

GENERAL CONDITIONS OF CONTRACT SUPPLEMENTARY

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This version of Supplementary Special Provisions - General to the OPSS MUNI 100 November 2019 is intended for contracts that are subject to the *Construction Act* (Ontario), which came into force on July 1, 2018, and was further amended on December 6, 2018, and again on October 1, 2019. Accordingly, these special supplementary conditions are only to be used where the following conditions are met:

1. there was either:
 - a. no procurement process (e.g. request for quotation, request for qualifications, request for proposals, or a call for tenders) for the award of this contract; or
 - b. the first procurement process associated with this Project was commenced after October 1, 2019; and
2. the Work to be performed under this contract is not maintenance or general repair work, but is instead any of the following, or a combination thereof:
 - a. an alteration, addition or capital repair;
 - b. the construction, erection or installation at the Project site, including the installation of industrial, mechanical, electrical or other equipment at the Project site that is essential to the normal or intended use of the Project; or
 - c. the complete or partial demolition or removal of any building structure or works at the Project site.

General Conditions for this contract shall be the OPS Volume 7 - Ontario Provincial Standards, General Conditions of Contract and General & Construction Specifications (OPSS.MUNI 100 November 2019), subject to the following:

SECTION GC 1.0 - INTERPRETATION

SC1 GC 1.04 - Definitions

SC1.1	Adjudication	<p><u>Add</u> the following new definition of “Adjudication”:</p> <p>“Adjudication means construction dispute interim adjudication as defined under the Construction Act.”</p>
SC1.2	Completion	<p><u>Delete</u> the definition of “Completion” and <u>replace</u> it with the following:</p> <p>“Completion means that the Work performed under the Contract has passed all required inspections and testing to the satisfaction of the Owner and has satisfied the requirements for deemed completion in accordance with Section 2(3) of the <i>Construction Act</i>, R.S.O. 1990, c. C.30.”</p>
SC1.3	Contract	<p><u>Insert</u> the following to the definition of “Contract” after the words “Contract Documents”:</p> <p>“and constitutes the entire agreement between the Owner and the Contractor with respect to the Work and supersedes and replaces all previous communications, representations and agreements, either written or verbal”.</p>
SC1.4	Construction Act	<p><u>Add</u> the following new definition of “Construction Act”:</p> <p>“Construction Act means the <i>Construction Act</i> R.S.O. 1990, c. C.30, as amended, including all regulations passed under it that are enforceable as of the date of execution of this Contract. For certainty, the first procurement process for the Project (<i>i.e.</i> the “improvement” as that term is defined in the Act) was commenced on or after October 1, 2019.</p>
SC1.5	Construction Schedule	<p><u>Add</u> the following new definition of “Construction Schedule” or “construction schedule”:</p> <p>“Construction Schedule or construction schedule means the schedule referred to GC 7.01.07 – Schedule.”</p>

SC1.6	Cut-Off Date	<p><u>Insert</u> the following to the definition of Cut-Off Date after the words “Work performed”</p> <p>“[...], and unless otherwise specified in the Contract Documents or agreed upon, in writing, by the Owner and the Contractor, shall be the last day of the Payment Period.”</p>
SC1.7	Force Majeure	<p><u>Add</u> the following new definition of “Force Majeure”:</p> <p>“Force Majeure means any cause, beyond the Contractor’s control, other than bankruptcy or insolvency or inability to pay, which prevents the performance by the Contractor of any of its obligations under the Contract and the event of Force Majeure did not arise from the Contractor’s default or active commission or omission and could not be avoided or mitigated by the exercise of reasonable effort or foresight by the Contractor. Force Majeure includes labour disputes unrelated to a contractor’s association or union to which the Contractor is a member or to which the Contract is otherwise bound, fire, unusual delay by common carriers or unavoidable casualties, civil disturbance, acts, orders, decrees, legislation, regulations or directives of any government or other public authority, acts of a public enemy, war, riot, sabotage, blockage embargo, lightning, earthquake, Abnormal Weather or acts of God.”</p>
SC1.8	Notice of Non-Payment	<p><u>Add</u> the following new definition of “Notice of Non-Payment”:</p> <p>“Notice of Non-Payment means a notice of non-payment of holdback (Form 6) or a notice of non-payment (Form 1.1) under the Construction Act, as applicable to the circumstances.”</p>
SC1.9	Payment Period	<p><u>Add</u> the following new definition of “Payment Period”:</p> <p>“Payment Period means the fixed segments of time determined by the Owner and the Contractor, at the first pre-construction meeting, for which the Contractor shall be entitled to claim payment for Work performed during such period. In the event that the Owner and the Contractor do not fix the segment of time for each Payment Period at the first pre-construction meeting, then the Payment Period shall be a one (1) month period during which work was performed, with the start and end dates of the Payment Period deemed to be the first (1st) calendar day of the month and the last calendar day of the month, respectively.</p>

