:

The party making the claim shall submit to the *Consultant* a detailed account of the amount claimed and the grounds upon which the claim is based. Such claim shall be submitted within a reasonable time, and in any event no later than 30 calendar days after completion of the *Work* affected by the situation. Oral arrangements will not be considered. The party making the claim must produce written evidence in support of the claim, and shall advance no claim in the absence of such written evidence, and shall not use, or attempt to use, against the other party any conversation with any parties.

80. In paragraph 6.6.5, delete “30 *Working Days*” and replace with “60 calendar days”.

## **PART 7      DEFAULT NOTICE**

### **GC 7.2      CONTRACTOR’S RIGHT TO SUSPEND THE WORK OR TERMINATE THE CONTRACT**

81. Delete subparagraph .1 of paragraph 7.2.3 in its entirety.

82. In subparagraph .2 of paragraph 7.2.3, delete “*Consultant*” and replace with “*Owner*”.

83. In subparagraph .4 of paragraph 7.2.3, delete the words “, except for GC 5.1 - FINANCING INFORMATION REQUIRED OF THE OWNER,”.

84. Add new paragraph as follows:

7.2.6 No right on behalf of the *Contractor* to suspend the work or terminate the *Contract* shall arise due to the withholding of certificates and/or payments because of the *Contractor’s* failure to pay all just claims promptly or because of the registration or notice of liens against the *Place of Work*, until such claims and liens are discharged.

## **PART 8      DISPUTE RESOLUTION**

### **GC 8.3 NEGOTIATION, MEDIATION, AND ARBITRATION**

85. Delete paragraph 8.2.6 and replace with:

By giving a *Notice in Writing* to the other party and the *Consultant*, not later than 10 *Working Days* after the termination of the mediated negotiations under paragraph 8.2.5, either party may request that the dispute be finally resolved by arbitration under the Rules for Arbitration of Construction Disputes as provided in

CCDC 40 in effect at the time of bid closing. The dispute shall not proceed to arbitration without the consent of both parties. Where both parties consent to send the dispute to arbitration, the arbitration shall be conducted in the jurisdiction of the *Place of the Work*.

## **PART 9      PROTECTION OF PERSONS AND PROPERTY**

### **GC 9.4 CONSTRUCTION SAFETY**

86. Add new paragraph as follows:

9.4.2 If at any time the *Consultant* or his authorized representative considers the *Works* to be unsafe he may order the *Contractor* to take immediate measures to ensure adequate safety. If, in the opinion of the *Consultant*, the *Owner* or their authorized representative, the *Contractor* fails to take adequate measures, the *Consultant* or the *Owner* or their authorized representatives may order the *Work* to cease until such measures have been taken. The *Contractor* shall not be entitled to an adjustment in *Contract Price* or the *Contract Time* for such work stoppage.

## **PART 10      GOVERNING REGULATIONS**

### **GC 10.1 TAXES & DUTIES**

87. Add new paragraphs as follows:

10.1.3 Where taxes and/or duties have increased or decreased after the time of the bid closing, the *Contractor* shall provide to the *Consultant* a detailed breakdown of such increase or decrease in costs in a form satisfactory to the *Owner*. Such statement shall be submitted no later than 30 calendar days after the completion of *Work*.

10.1.4 The *Owner* reserves the right to make deductions from regular progress payments as compensation for the estimated benefit from decreased tax or duty costs. Such deductions shall be set off from progress payments pending receipt of the statement itemizing the benefits that have resulted from the decrease in tax or duty costs at which time the final payment adjustment will be determined.

### **GC 10.4 WORKER'S COMPENSATION**

88. Delete paragraph 10.4.1 and replace with the following:

10.4.1 Prior to commencing the *Work*, again with each of the *Contractor's* applications for payment, including payment of the holdbacks amounts, and with the *Contractor's* application for final payment, the *Contractor* shall

provide evidence of compliance with worker's compensation legislation at the *Place of the Work*, including payments due thereunder.

