

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

**PART C**

**SUPPLEMENTARY CONDITIONS TO**

**CCDC 2 STIPULATED PRICE CONTRACT, 2008**

**Rev 8 CH Date: 05 February 2020**

The *Construction Act* and its regulations as they read on June 29, 2018 apply to this Contract except any provisions of the current version of the *Construction Act* that apply to the Contract pursuant to section 87.3 (3) of the *Construction Act*.

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* on April 20, 2020 and, subject to adjustment in *Contract Time* as provided for in the *Contract Documents*, attain *Substantial Performance of the Work* on or before September 24, 2021 and attain Final Completion of the *Work* on or before October 29, 2021.

**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. Add to the end of paragraph 6.1:

*“Notices in Writing* to the *Owner* shall be delivered to the Facilities Project Manager at the address below and to Legal Services at [legalservices@niagarafalls.ca](mailto:legalservices@niagarafalls.ca).

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.

**ARTICLE A-9 TIME OF THE ESSENCE / LIQUIDATED DAMAGES**

7. Add new **ARTICLE A-9 TIME OF THE ESSENCE/LIQUIDATED DAMAGES** as follows:

9.1 It is agreed that one of the reasons the *Contractor* was selected by the *Owner* for this *Contract* is the *Contractor’s* representation and warranty that it will attain Substantial Performance of the Work within the Contract Time stated in Article A-1 of this Contract. The Contractor acknowledges that it has been advised by the Owner that it is critical to the Owner that Substantial Performance of the Work is achieved within the Contract Time. The Contractor agrees that time is of the essence in the performance of the Contractor’s obligations under this Contract.

9.2 The Contractor further acknowledges its understanding that the Owner is responsible and must account to the citizens, visitors, and partners of the City of Niagara Falls. A failure by the Contractor to

attain Substantial Performance of the Work within the Contract Time will result in damages to the Owner and to citizens, visitors and partners of the City of Niagara Falls, which would be difficult or impractical to quantify but would nevertheless have a significant negative impact on the Owner and its ability to provide the services the Owner is obliged to provide to the citizens, visitors and partners of the City of Niagara Falls.

- 9.3 Given the significance of the requirement for the Contractor to achieve Substantial Performance of the Work, as described in Article A-10.2, the Contractor further agrees that, without limiting the Owner's entitlement to any additional or other damages, the Contractor acknowledges that in the event that it fails to achieve Substantial Performance of the Work within the Contract Time, the Owner will incur substantial damages and the extent of such damages shall be incapable or very difficult of accurate measurement. Nonetheless, the parties acknowledge that as of the effective date of this Contract, the amount of liquidated damages set forth in subparagraph 10.4 below represents a good faith estimate on the part of the parties as to the actual potential damages that the Owner would suffer because of late completion of the Project. It is expressly acknowledged and agreed by and between the parties that the amount of such liquidated damages does not include any penalty. Notwithstanding the foregoing, where the Project is delayed beyond the Contract Time, the Owner shall be entitled to (i) the liquidated damages as calculated pursuant to Article A-9.4, or (ii) in the event that the Contractor claims that this liquidated damages provision is invalid or unenforceable and the Contractor prevails on such a defence, the damages arising from the delay suffered by the Owner including, without limitation, consequential, special, incidental, and indirect damages, costs and other expenses incurred or suffered by the Owner.
- 9.4 The Owner shall require that the Contractor pay to the Owner (or have deducted from Contract payments) liquidated damages at the per diem rate of Two Thousand Dollars (\$2,000) for each calendar day of delay beyond the prescribed date for Substantial Performance of the Work until Substantial Performance of the Work is achieved and certified, pursuant to the terms of the Contract.
- 9.5 Liquidated damages will be assessed as incurred and reflected as deductions from amounts that may be due under any applications for payment pending at the time that such liquidated damages are assessed. All liquidated damages not deducted from payments prior to final payment shall be deducted from the final payment to be made

by the Owner to the Contractor pursuant to GC 5.7 FINAL PAYMENT, and any amount of liquidated damages in excess of the final payment amount, shall be paid by the Contractor to the Owner, within 30 days following a written demand by the Owner for such payment.

- 9.6 The liquidated damages payable under this paragraph are in addition to and without prejudice to any other remedy, action or any other alternative claim that may be available to the Owner.”

## **DEFINITIONS**

### **8. 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 DTAH Architects Limited and the *Consultant's* representative will be Megan Torza.