SC1.10	Proper Invoice	<p><u>Delete</u> the definition of “Proper Invoice” and <u>replace</u> it with the following::</p> <p>“Proper Invoice means a “proper invoice” as that term is defined in Section 6.1 of the Construction Act, with the minimum requirements set out in Exhibit “1” of the City of Niagara Falls Special Supplementary Conditions.</p>
SC1.11	Restricted Period (Adjudication)	<p><u>Add</u> the following new definition of “Restricted Period”:</p> <p>“Restricted Period (Adjudication): means the (inclusive) period of time between November 15 in one calendar year to January 2, in the next calendar year, of any given year throughout the duration of the Contract.”</p>
SC1.12	Restricted Period (Proper Invoice)	<p><u>Add</u> the following new definition of “Restricted Period (Proper Invoice)”:</p> <p>“Restricted Period (Proper Invoice): means the (inclusive) period of time between December 10 to December 28 in any given year throughout the duration of the Contract.”</p>
SC1.13	Substantial Performance	<p><u>Delete</u> the definition of “Substantial Performance” and <u>replace</u> it with the following:</p> <p>“Substantial Performance means:</p> <p>(a) has satisfied the requirements for being substantially performed in accordance with Section 2(1) and Section 2(2) of the <i>Construction Act</i>, provided that, for the purposes of Section 2(2) of the <i>Construction Act</i>, interruption of Work caused by the winter season shall not be interpreted to mean that the Work cannot be completed expeditiously; and</p> <p>(b) when the Work to be performed under the Contract has passed all required inspections and testing to the satisfaction of the Owner, including without limitation any site walkthroughs with the governing road authority where such walkthroughs are a requirement of the Contract Documents.</p>
SC1.14	Work	<p><u>Delete</u> the definition of “Work” and <u>replace</u> it with the following:</p>

		<p>“Work means all labour, Material, products, articles, fixtures, services, supplies and acts required to be done, furnished or performed by the Contract Documents, including those that can reasonably be inferred from or is incidental to same based on the judgment of a good, competent, and experienced Contractor.”</p>
SC1.15	Working Area	<p><u>Delete</u> the definition of “Working Area” and <u>replace</u> it with the following:</p> <p>“Working Area means all the lands and easements on, over or under which the Work is undertaken that are owned or acquired by the Owner or lands or easements that the Owner is required and authorized to maintain on behalf of another municipality or other entity”</p>

SC2 GC 1.06 - Final Acceptance

SC2.1	1.06.1	<p><u>Delete</u> GC 1.06.01 in its entirety and <u>replace</u> it with “[Intentionally left blank].”</p>
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SECTION GC 2.0 – CONTRACT DOCUMENTS

SC3 GC 2.02 - Order of Precedence

SC3.1	2.02.01	<p><u>Delete</u> GC 2.02.01 and <u>replace</u> it with the following:</p> <p>“0.1 In the event of any inconsistency or conflict in the contents of the following documents, such documents shall take precedence and govern in the following descending order:</p> <ul style="list-style-type: none"> (a) Agreement (b) Addenda (c) Form of Tender (d) Special Provisions <ul style="list-style-type: none"> (i) City of Niagara Falls Special Supplementary Conditions 2020 (ii) City of Niagara Falls Supplementary Special Provisions – Contract Items (if applicable) (iii) Special Provisions- Contract Items (Niagara Peninsula Standard Contract Document).
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		<ul style="list-style-type: none"> (iv) Technical Specifications (if applicable) (v) Special Provisions – General (Niagara Peninsula Standard Contract Document) (e) Contract Drawings (f) Standard Specifications <ul style="list-style-type: none"> (i) Ontario Provincial Standard Specifications (g) Standard Drawing (h) Special Instructions to Bidders (i) Instructions to Bidders (j) OPSS.MUNI 100 November 2019 General Conditions of Contract (Ontario Provincial Standard Specifications) (k) Working Drawings <p>Later dates will govern within each of the above categories of documents.”</p>
SC3.2	2.02.05	<p><u>Add</u> new GC 2.02.05 as follows:</p> <p>“.05 The Contractor shall not take advantage of any apparent error, omission or issue in the Contract Documents. Upon identifying an error, omission or issue in the Contract Documents, as set out in GC 7.01.08, the Contractor shall promptly inform the Owner or Contract Administrator in writing of any such error(s), omission(s) or issue(s)”.</p>

SECTION GC 3.0 – ADMINISTRATION OF THE CONTRACT

SC4 GC 3.01 - Contract Administrator’s Authority

SC4.1	3.01.04	<p><u>Delete</u> GC 3.01.04 and <u>replace</u> it with the following:</p> <p>“.04 Based on the Contract Administrator’s observations and evaluation of the Contractor’s Proper Invoice, the Owner shall determine the amounts owing to the Contractor, as provided for in section GC 8.0, Measurement and Payment. Where the Owner identifies an error, omission, discrepancy, or disagrees with the amount being claimed in the Contractor’s Proper Invoice, the Owner shall prepare and issue to the Contractor a Notice of Non-</p>
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		Payment within the time prescribed by the Construction Act.”
SC4.2	3.01.13	<u>Insert</u> the following sentence to the end of GC 3.01.13: “The amount to be deducted, as determined by the Contract Administrator shall be deducted from the amount stated in any subsequent Proper Invoice.”
SC4.3	3.01.18	<u>Add</u> new GC 3.01.18 as follows: “.18 All Estimates and certificates issued by the Contract Administrator are understood to be prepared based on the Contract Administrator’s reasonable knowledge, information and belief at the time of issuance. By issuing any Estimate or certificate, the Contract Administrator is not confirming or guaranteeing that the certified or estimated Work is completed, correct or free from defects or deficiencies.