89. Add the following new Article:

#### **GC 10.5 NON-RESIDENT CONTRACTORS**

10.5.1 If the *Contractor* is non-resident in Ontario, the *Contractor* shall, immediately after being notified by the *Owner* that his tender has been accepted by the *Owner*, obtain from the Retail Sales Tax Branch a certificate showing that the *Contractor* has registered with the Retail Sales Tax Branch and shall submit such certificate to the *Owner* at the time that he furnishes bonds as required by the *Contract*.

10.5.2 In addition, wherever the *Contract Documents* require a Certificate of Clearance from the Workplace Safety and Insurance Board (WSIB), the non-residence *Contractor* shall provide an equivalent document from his home province or state.

### **PART 11 INSURANCE AND CONTRACT SECURITY**

#### **GC 11.1 INSURANCE**

90. In the last sentence of subparagraph .1 of paragraph 11.1.1, delete "a period of 6 years" and replace with "a period of 3 years".

91. Delete subparagraphs .3 (Aircraft or Watercraft Liability Insurance) and .5 (Boiler and Machinery Insurance) of paragraph 11.1.1.

92. Add the following to paragraph 11.1.2:

Confirmation of coverage with respect to general liability and automobile liability insurance required shall be provided using the City of Niagara Falls' standard Certificate of Insurance form.

#### **GC 11.2 CONTRACT SECURITY**

93. Delete the last sentence of paragraph 11.2.2 and replace with the following:

The form of such bonds shall be in forms satisfactory to the City Solicitor.

94. Add new paragraphs as follows:

11.2.3 The bonds shall cover payment of all obligations placed upon the *Owner* as a result of the *Contractor's* default, including:

- .1 Payment of all legal, architectural, mechanical, electrical and structural engineering expenses incurred by the *Owner* in determining the extent of *Work* performed and *Work* still to be performed including, without limitation, any additional *Work* required as a result of the interruption of the *Work*, and
- .2 Payment of any additional expenses reasonably incurred by the *Owner* in the form of site security services, light, heat, power, etc., payable over the period between the default of the original *Contract* and commencement of the new *Contract*.

11.2.4 No claims for additional bonding will be considered unless such additional bonding has been pre-approved by the *Owner*.

## **PART 12 INDEMNIFICATION, WAIVER OF CLAIMS AND WARRANTY**

### **GC 12.1 INDEMNIFICATION**

95. In subparagraph .2 of paragraph 12.1.1, delete “6 years” and replace with “2 years”.

### **GC 12.2 WAIVER OF CLAIMS**

96. In paragraph 12.2.2, delete “395 calendar days” and replace with “760 calendar days”.

97. Delete paragraph 12.2.7 and replace with the following:

The party giving “*Notice in Writing* of claim” as provided for in GC 12.2 - WAIVER OF CLAIMS shall submit within 60 calendar days a detailed account of the amount claimed.

98. Delete the last sentence of paragraph 12.2.8 and replace with the following:

The party making the claim shall submit a final account no later than 60 calendar days after the end of the effects resulting from the event or series of events.

### **GC 12.3 WARRANTY**

99. Throughout GC 12.3, delete “one year” and replace with “two years”.

100. Change the numbering of paragraph 12.3.4. to 12.3.4.1 and add to the end of paragraph 12.3.4.1:

“Any Work repaired or replaced during the warranty period shall be re-warranted for an additional two years from the date of completion of the repair or replacement. Notwithstanding the expiration of the warranty period, the Contractor shall not be relieved of its obligations to correct any defects or deficiencies in the Work of which

notice has been given to the Contractor prior to the expiration of the Warranty Period.”

101. Add additional paragraphs:

12.3.4.2 If the correction of the defects or deficiencies in the Work cannot be completed within five full Working Days following receipt of the Notice in Writing from the Consultant, the Contractor shall not be in default if the Contractor,

- a) commences the correction within the five full *Working Days* following receipt of the *Notice in Writing*;
- b) provides the *Owner* with an acceptable schedule for the progress of such correction; and
- c) completes the correction in accordance with such schedule.