### **9. 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.

### **10. 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*.

### **11. 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*.

**12. 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**

13. 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**

14. 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 among the Subcontractors and Suppliers regarding the limits of responsibility.

15. 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.

16. 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

17. 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*.

18. 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*.

19. 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.

20. 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 Owner agrees otherwise.

21. 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**

22. Delete paragraph GC 1.2.1 in its entirety and substitute new paragraphs 1.2.1 and 1.2.2:

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.

1.2.2 The Construction Act and its regulations as they read on June 29, 2018 apply to this Contract except any provisions of the current version of the Construction Act that apply to the Contract pursuant to section 87.3 (3) of the Construction Act.

## **GC 1.4 ASSIGNMENT**

23. 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**

24. 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.

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

26. 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 be deemed an acceptance of the *Supplemental Instruction* by the *Contractor* without any change to the *Contract Price* or *Contract Time*.

27. 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**

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

29. Add new paragraph 2.3.8:

It is the responsibility of the *Contractor* to schedule notifications and inspections required by authorities having jurisdiction such that the notifications can be properly received, and the inspections can be properly undertaken without causing a delay in the *Work*. The *Contractor* shall be responsible for any delay in the *Work* caused by the *Contractor's* failure to properly schedule the required notifications and inspections and shall not be entitled to any extension of the *Contract Time* due to such failure.

30. Add new paragraph 2.3.9:

Where standards of performance are specified and the *Work* does not comply with the specified standard of performance, the deficiency in the *Work* shall be corrected as directed by the *Consultant*. Subsequent testing to ensure that the standard of



performance has been attained (including re-testing by *Owner*), shall be carried out at the *Contractor's* expense and shall not be paid from the cash allowances pursuant to GC 4.1.2.

## **GC 2.4 DEFECTIVE WORK**

31. 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**

32. 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**

33. Delete paragraph 3.2.2.2 in its entirety.

34. 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 the *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* ("OHSA").

### **GC 3.4 DOCUMENT REVIEW**

35. 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 immediately provide *Notice in Writing* to the *Consultant* regarding 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*.

36. 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 provide *Notice in Writing* to the *Consultant*, who will provide written instructions or explanations. Neither the *Owner* nor the *Consultant* will be responsible for oral instructions. If the *Contractor* fails to provide *Notice in Writing* to the *Consultant* regarding such discrepancy or omission, the *Contractor* shall be deemed to have accepted all responsibility for the correction of any deficiencies resulting from such failure and shall not be entitled to an adjustment in the *Contract Price* or *Contract Time* for the correction.
- 3.4.3 Notwithstanding the foregoing, errors, inconsistencies and/or omissions shall not include lack of reference on the drawings or in the specifications to labour and/or Products that are required or normally recognized within respective trade practices as being necessary for the complete execution of the *Work*. The *Contractor* shall not use requests for information ("RFI")

as described in paragraphs 3.4.1 and 3.4.2 issued during execution of the Work in and of themselves to establish a change and/or changes in the Work pursuant to Part 6 - CHANGES IN THE WORK. In the event an RFI or the cumulative effect of RFIs leads to what the Contractor considers to be a change in the Work, then the procedure under Part 6 - CHANGES IN THE WORK shall be followed.

### **GC 3.5 CONSTRUCTION SCHEDULE**

37. Delete paragraph 3.5.1 in its entirety and substitute:

3.5.1. The Contractor shall prepare, and update as required, a construction schedule in the form acceptable to the Owner that includes identification of the critical path of the Work, the schedule of operations and indicates the proposed methods of construction and sequence of work and the time the Contractor proposes to complete the various items of work within the Contract Time. The schedule shall be designed to ensure conformity with the specified Contract Time. The construction schedule shall be submitted to the Consultant no later than seven Working Days following award of the Contract. The schedule will include activity sequences and durations, special allocation of labour and Materials, processing of Working Drawings and samples, delivery of products involving long lead time procurement and usage and occupancy requirements of the Owner of those portions of the Work having usage or occupancy priority and any other schedule requirements set out in the Contract Documents. The Contractor shall, during performance of the Work and in accordance with the controls and reporting requirements in the Contract Documents, provide for the Consultant's review and approval progress reports updating the construction schedule and reporting on the progress achieved, percentage of completion, schedule status and financial status with areas of immediate concern highlighted. If the schedule is affected by approved Changes, the Contractor shall submit an updated construction schedule, if requested by the Consultant, within 7 Working Days of the request. This updated schedule shall show how the Contractor proposes to perform the balance of the Work such that the Contractor shall complete the Work within the Contract time as amended by the changes. The Owner may, at its sole discretion, not issue an order to commence work until the schedule has been received and approved.