SC5 GC 3.06 - Extension of Contract Time

SC5.1	3.06.01	In GC 3.06.01, <u>delete</u> the words “15 days prior to the expiration of the Contract Time” and <u>replace</u> them with “7 days following the commencement of the event for which reason such extension is requested”.
SC5.2	3.06.06	<u>Add</u> new GC 3.06.06 as follows: “.06 Until and unless an extension of Contract Time is granted in accordance with this GC 3.06, the Contractor is solely responsible for maintaining the approved Construction Schedule for the Work and completing all Work within the Contract Time. If necessary, and to the extent required, the Contractor shall operate additional and/or augmented daylight shifts throughout the life of the Contract to ensure that the Work is performed in accordance with the approved Construction Schedule and within the Contract Time. The Contractor shall have no claim for extra compensation in respect of any additional costs occasioned by compliance with this provision. Such costs are deemed to be included in the Tender prices for the various items of the Work.”

SC6 GC 3.07 - Delays

SC6.1	3.07.01	<p><u>Delete</u> GC 3.07.01 in its entirety, including all subparagraphs and <u>replace</u> it with the following:</p> <p>“.01 If the Contractor is delayed in the performance of the Work by</p> <p>(a) errors in the Contract Documents;</p> <p>(b) an act or omission of the Owner or Contract Administrator, or anyone employed or engaged by them directly, contrary to the provisions of the Contract Documents; or</p> <p>(c) the Contract Administrator giving notice under section GC 7.09, Suspension of Work;</p> <p>then the Contractor shall be reimbursed by the Owner for reasonable costs incurred by the Contractor as the result of such delay, but excluding any consequential, indirect, or special damages (including, without limitation, loss of profits, loss of opportunity, or loss of productivity). Extension of Contract Time may be granted in accordance with subsection GC 3.06, Extension of Contract Time.”</p>
SC6.2	3.07.03	<p><u>Delete</u> GC 3.07.03 and <u>replace</u> it with the following:</p> <p>“.03 If the Contractor is delayed in the performance of the Work by Force Majeure, then the Contract Time shall be extended for such reasonable time as determined by the Contract Administrator in accordance with GC 3.06, Extension of Contract Time. The extension of time shall not be less than the time lost as a result of the Force Majeure event causing the delay, unless the Contractor agrees to a shorter extension. The Contractor shall not be entitled to payment or reimbursement by the Owner for costs incurred as a result of such delay. Upon the Contract Administrator recommending an extension to the Contract Time, and the Owner agreeing that it is fair and reasonable, the Owner and the Contractor shall execute a Change Order indicating the length of the extension to the Contract Time and confirming that there</p>

		are no costs payable by the Owner to the Contractor for the extension of Contract Time.”
SC6.3	3.07.05	<p><u>Add</u> new GC 3.07.05 as follows:</p> <p>“.05 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 Administrator may make a recommendation, following consultation with the Contractor, to the Owner regarding extending the Contract Time for such reasonable time as the Contract Administrator considers appropriate. The Owner shall make a decision regarding the reasonable time for such extension of the Contract Time. The Owner shall be reimbursed by the Contractor for all reasonable costs incurred by the Owner as a result of such delay, including without limitation all services required by the Owner from the Contract Administrator as a result of such delay by the Contractor and, in particular, the cost of the Contractor Administrator’s services during the period between the original date of Completion and any later, actual date that Completion is achieved by the Contractor.”</p>

SC7 GC 3.09 - Subcontracting by the Contractor

SC7.1	3.09.02	In GC 3.09.02, <u>delete</u> the words “in writing in” and <u>replace</u> them with “in writing at least”.
SC7.2	3.09.07	<p><u>Add</u> the following new GC 3.09.07 as follows:</p> <p>“.07 The Contractor shall provide the Owner with:</p> <ul style="list-style-type: none"> (i) a copy of any written notices of Adjudication the Contractor receives; (ii) notice of the date on which the adjudicator relating to such Adjudication receives documents under section 13.11 of the Construction Act; and (iii) the adjudicator’s determination of the Adjudication under section 13.13 of the Construction Act.

		<p>The Contractor shall ensure its contracts with Subcontractors and suppliers and the contracts with sub-subcontractors (of every tier) contain equivalent obligations to this GC 3.09.07 and the Contractor shall forthwith upon receipt provide to the Owner any notices of Adjudication and related information it receives. The Contractor shall be liable to and indemnify the Owner for any losses, damages, costs, claims and proceedings the Owner incurs, suffers or receives as a result of the Contractor's failure to comply with its obligations under this GC 3.09.07."</p>
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SC8 GC 3.10 - Changes