12.3.4.3 If the *Contractor* fails to correct the defects or deficiencies in the *Work* within the five full *Working Days* following receipt of the *Notice in Writing* from the *Consultant*, or such agreed upon schedule for such correction, the *Owner*, without prejudice to any other right or remedy the *Owner* may have, carry out such work by its own forces or by other contractors and if such work is work which the *Contractor* should have carried out at the Contractor's own expense, the *Owner* shall be entitled to recover from the *Contractor* the cost thereof or may deduct the same from any monies due or that become due to the *Contractor*, including any warranty holdback.

12.3.4.4 The decision of the *Owner* shall be final as to the existence of such defects or deficiencies, the necessity of remedying same, and the remedial measures required.

12.3.4.5 The Contractor shall be responsible for the costs for inspection and testing for the correction of defects or deficiencies. The *Owner* shall have the right to deduct the cost of the inspection and testing from any monies owed to the Contractor.

102. Add to paragraph 12.3.6:

The *Contractor* shall be responsible for the cost of the extended warranties which shall be included in the *Contract Price*. Extended warranties shall be submitted to the *Consultant* no later than 30 calendar days after the date of *Substantial Performance of the Work*.

103. Add new paragraphs:

- 12.3.7 If the Contract Documents provide, the Owner may hold back from each payment for an invoice 2.5% of the total amount payable under each such invoice as security for the Contractor's performance of its warranty obligations. In the event the Contractor fails to correct a defect or deficiency during the warranty period within the required time and/or fails to pay for the redesign, reconstruction and other costs related to damages arising from a defect or deficiency, the Owner shall be entitled, in addition to any other remedy available to the Owner, to use the warranty holdback, or such part of it still being held by the Owner to pay for the costs of remedying the defect or deficiency and any redesign, reconstruction or other costs relating to the defect or deficiency. If the costs are greater than the amount of the warranty holdback, the Contractor shall pay the additional costs upon receipt of an invoice from the Owner. Subject to section 12.3.8, the Contractor shall have the right to invoice the Owner for the balance of the warranty holdback at the end of the warranty period or extra warranty period as described in 12.3.4.1.
- 12.3.8 The Contractor shall assign to the Owner all warranties, guarantees or other obligations for Work, services or Products performed or supplied by any Subcontractor, Supplier or other person in connection with the Work and such assignment shall be with the consent of the assigning party where required by law or by the terms of that party's contract. Such assignment shall be in addition to, and shall in no way limit, the warranty rights of the Owner under the Contract Documents. The warranty holdback shall not be released under section 12.3.7 until all warranties and extended warranties have been transferred to the Owner pursuant to this section.
- 12.3.9 In accordance with paragraph 3.5.4, the *Contractor* shall carry out correction of defects and deficiencies at such times as may be convenient to the *Owner*, which may require work by the *Contractor* outside of normal working hours. Additional costs for work in this regard shall be borne by the *Contractor*.
- 12.3.10 Any *Products* requiring excessive servicing during the warranty period (or free maintenance period if applicable) shall be considered defective and the warranty (or free maintenance period) shall be deemed to start over on the date that the defect causing such excessive servicing has been corrected.
- 12.3.11 The Contractor's obligations under this GC 12.3 – WARRANTY shall continue notwithstanding any withholding of payment by the Owner under GC 5.8 – WITHHOLDING OF PAYMENT or the Owner's performance of the Contractor's obligations under this Contract where the Contractor is in default in the performance of such obligations."

104. Add New Part 13:

**PART 13 OTHER PROVISIONS**

**GC 13.1 OWNERSHIP OF MATERIALS**

13.1.1 Unless otherwise specified, all materials existing at the Place of the Work at the time of execution of the Contract shall remain the property of the Owner. All work and Products delivered to the Place of the Work by the Contractor shall be the property of the Owner. The Contractor shall remove all surplus or rejected materials as its property when notified in writing to do so by the Consultant.