37. Add a new paragraphs 3.5.2 to 3.5.7:

3.5.2 For the duration of the Contract term, the Contractor shall provide progress reports for review and approval by the Owner and an update of the construction schedule referred to in this paragraph as required in the Contract Documents and in any event no less than at intervals of every 30 calendar days.

3.5.3 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.

3.5.4 If,

.1 at any time it should reasonably appear to the Owner or the Consultant that the actual progress of the Work is behind schedule or is likely to become behind schedule and notice of such opinion is given to the Contractor; or

.2 the Contractor has noticed slippage in the schedule,

then the Contractor shall take appropriate steps to cause the actual progress of the Work to conform to the schedule and shall produce and present to the Owner and the Consultant a recovery plan demonstrating how the Contractor will achieve the recovery of the schedule.

3.5.5 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.

3.5.6 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 scheduled 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.

3.5.7 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**

38. Add new paragraphs as follows:

3.6.3 The *Contractor's* 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**

39. 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 a default of the *Contractor's* contractual obligations. ”

40. Add the following to paragraph 3.7.5:

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

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

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

42. 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 its *Subcontractors* or *Suppliers* from performance of the *Work* for failure to comply with this requirement.”

43. 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 OHSA or exhibits unacceptable conduct of which the *Consultant* shall be the sole judge, 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 the manufacturers' printed instructions and supplementary directions prior to use or installation of the proprietary **Products**.
- 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 a *Subcontractor* or *Supplier*.

- 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 *Consultant* shall have all the responsibility for the additional costs of the *Owner* and the *Consultant* related to their review of the proposed substitution.
- 3.8.12 The *Contract Price* shall be based on the *Products* specified and not 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 *Work*.

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

44. 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 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 *Place of Work* in whole, or in part, for the purpose of operating its business before final completion of the *Work*. 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**

45. Add new paragraphs as follows:

3.13.4 If the *Contractor* fails to properly clean the *Place of the Work* within 24 hours of receiving *Notice in Writing* to do so, the *Owner* may complete the cleaning work and the *Contractor* shall be responsible for all costs incurred by the *Owner* in so doing. .

3.13.5 The *Contractor* shall repair any damage to the *Place of the Work* caused by the *Contractor's* transportation in and out of the *Place of the Work* prior to the final payment under the *Contract*, failing which the *Contractor* shall be responsible for all costs incurred by the *Owner* to the complete the repairs.  
Add new Articles as follows:

### **GC 3.14 PERFORMANCE BY CONTRACTOR**

3.14.1 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 care in respect of any *Products*, personnel, or procedures which it may recommend to the *Owner*.

3.14.2 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;
- .3 there are no pending, threatened or anticipated claims that would have a material effect on the financial ability of the *Contractor* to perform the *Work*; and,
- .4 the *Contractor's* workload is not overextended such that would have an adverse effect on the *Contractor's* ability to perform the *Work*.

### **GC 3.15 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. Amend paragraph 5.2.3 by adding at the end of that paragraph:

"but no amount claimed shall include Products delivered to the Place of the Work unless the Products are free and clear of all security interests, liens, and other claims of third parties."

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. 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, 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. Advance payments for *Products* made by the *Owner* 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) and an updated construction schedule and a report on the progress achieved, percentage of completion, schedule status and financial status with areas of immediate concern highlighted.

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 written 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.
- .3 the *Owner* shall make payment to the *Contractor* on account as provided in Article A-5 of the Agreement - PAYMENT, on or before 30 calendar days after the issuance date of the recommendation by the *Consultant*.

#### **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 to be 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 *Construction Act*.