SC8.1	3.10.01.01	<p>In GC 3.10.01.01, after the words "receipt of a", in the third line, <u>insert</u> the word "signed",</p> <p style="text-align: center;">-and-</p> <p><u>insert</u> the following sentences at the end of the paragraph:</p> <p>"In presenting a claim to the Owner for the cost of a Change in the Work, the Contractor shall include, itemize and separate all direct and indirect costs associated with that Change. Once the Owner and the Contractor have executed a Change Order in respect of the Change in the Work, the Contractor may include the agreed upon payment amount for the Change in the Work on the relevant Proper Invoices following completion of the Work under the Change Order."</p>
SC8.2	3.10.02.01	<p>In GC 3.10.02.01, after the words "receipt of", in the third line, <u>insert</u> the word "signed",</p> <p style="text-align: center;">-and-</p> <p><u>insert</u> the following sentences at the end of the paragraph:</p> <p>"In presenting a claim to the Owner for the cost of Extra Work, the Contractor shall include, itemize and separate all direct and indirect costs associated with that Extra Work. Once the Owner and the Contractor have executed a Change Order in respect of the Extra Work, the Contractor may include the agreed upon payment amount for the Extra Work on the relevant Proper Invoices following completion of the Extra Work."</p>
SC8.3	3.10.03.01	<p>In GC 3.10.03.01, after the words "receipt of", in the third line, <u>insert</u> the word "signed",</p>

		<p>-and-</p> <p><u>insert</u> the following sentences at the end of the paragraph:</p> <p>“In presenting a claim to the Owner for the cost of Additional Work, the Contractor shall include, itemize and separate all direct and indirect costs associated with that Additional Work. Once the Owner and the Contractor have executed a Change Order in respect of the Additional Work, the Contractor may include the agreed upon payment amount for the Additional Work on the relevant Proper Invoices following completion of the Additional Work.”</p>
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SC9 GC 3.13 - Claims, Negotiations, Mediation

SC9.1	3.13	<u>Add</u> to the end of the heading, after the word “Mediation”, the words “, and Adjudication”
SC9.2	3.13.04.02	<p>In GC 3.13.04.02, <u>delete</u> the balance of the paragraph after the words “Payment on a Time and Material Basis” in the fifth line, and <u>replace</u> them with the following:</p> <p>“either party may:</p> <ul style="list-style-type: none"> .1 serve a notice of Adjudication on the other party, pursuant to the Construction Act and in accordance with GC 3.16 Adjudication; or .2 proceed in accordance with GC 3.13.05 Mediation, or subsection GC 3.14 Arbitration.”

SC10 GC 3.15 - Archaeological Finds

SC10.1	3.15.02	In GC 3.15.02, <u>delete</u> the reference to “GC 3.07.01” and <u>replace</u> it with “GC 3.07.03”.
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SC11 GC 3.16 - Adjudication

SC11.1	3.16	<p><u>Add</u> new GC 3.16 Adjudication as follows:</p> <p>“GC 3.16 Adjudication</p> <p>.01 Notwithstanding any other provisions in GC3.13, 3.14 or elsewhere in the Contract Documents the parties shall engage in Adjudication as required by, and in accordance with, the Construction Act and this Contract.</p>
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		<p>.02 The following procedures shall apply to any Adjudications the parties engage in under the Construction Act:</p> <ul style="list-style-type: none">.1 any hearings shall be held in the municipal/head offices of the Owner or such other venue as the parties may agree and which is acceptable to the adjudicator;.2 the Adjudication shall be conducted in English;.3 each party may be represented by counsel throughout an Adjudication;.4 there shall not be any oral communications with respect to issues in dispute that are the subject of an Adjudication between a party and the adjudicator unless it is made in the presence of both parties or their legal representatives; and.5 a copy of all written communications between the adjudicator and a party shall be given to the other party at the same time. <p>.03 Any documents or information disclosed by the parties during an Adjudication are confidential and the parties shall not use such documents or information for any purpose other than the Adjudication in which they are disclosed and shall not disclose such documents and information to any third party, unless otherwise required by law, save and except the adjudicator.</p> <p>.04 In respect of any claim or dispute, if the Contractor fails to comply with any of the notice requirements set out in the Contract Documents then the Contractor shall be barred from advancing such claim(s) or dispute(s) and shall have no entitlement whatsoever in respect of such claim(s) or dispute(s) (including to an increase in payment under the Contract, or an extension of Contract Time) and by failing to comply with the notice requirements waives the right to make any such claim(s) or dispute(s) in an Adjudication or in any other form of dispute resolution available under this Contract or at law. This GC 3.16.04 shall operate conclusively as an estoppel and bar in the event such claims or disputes are brought in an Adjudication or other form of dispute resolution and the Owner may rely on this GC 3.16.04 as a complete defence to any such claims or disputes.</p> <p>.05 The parties hereby acknowledge and agree,</p> <ul style="list-style-type: none">.1 that counterclaims, claims of set-off or the exercise or use of other contractual rights that permit the Owner to
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		<p>withhold, deduct or retain from monies otherwise owed to the Contractor under the Contract may be referred to, and included as part of, Adjudications under the Construction Act;</p> <p>.2 that disputes related to the termination or abandonment of the Contract, as well as any disputes that arise or are advanced following the termination or abandonment of the Contract, shall not be referred to Adjudication under the Construction Act;</p> <p>.3 that notice(s) of Adjudication, with respect to any dispute or claim relating to the Project, shall not be given, and no Adjudication shall be commenced following Completion, abandonment, or termination of the Contract;</p> <p>.4 that any Adjudication between the Contractor and a Subcontractor or a supplier that relates to an Adjudication between the Owner and the Contractor shall be joined together to be adjudicated by a single adjudicator, provided that the adjudicator agrees to do so, and the Contractor shall include a provision in each of its contracts that contain an equivalent obligation to this GC 3.16.05.4; and</p> <p>.5 that, other than where the Contractor is obliged to commence an Adjudication pursuant to an undertaking under the Construction Act, neither the Owner nor the Contractor shall commence an Adjudication during the Restricted Period (Adjudication).</p> <p>.06 The parties acknowledge and agree that no adjudication, arbitration, action, suit or other proceeding may be brought by the Contractor against the Owner in respect of a claim , unless and until:</p> <p>.1 the Owner and Contract Administrator have received a detailed claim notice in accordance with GC 3.13.03.03 (a "Claim Notice"); and</p> <p>.2 the Contract Administrator has issued a finding to the Contractor regarding the validity of the Claim Notice in accordance with GC 3.13.03.05.</p> <p>For greater clarity and without limiting the foregoing, the amount applied for in each Proper Invoice shall not include any amounts included in any Claim Notice unless and until the Contract Administrator has issued a finding to the Contractor regarding the validity of such Claim Notice. However, nothing in this GC</p>
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		3.16.07 shall prevent a Contractor from commencing an Adjudication where, pursuant to the Construction Act, the Contractor is required to give an undertaking to a Subcontractor to commence an Adjudication following delivery of a Notice of Non-Payment.”
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SECTION GC 4.0 – OWNER’S RESPONSIBILITIES AND RIGHTS