**GC 13.2 CONTRACTOR DISCHARGE OF LIABILITIES**

13.2.1 In addition to the obligations assumed by the Contractor pursuant to GC 3.7, the Contractor agrees to discharge all liabilities incurred by it for labour, materials, services, Subcontractors and Products, used or reasonably required for use in the performance of the Work, except for amounts withheld by reason of legitimate dispute which have been identified to the party or parties, from whom payment has been withheld.

**GC 13.3 DAILY REPORTS/DAILY LOGS**

13.3.1 The Contractor shall cause its supervisor, or such competent person as it may delegate, to prepare a daily log or diary reporting on weather conditions, work force of the Contractor, Subcontractors, Suppliers and any other forces on site and also record the general nature of Project activities. Such log or diary shall also include any extraordinary or emergency events which may occur and also the identities of any persons who visit the site who are not part of the day-to-day work force.

13.3.2 The Contractor shall also maintain records, either at its head office or at the job site, recording manpower and material resourcing on the Project, including records which document the activities of the Contractor in connection with GC 3.5, and comparing that resourcing to the resourcing anticipated when the most recent version of the schedule was prepared pursuant to GC 3.5.

105. Add New Part 14:

**PART 14 CONFIDENTIAL INFORMATION**

14.1 In this Part,

**Confidential Information**” includes information, whether oral, written, visual, electronic, or in any other form, relating in any way to this Agreement, which is identified as confidential or that would reasonably be considered as being confidential. Confidential Information does not include any portions of the Confidential Information that (a) at the time of disclosure was in the public domain; (b) after disclosure hereunder, is published or otherwise becomes part of the public domain through no fault of the Contractor; or (c) is received from an independent third party who had obtained the Confidential Information lawfully and was under no obligation of secrecy or duty of confidentiality owed to the Owner.

- 14.2 Except as otherwise permitted in the Contract Documents, the Contractor shall keep in confidence, any Confidential Information that it now has or that may come into its possession in the course of the Agreement, including information marked “Confidential”, and shall not, without the City’s prior written consent, disclose the Confidential Information in any manner whatsoever, in whole or in part, and shall not use the Confidential Information for any purpose other than in connection with the Project. The Contractor may reveal or permit access to the Confidential Information only to Contractor parties who need to know the Confidential Information, who must be advised of the confidential nature of the Confidential Information, who are directed by the Contractor to hold the Confidential Information in confidence and who agree to be bound by and to act in accordance with the terms and conditions of the Contract Documents. The Contractor shall take all necessary precautions or measures to prevent improper access to, or use or disclosure of, the Confidential Information by such parties and agrees to be jointly and severally responsible for any breach of the Agreement by any Contractor parties.
- 14.3 The Contractor acknowledges that the Owner is subject to the provisions of the *Municipal Freedom of Information and Protection of Privacy Act* as amended from time to time.
- 14.4 If the Contractor breaches any provision of this Contract relating to Confidential Information, it shall immediately give Notice in Writing of such breach to the Owner and take all necessary steps to limit the extent and impact of the breach.
- 14.5 The harm that would be suffered by the Owner in the event of a breach of the provisions of this Agreement relating to Confidential Information by the Contractor would not be compensable by monetary damages alone. Therefore, the Owner shall be entitled, in addition to any other remedies, to seek an injunction against any breach or threatened breach of any such provision.
- 14.6 The provisions of this Contract relating to Confidential Information will remain in effect after the expiry or other termination of this Agreement.

Canadian Standard Construction Document CCDC 41, CCDC Insurance Requirements, dated January 21, 2008 shall be considered complete except as amended and supplemented by the following supplementary conditions.

106. Confirmation of coverages noted in paragraphs 1 and 2 shall be provided using the City of Niagara Falls' standard Certificate of Insurance form.

107. Delete paragraphs 3 and 5.

108. "Broad Form" Property Insurance

- .1 In the second sentence of paragraph 4, delete "(excluding flood and earthquake)" and replace with "(excluding earthquake)".
- .2 "Broad form" property insurance shall not exclude "resultant damage".