#### **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* may 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 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 amounts payable to the *Owner* by the *Contractor* in accordance with the *Contract Documents*, may be retained out of any amount due from the *Owner* to the *Contractor* under this or any other *Contract* with the *Owner*. Such amounts 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*. The *Owner* may withhold any estimate or certificate even if the sum to be retained is 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 the *Contractor* or his agents become aware of.
- 5.10.2 The *Contractor* shall, at the *Contractor's* expense, remove any liens arising from of this *Contract* and registered against the *Place of the Work* or given to the *Owner*, 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 written notice of a lien or a claim for lien, the *Owner* may withhold 125% of the lien amount from any payments due to the *Contractor* under the *Contract* until such lien is withdrawn or 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 of *Subcontractors* or *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 makes a request to the *Owner* pursuant to section 39 of the *Construction Act*, , the *Contractor* shall be pay the *Owner* an administration fee of Five Hundred Dollars (\$500.00) for each request made as compensation for the cost of the *Owner* of complying with the request.
- 5.10.7 Where an application is made by a *Subcontractor* or *Supplier* brought to the court to compel production of any particular document to a lien claimant, the *Contractor* shall indemnify the *Owner* from reasonable legal fees on a solicitor and client basis incurred in appearing on such an application and shall 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 the court.

5.10.8 Any and all fees, costs, or expenses of any nature whatsoever which are the responsibility of the *Contractor* under this paragraph 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*.”

## **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 time and materials, in accordance with paragraph 6.3.7.”

72. Add new paragraphs 6.2.3, 6.24, 6.25 and 6.26:

"6.2.3 The following mark-ups (for overhead and profit combined) shall apply to amounts agreed to under 6.2.2 on such costs (where each percentage is not cumulative but is applied to the costs of the work):

- .1 *Contractor's* mark-up on work of *Contractor's* own forces: 5%;
- .2 *Subcontractor's* mark-up on *Subcontractor's* work: 5%; and
- .3 *Contractor's* mark-up on *Subcontractor's* work: 5%, not compounded with *Subcontractor's* mark-up.

6.2.4 The mark-up on changes is intended to cover all general expenses and overhead costs incurred by the *Contractor* in relation to the change. For greater certainty, the following items of cost of the *Contractor* in relation to any changes are covered by and included in the overhead and profit mark-up on changes:

- .1 project management costs
- .2 estimating, site supervision, safety, preparation of as-builts, coordination and administration costs

- .3 warranty costs; and
- .4 general clean-up and disposal costs.

Any additional cost associated with bonding and/or insurance resulting from the change shall be included in the estimate of the cost of the change or as a line item included in the costs of the change, as may be applicable, but the *Contractor* shall not be entitled to mark-up on such additional cost, if any.

6.2.5 The *Contractor* shall not be entitled to any additional compensation arising out of changes to the Work aside from the amounts determined and agreed to under this GC 6.2 or as provided in GC 6.3.

6.26 *Change Orders* are not valid and binding upon the *Owner* unless approved and executed in accordance with the *Owner's* internal approval processes.”

### **GC 6.3 CHANGE DIRECTIVE**

73. Amend paragraph 6.3.6 in the second line by adding the word “actual” before the word “cost” and by deleting paragraph 6.3.6.3 in its entirety and substituting:

- .3 “The Contractor's fee shall be as specified in paragraph 6.2.3 and shall only apply where the method of adjustment to be used is the time and materials method.”

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 6.2 as amended.

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

75. Add new paragraph as follows:

“6.4.5 The *Contractor* confirms, that prior to submitting its tender for the *Project*, it had the opportunity to carefully investigate the *Place of Work* and applied to that investigation the degree of care and skill described in paragraph 3.14.1. 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 its tender.

### **GC 6.5 DELAYS**



76. Amend paragraph 6.5.1 by deleting the words at the end of the fifth line following the word "for" and substituting : "... reasonable direct costs directly flowing from the delay but excluding any consequential, indirect or special damages."

77. Amend paragraph 6.5.2 by deleting all of the words in the fourth line and substituting:

"reasonable direct costs directly flowing from the delay but excluding any indirect, consequential, or special damages."

78. Amend paragraph 6.5.3.4. by adding the words "other than lack of financial resources or" immediately following the words "*Contractor's control*".

79. Add new paragraph 6.5.6:

6.5.6 "If the Contractor delays the performance of the Work and such delay is for a cause within the Contractor's control, the Contractor shall reimburse the Owner for the reasonable costs incurred by the Owner as the result of such delay or delays."

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

80. In paragraph 6.6.1, delete "shall give timely *Notice in Writing*" and replace with "shall, within 7 calendar days after the commencement of any part of the *Work* that is the subject of the claim, give *Notice in Writing*".

81. 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* that is the subject of the claim. Oral communications will not be binding on the Owner. The party making the claim must produce written evidence in support of the claim and shall not use, or attempt to use, against the other party any oral communications among the parties."