SC12 GC 4.10 - Termination of the Contract

SC12.1	4.10.01	<u>Insert</u> the following words at the end of the GC 4.10.01 “and within 5 Working Days of providing written notice of termination, the Owner shall publish a notice of termination (Form 8) in accordance with the Construction Act.”
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SECTION GC 6.0 – INSURANCE, PROTECTION AND DAMAGE

SC13 GC 6.03 - Contractor’s Insurance

SC13.1	6.03	Under the heading “GC 6.03 Contractor’s Insurance” <u>insert</u> the following note: “GC 6.03 Contractor’s Insurance shall apply to the extent that it does not conflict with the requirements of Special Provisions – General - Item G1, Execution of Contract.”
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SC14 GC 6.04 - Bonding

SC14.1	6.04.02	In GC 6.04.02, after the words “Province of Ontario” in the second line <u>insert</u> the words “, shall be in the form prescribed by the Construction Act,”
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SECTION GC 7.0 – CONTRACTOR’S RESPONSIBILITIES AND CONTROL OF THE WORK

SC15 GC 7.02 - Monuments and Layout

SC15.1	7.02	Under the heading “GC 7.02 Monuments and Layout” <u>insert</u> the following note:
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		“GC 7.02 Monuments and Layout shall apply to the extent that it does not conflict with the requirements of Special Provisions – Contract Item A4 – Construction Layout.”
SC15.2	7.02.01	In GC 7.02.01, delete the words “the Contract Administrator.”

SC16 GC 7.10 - Contractor’s Right to Stop the Work or Terminate the Contract

SC16.1	7.10.06	<p><u>Add</u> new GC 7.10.06 as follows:</p> <p>“.06 Notwithstanding any other provision of this GC 7.10, Contractor's Right to Stop the Work or Terminate the Contract, no termination of the Contract by the Contractor will be valid until and unless the Contractor publishes a notice of termination in accordance with the requirements of the Construction Act.”</p>
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SC17 GC 7.13 - Obstructions

SC17.1	7.13	<p>Under the heading “GC 7.13 Obstructions” <u>insert</u> the following note:</p> <p>“GC 7.13 Obstructions shall apply to the extent that it does not conflict with the requirements of Special Provisions – General - Item G21 – Protection of Overhead Construction and Tree Removal.”</p>
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SC18 GC 7.16 - Warranty

SC18.1	7.16.04	<p>GC 7.16.02 shall be amended by deleting subsections a), b) and c) and inserting:</p> <p>“a) 12 months from the date of Completion of the Work as set out in the Completion Certificate; or</p> <p>b) such longer periods as may be specified in the Contract Documents for certain Materials or for some of the Work.</p>
SC18.2	7.16.04	<p><u>Add</u> the following new GC 7.16.04, GC 7.16.05, and GC 7.16.06 as follows:</p> <p>“.04 The Contractor shall correct any defects or deficiencies in the work within twelve (12) hours (or any time stipulated) of</p>

		<p>having received written notice from the Contract Administrator to do so. Should the Contractor fail to correct the defects or deficiencies within the time stipulated, or if the defect or deficiency, in the opinion of the Contract Administrator, becomes emergency in nature, the Owner will undertake the necessary corrections and the Owner's costs in this respect shall become the responsibility of the Contractor.</p> <p>.05 It will be a condition of any warranty required by the Contract Documents that, should any Work be repaired or replaced during the Warranty Period, the Warranty Period shall recommence for a further 12 months from the date of acceptance by the Owner for the corrected work.</p> <p>.06 The Contractor shall assign to the Owner all warranties or guarantees for the work, services or products, performed or supplied, by any Subcontractor, supplier or other person in connection with the Project retained by the Contractor, 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."</p>
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SC19 GC 7.19 - Construction Liens