## **PART 7      DEFAULT NOTICE**

### **GC 7.1      OWNER'S RIGHT TO PERFORM THE WORK, TERMINATE THE CONTRACTOR'S RIGHT TO CONTINUE WITH THE WORK OR TERMINATE THE CONTRACT**

82. Amend paragraph 7.1.2 by adding the words "including failing or neglecting to comply with the requirements in GC 3.5..." immediately following the word "properly" in line one.

83. Amend paragraph 7.1.3.1 by adding the words "and is diligently proceeding with" immediately following the word "commences".

84. Amend paragraph 7.1.3.2 by substituting the words "an acceptable schedule" with the words "a schedule acceptable to the *Owner*".
85. Amend paragraph 7.1.5.3 by substituting the words "the difference" at the end of paragraph 7.1.5.3 with the words "on the expiry of the warranty period specified in paragraph 12.3.1 for that portion of the *Work* performed by the *Contractor*, provided that such payment shall be made only in accordance with the requirements set out in GC 5.7 – FINAL PAYMENT."
86. Amend paragraph 7.1.5.4 by substituting the words "the difference" at the end of paragraph 7.1.5.4 with the words "for that portion of the *Work* performed by the *Contractor*, provided that such payment shall be made only in accordance with the requirements set out in GC 5.10 – FINAL PAYMENT."
87. Add new paragraphs 7.1.7, 7.1.8, 7.1.9, 7.1.10 and 7.1.11:
- “7.1.7 The *Owner* may, if conditions arise which make it necessary for reasons other than as provided in paragraphs 7.1.1 and 7.1.4, suspend performance of the *Work* or terminate the *Contract* by giving written notice to that effect to the *Contractor* identifying the reason for the suspension and the expected length of the suspension. Such suspension or termination shall be effective in the manner specified in said notice and shall be without prejudice to any claims which either party may have against the other.
- 7.1.8 The *Contractor* upon receiving notice of suspension or termination from the *Owner* shall suspend all operations as soon as reasonably possible except work which, in the *Contractor's* opinion is necessary for the safety of personnel and for the care and preservation of the *Work*, the materials and plant. In the event of such suspension, the *Contractor* shall be reimbursed by the *Owner* for the reasonable costs incurred by the *Contractor* for such protection. Subject to any directions in the notice of suspension or termination, the *Contractor* shall discontinue ordering materials, facilities and supplies and make every reasonable effort to delay delivery of existing orders and, in the event of termination, to cancel existing orders on the best terms available.
- 7.1.9 During the period of suspension, the *Contractor* shall not remove from the *Place of the Work* any part of the *Work*, or any *Product* or materials without the consent of the *Owner*.
- 7.1.10 If the *Work* is suspended for a period of 30 days or less, the *Contractor*, upon the expiration of the period of suspension, shall resume the performance of the *Work* in accordance with the *Contract Documents*. If the suspension was not due to an act or an omission of the *Contractor*, there shall be an equitable adjustment to the *Contract Time* and the *Contract Price*.

7.1.11 If, after 30 days from the date of notice of suspension of the *Work*, the *Owner* and the *Contractor* agree to continue with and complete the *Work*, the *Contractor* shall resume operations and complete the *Work* in accordance with any terms and conditions agreed upon by the *Owner* and the *Contractor*."

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

88. Amend paragraph 7.2.2 by adding to the end of the paragraph "unless an acceptable arrangement for an extension of the *Contract Time* is agreed to by the *Contractor* and the *Owner*."

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

90. Amend paragraph 7.2.3.2 by deleting the word "*Consultant*" and replacing it with "*Owner*".

91. Delete paragraph 7.2.3.3 in its entirety and substitute new paragraph 7.2.3.3:

"the *Owner* fails to pay the *Contractor* when due the amount certified by the *Consultant* or awarded by arbitration or a *Court*, except where the *Owner* has a bona fide claim for set off, or"

92. Amend paragraph 7.2.3.4 by deleting the phrase beginning with the word "except" and ending with the word "*Owner*".

93. Delete paragraph 7.2.5 in its entirety and replace it with:

"If the *Contractor* terminates the *Contract* under the conditions described in this GC 7.2, the *Contractor* shall be entitled to be paid for all *Work* performed to the date of termination. The *Contractor* shall also be entitled to recover the costs associated with termination, including the costs of demobilization, losses sustained on *Products* and construction machinery and equipment. The *Contractor* shall not be entitled to any recovery for any indirect, special or consequential losses."

94. Add new paragraph 7.2.6:

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**

95. 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*. If both parties do not consent to arbitration, the dispute shall be settled in the court with the appropriate jurisdiction.”

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

### **GC 9.1 PROTECTION OF WORK AND PROPERTY**

96. Amend paragraph 9.1.1.1 by adding at the end of that paragraph:

"...which the Contractor could not reasonably have discovered applying the degree of care and skill described in paragraph 3.4.1 to its review of the Contract Documents."

97. Delete paragraph 9.1.2 in its entirety and substitute:

"Before commencing any work, the Contractor shall determine the locations of all underground utilities and structures indicated in the Contract Documents or that are discoverable by applying to an inspection of the Place of Work the degree of care and skill described in paragraph 3.14.1."

98. Add new paragraph 9.1.5:

"The Contractor shall neither undertake to repair and/or replace any damage whatsoever to the work of other contractors, or to adjoining property, nor acknowledge the same was caused or occasioned by the Contractor, without first consulting the Owner and receiving written instructions as to the course of action to be followed from either the Owner or the Consultant. However, where there is danger to life or public safety, the Contractor shall take such emergency action as it deems necessary to remove the danger."

### **GC 9.2 TOXIC AND HAZARDOUS SUBSTANCES**

99. Add new paragraph 9.2.10:

"The Contractor shall indemnify and hold harmless the Owner, the Consultant, their agents and employees from and against claims, demands, losses, costs,

damages, actions, suits or proceedings arising out of or resulting from exposure to, or the presence of, toxic or hazardous substances or materials which were either brought on to the Place of the Work by the Contractor, or anyone for whom the Contractor is in law responsible, and mishandled or handled negligently or improperly or which are otherwise mishandled or handled negligently or improperly by the Contractor, or anyone for whom the Contractor is in law responsible, thereby creating exposure to toxic or hazardous substances or materials. This obligation shall not be construed to negate, abridge, or reduce other rights or obligations of indemnity set out in GC 12.1 INDEMNIFICATION or which otherwise exist respecting a person or party described in this paragraph."

#### **GC 9.4 CONSTRUCTION SAFETY**

100. Add new paragraphs 9.4.2, 9.4.3 and 9.4.4 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.

9.4.3 Prior to the commencement of the *Work*, the *Contractor* shall submit to the *Owner*:

- .1 a current WSIB clearance certificate;
- .2 copies of the *Contractor's* insurance policies having application to the *Project* or certificates of insurance, at the option of the *Owner*;
- .3 documentation of the *Contractor's* in-house safety-related programs; and
- .4 a copy of the Notice of Project filed with the Ministry of Labour naming itself as "Constructor" under the OHS.A."

9.4.4 The *Contractor* shall indemnify and save harmless the *Owner*, its agents, officers, directors, employees, consultants, successors and assigns from and against the consequences of any and all safety infractions committed by the *Contractor* under the OHS.A, including the payment of legal fees and disbursements on a full indemnity basis. Such indemnity shall apply to the extent to which the *Owner* is not covered by insurance, provided that the indemnity contained in this paragraph shall be limited to costs and damages

resulting directly from such infractions and shall not extend to any consequential, indirect or special damages.

- 9.4.5 In the event of an emergency threatening health, life or property, the Contractor shall take such action as may be necessary to save lives and protect persons from injury and, this being done to protect and preserve the property. The Contractor shall notify the Owner of such emergency as promptly as is practical under the circumstances."

## **PART 10    GOVERNING REGULATIONS**

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

101. 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 10.2 LAWS, NOTICES, PERMITS AND FEES**

102. Amend paragraph 10.2.5 by adding the words, "Subject to paragraph 3.4.1" to the beginning of the paragraph.

103. Further amend paragraph 10.2.5 by adding to the end of the second sentence:

"...and no further Work on the affected components of the Contract shall proceed until these changes to the Contract Documents have been obtained by the Contractor from the Consultant."

104. Amend paragraph 10.2.6 by adding at the end of that paragraph:

"In the event the Owner suffers loss or damage as a result of the Contractor's failure to comply with paragraph 10.2.5, and notwithstanding any limitations described in paragraph 12.1.1, the Contractor agrees to indemnify and to hold harmless the Owner and the Consultant from and against any claims, demands,

losses, costs, damages, actions, suits or proceedings resulting from such failure by the Contractor."