SC19.1	7.19	<p><u>Add</u> new GC 7.19 Construction Liens as follows:</p> <p>"GC 7.19 Construction Liens</p> <p>.01 Notwithstanding any other provision in the Contract, the Owner shall not be obligated to make payment to the Contractor, if at the time such payment was otherwise due:</p> <p style="padding-left: 40px;">.1 a claim for lien has been registered against title to the Working Area, or delivered to the Clerk of the Owner, by a Subcontractor or a supplier of any tier that has</p>
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		<p>not been vacated or discharged by the Contractor in accordance with the requirements of this Contract,</p> <ul style="list-style-type: none">.2 the Owner has received a written notice of a lien that has not been resolved by the Contractor through the posting of security or otherwise; or.3 a claim for lien has been registered against title to the Working Area by the Contractor, that has not been vacated or discharged by the Contractor. <p>.02 If a construction lien arising from the performance of the Work is preserved by a Subcontractor or a supplier of any tier, or a written notice of a lien is given to the Owner by a Subcontractor or a supplier, or a construction lien action is commenced against the Owner by a Subcontractor or a supplier of any tier, or the Contractor has registered a claim for lien against title to the Work Area or given a written notice of lien to the Owner, then the Contractor shall, at its own expense:</p> <ul style="list-style-type: none">.1 within 10 calendar days of registration of a claim for lien, or delivery of a claim for lien by a Subcontractor or supplier to the Clerk of the Owner, vacate the lien by posting security with the Ontario Superior Court in accordance with s. 44 of the Construction Act or procure a discharge of the lien. If the lien is merely vacated, the Contractor shall, if requested, undertake the Owner's defence of any subsequent action commenced by a Subcontractor or supplier in respect of the lien being claimed, at the Contractor's sole expense;.2 within 10 calendar days of receiving notice from the Owner of a written notice of a lien being given to the Owner by a Subcontractor or supplier, post security with the Ontario Superior Court of Justice so that the written notice of a lien no longer binds the parties upon whom it was served; and.3 satisfy all judgments and pay all costs arising from such Subcontractor or supplier construction lien(s) and actions and fully indemnify the Owner against all costs and expenses arising from same, including legal costs on a full indemnity basis. <p>.03 If the Contractor fails or refuses to comply with its obligations pursuant to GC 7.19.02, the Owner shall, at its option, be entitled to take all steps necessary to address any such construction liens including, without limitation and in</p>
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		<p>addition to the Owner’s rights under GC 7.19.04, the posting of security with the Ontario Superior Court of Justice to vacate the claim for lien or written notice of lien, and in so doing will be entitled to full indemnity from the Contractor for all legal fees, security, disbursements and other costs incurred, and will be entitled to deduct same from amounts otherwise owing to the Contractor.</p> <p>.04 If any Subcontractor or supplier of any tier preserves a claim for lien with respect to the Work, or the Contractor registers a claim for lien against title to the Work Area or gives the Owner a written notice of lien, the Owner shall have the right to withhold, in addition to the statutory holdback, the full amount of said claim for lien plus either: (a) \$250,000 if the claim for lien is in excess of \$1,000,000 or (b) 25% of the value of the claim for lien and to bring a motion to vacate the registration of the claim for lien or the written notice of lien and any associated certificate of action in respect of that lien, in accordance with Section 44 of the Construction Act, by paying into court as security the amount withheld.</p> <p>.05 Nothing in this GC 7.19 serves to preclude the Contractor from preserving and perfecting its lien, in accordance with the Construction Act, in the event of non-payment by the Owner.”</p>
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SECTION GC 8.0 – MEASUREMENT AND PAYMENT

SC20 GC 8.01 - Measurement

SC20.1	8.01.01.01	<p><u>Delete</u> GC 8.01.01.01 and <u>replace</u> it with the following:</p> <p>“.01 The Contract Administrator shall prepare an Estimate of the quantity of Work immediately upon the conclusion of each Payment Period. The first Estimate shall be for the quantity of Work performed since the Contractor commenced the Contract, and every subsequent Estimate shall be of the quantity of Work performed since the preceding Estimate was made. The Contract Administrator shall provide the copy of each Estimate to the Contractor within 10 calendar days of the Cut-Off Date, or at such other time agreed to by the Owner and the Contractor in writing. Where the Contract Administrator has not delivered an Estimate to the Contractor with the time prescribed by</p>
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		this GC 8.01.01.01, the Contractor shall deliver a Notice to this effect to the Owner and the Contract Administrator.”
SC20.2	8.01.02.01	In GC 8.01.02.01 a), <u>replace</u> the references to “15%” and “115%” with “20%” and “120%” respectively.
SC20.3	8.01.02.01	<u>Delete</u> GC 8.01.02.01 b) and <u>replace</u> it with the following: “.01 b) In the case of a major item where the quantity of work performed and/or material supplied by the Contractor is less than 80% of the tender quantity, the Contractor may make a written request to the Owner for consideration for an allowance to compensate for the Contractor's losses in fixed costs. If the Owner considers that compensation is justified, it will be paid for at a rate equal to 10% of the unit bid price on the amount of the under-run which is less than 80% of the tender quantity”.