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

105. 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.

106. 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 its home province or state.

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

#### **GC 11.1 INSURANCE**

107. Delete subparagraph 11.2.1.5 (Boiler and Machinery Insurance).

108. Add the following to the end of 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.

109. Add paragraph 11.1.9

"The minimum limits of insurance in this GC 11 and in CCDC 41 shall be varied to provide the following:

- .1 General Liability Insurance shall have a limit of five million dollars (\$5,000,000) inclusive per occurrence;
- .2 Automobile Liability Insurance shall have a limit of two million dollars (\$2,000,000) inclusive per occurrence;
- .3 For the General Liability Insurance, Ontario Northland Transportation Commission shall be included as additional insured; and,
- .4 Coverage and limits of insurances will be provided and maintained by all Subcontractors in accordance with this paragraph.”

**GC 11.2 CONTRACT SECURITY**

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

The form of such bonds shall be in the form prescribed by the Construction Act.

111. 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**

112. Delete paragraph 12.1 in its entirety and substitute:

"12.1.1 The Contractor shall indemnify and hold harmless the Owner and the Consultant, their agents and employees from and against claims, demands, losses, costs, damages, actions, suits, or proceedings (hereinafter called "claims"), by third parties that



arise out of, or are attributable to, the Contractor's performance of the Contract provided such claims are:

.1 attributable to bodily injury, sickness, disease, or death, or to injury to or destruction of tangible property;

.2 caused by negligent acts or omissions of the Contractor or anyone for whose acts the Contractor may be liable, and

.3 made in writing within a period of 6 years from the date of Substantial Performance of the Work as set out in the certificate of Substantial Performance of the Work, or within such shorter period as may be prescribed by any limitation statute of the province or territory of the Place of the Work.

12.1.2 GC 12.1 – INDEMNIFICATION shall govern over the provisions of paragraph 1.3.1 of GC 1.3 – RIGHTS AND REMEDIES."

## **GC 12.2 WAIVER OF CLAIMS**

111. Delete GC 12.2 in its entirety and substitute:

"12.2.1 Waiver of Claims by Owner

As of the date of the final certificate for payment, the Owner expressly waives and releases the Contractor from all claims against the Contractor including without limitation those that might arise from the negligence or breach of contract by the Contractor except one or more of the following:

- .1 those made in writing prior to the date of the final certificate for payment and still unsettled;
- .2 those arising from the provisions of GC 12.1 – INDEMNIFICATION or GC 12.3 - WARRANTY;
- .3 those arising from the provisions of paragraph 9.2.5 of GC 9.2 – TOXIC AND HAZARDOUS SUBSTANCES and arising from the Contractor bringing or introducing any toxic or hazardous substances and materials to the Place of the Work after the Contractor commences the Work.
- .4 those arising from the provisions of paragraph 9.5.1 of GC 9.5 – MOULD and arising from the Contractor bringing or introducing mould to the Place of the Work.

- .5 those made in writing within a period of six (6) years from the date of Substantial Performance of the Work, as set out in the certificate of Substantial Performance of the Work, arising from the Contractor's performance of the Contract with respect to material defects or deficiencies in the Work.

#### 12.2.2 Waiver of Claims by Contractor

As of the date of the final certificate for payment, the Contractor expressly waives and releases the Owner from all claims against the Owner including without limitation those that might arise from the negligence or breach of contract by the Owner except:

- .1 those made in writing prior to the Contractor's application for final payment and still unsettled; and
- .2 those arising from the provisions of GC 9.3 – TOXIC AND HAZARDOUS SUBSTANCES, GC 9.5 Mould, or GC 10.3 – PATENT FEES.

12.2.3 GC 12.2 – WAIVER OF CLAIMS shall govern over the provisions of paragraph 1.3.1 of GC 1.3 – RIGHTS AND REMEDIES."

### **GC 12.3 WARRANTY**

- 112. Throughout GC 12.3, delete "one year" and replace with "two years".
- 113. 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."
- 114. 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*.

115. Add new paragraphs 12.3.7, 12.3.8, 12.3.9, 12.3.10 and 12.3.11:

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."

116. 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.

117. 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.

- 118. Confirmation of coverages noted in paragraphs 1 and 2 shall be provided using the City of Niagara Falls' standard Certificate of Insurance form.
- 119. Delete paragraphs 3 and 5.
- 120. "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".