SC21 GC 8.02.04.01 - Progress Payment Certificate

SC21.1		
SC21.2	8.02.04.01.02	<u>Delete</u> GC 8.02.04.01.02 and <u>replace</u> it with the following: “.02 Within five (5) calendar days following the delivery of the Estimate to the Contractor, the Contractor shall deliver its invoice to the Owner and to the Contract Administrator in accordance with GC 8.02.04.01.03 for Work performed during a Payment Period (the “ Proper Invoice Submission Date ”) provided that if the fifth (5th) calendar day following the delivery of the Estimate to which an invoice relates falls on a calendar day that is not a Working Day, the Proper Invoice Submission Date shall be deemed to fall on the next Working Day. The parties hereby consent to the giving and receiving of Proper Invoices electronically and in accordance with the requirements of GC 8.02.04.01.03.”
SC21.3	8.02.04.01.03	<u>Delete</u> GC 8.02.04.01.03 and <u>replace</u> it with the following: “.03 Invoices submitted under GC 8.02.04.01.02 shall be given in accordance with the following requirements: .1 Invoices shall include all the information described in Exhibit “1”.

		<p>.2 Invoices shall be given to the Owner’s Representative at: <u>costclerk@niagarafalls.ca</u> with a copy by email to the City Project Manager at the email address provided to the Contractor.</p> <p>Or 4310 Queen Street, Niagara Falls ON L2E 6X5, if the invoice is unable to be submitted electronically, with a copy to the City Project Manager and the Contractor Administrator, if any, unless advised otherwise in writing.</p> <p>.3 Invoices shall be given between the hours of 9:00 a.m. to 4:00 p.m. (EST) on the Proper Invoice Submission Date.</p> <p>.4 If an invoice is given after 4:00 p.m. (EST) on the applicable Proper Invoice Submission Date, the invoice will not be considered or reviewed by the Owner and Contract Administrator until the next Working Day, at which point the Proper Invoice will be deemed to have been given to the Owner and the Contract Administrator. Should the Owner decide to accept an invoice submitted after 4:00 p.m. on the applicable Proper Invoice Submission Date (which the Owner is under no obligation to do), such acceptance shall not be construed as a waiver of any of its rights or waive or release the Contractor’s obligations to strictly comply with the requirements prescribed in this GC 8.02.04.01.03.</p> <p>.5 If an invoice is given before the Proper Invoice Submission Date, the invoice will not be considered or reviewed by the Owner and Contract Administrator until the applicable Proper Invoice Submission Date, at which point the invoice will be deemed to have been received by the Owner and Contract Administrator for the purpose of review and evaluation.</p> <p>.6 Notwithstanding any other provision of this Contract, the Contractor shall not deliver an invoice, for consideration as a Proper Invoice by the Owner, during the Restricted Period (Proper Invoice).”</p>
SC21.4	8.02.04.01.05 to 8.02.04.01.09	<p><u>Add</u> new GC8.02.04.01.05 to GC8.02.04.01.09 as follows:</p> <p>“.05 Upon receiving the Contractor’s invoice, submitted in accordance with GC 8.02.04.01.02 the Contract Administrator shall confirm whether the invoice satisfies all of the criteria for a Proper Invoice. If not, the invoice will be</p>

		<p>returned to the Contractor with reasons from the Owner or the Contract Administrator setting out which criteria for a Proper Invoice have not been satisfied.</p> <p>.06 The Owner reserves the right, in its sole, absolute and unfettered discretion, to permit the Contractor to correct an error or minor irregularity in an invoice that the Contractor purported to be a Proper Invoice and gave to the Owner in accordance with GC 8.02.04.01.02. The Owner shall be under no obligation to exercise the right conferred to it under this GC 8.02.04.01.06.</p> <p>.07 The requirements of Proper Invoices are of the essence.</p> <p>.08 The Contractor shall prepare and maintain current as-built drawings or red-line markups which shall consist of the Drawings and End Result Specification, including but not limited to architectural, structural, mechanical, electrical, cabling, shop drawings, single-line diagrams and any other graphical representations, and shall be maintained by the Contractor and made available to the Contract Administrator for review with each Proper Invoice.</p> <p>.09 The Contractor’s actual expense for bonds shall be included in the first Proper Invoice and paid by the Owner.”</p>
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SC22 GC 8.02.04.01a - Progress Payment

SC22.1	8.02.04.01a	<p><u>Add</u> new GC 8.02.04.01a Progress Payment as follows: “GC 8.02.04.01a Progress Payment</p> <p>.01 No later than 14 Days after the receipt of the Proper Invoice for a progress payment, the Contract Administrator:</p> <ul style="list-style-type: none"> a) will issue to the Owner with a copy to the Contractor, a progress payment certificate in the amount applied for by the Contractor, and the Owner shall make payment in such amount within 28 days following receipt of the Contractor’s Proper Invoice, or b) if the Contract Administrator finds that such other amount is properly due under the Proper Invoice or otherwise finds that the Proper Invoice must be amended, it shall notify the Owner’s Representative and prepare an applicable Notice of Non-Payment (Form 1.1) with reasons for the amendments. <p>.02 Where the Owner has delivered a Notice of Non-Payment, the Owner and the Contractor shall first engage in good faith</p>
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		<p>negotiations to resolve the dispute. If within 10 calendar days following the issuance of a Notice of Non-Payment, the Owner and the Contractor cannot resolve the dispute, either party may issue a notice of Adjudication in the applicable form prescribed under the Construction Act.</p> <p>.03 The amounts disputed and described under the Notice of Non-Payment shall be held by the Owner until all disputed amounts of the Proper Invoice have been resolved. Any portion of the Proper Invoice which is not the subject of the Notice of Non-Payment shall be payable within the time period set out the Construction Act, provided no claims for lien and no written notices of lien have been delivered to the Owner.</p> <p>.04 The Owner reserves the right to retain amounts to ensure correction or replacement of deficient work done or unacceptable product provided. The Owner's obligation to pay under GC 8.02.04.01a.01(a) or 8.02.04.01a.03 is subject to any rights conferred on the Owner at law or under this Contract to withhold payment, backcharge or set-off against payment.</p> <p>.05 Subject to the Construction Act, any amounts payable to the Owner by the Contractor pursuant to the Contract Documents, may be retained out of any monies due, or which may become due, from the Owner to the Contractor under the Contract or, if the Contractor becomes insolvent, under any other contract between the Contractor and the Owner, and may be recovered from the Contractor or its sureties, or any or either of them, as a debt due to the Owner. In addition, the Owner shall have full authority to retain monies if circumstances arise which may indicate the advisability of so doing, though the sum to be retained may be unascertained. For greater clarity any amounts payable to the Owner by the Contractor pursuant to the Contract Documents, or any deductions, retainage or withholdings the Owner is entitled to make pursuant to the Contract Documents, shall entitle the Owner to refuse to pay all or any portion of the amounts payable under Proper Invoices on account of such amounts payable, deductions, retainage or withholdings</p>
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SC23 GC 8.02.04.02 - Certification of Subcontract Completion

SC23.1	8.02.04.04.02	<u>Delete</u> GC 8.02.04.02 in its entirety.
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SC24 GC 8.02.04.03 - Subcontract Statutory Holdback Release Certificate and Payment

SC24.1	8.02.04.04.03	<u>Delete</u> GC 8.02.04.03 in its entirety.
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SC25 GC 8.02.04.04 - Substantial Performance of Work

SC25.1	8.02.04.04.04	<p><u>Delete</u> GC 8.02.04.04.04, <u>and replace it with:</u></p> <p>“The Contractor shall publish, in a construction trade newspaper in the area of the location of the Work, a copy of the certificate of Substantial Performance of the Work referred to in this GC 8.02.04.05.01 within seven (7) days of receiving a copy of the certificate signed by the Contract Administrator, and the Contractor shall provide suitable evidence of the publication to the Contract Administrator and the Owner.”</p>
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SC26 GC 8.02.04.05 - Substantial Performance Payment and Substantial Performance Statutory Holdback Release Payment Certificate

SC26.1	8.02.04.05.01	<u>In GC8.02.04.05.01, replace “section 8.02.04.01.02” with “section 8.02.04.01.03”.</u>
SC26.2	8.02.04.05.03	<p><u>At the end of GC8.02.04.05.03 add the following:</u></p> <p>“c) a Proper Invoice for the payment of the holdback amount; and</p> <p>d) such additional documents as the Contract Administrator may reasonably require.”</p>
SC26.3	8.02.04.05.05	<p><u>Add new GC8.02.04.05.05:</u></p> <p>“.06 Where after thirty (30) days following the publication of the Certificate of Substantial Performance, pursuant to GC 8.02.04.05.01, the value of the Work remaining to be completed under the Contract, plus the estimated cost to repair any remaining deficiencies, exceeds the amount of the unpaid balance of the labour and Materials (as determined by the</p>

		Contract Administrator, acting reasonably), the Owner's Representative may publish a notice of non-payment of holdback in accordance with the Construction Act (Form 6) and retain an amount from the holdback to supplement the unpaid value of the labour and Materials to secure the correction of deficiencies and completion of the Work."
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SC27 GC 8.02.04.07 - Final Payment and Statutory Holdback Release

SC27.1	8.02.04.07	<p>Delete GC 8.02.04.07 and <u>replace</u> it with the following:</p> <p>"GC 8.02.04.07 Final Payment and Statutory Holdback Release</p> <p>.01 When the Contractor considers that the Work has been totally performed, the Contractor shall submit a written application for review by the Contract Administrator to establish Completion of the Work.</p> <p>.02 Within ten (10) calendar days of the Contractor submitting an application under GC8.02.04.07.01 for contract Completion, the Contractor, Owner and Contract Administrator shall attend a meeting to discuss and review the work completed during the final Payment Period and, more generally, the total performance of the Work under the Contract . If the scheduled date for the meeting is not a Working Day, the meeting shall occur on the next Working Day, or on another day agreed to by the Contractor and the Owner in writing. The Contractor shall bring with it to the meeting any documents reasonably required by the Contract Administrator.</p> <p>.03 No later than five (5) calendar days prior to the meeting, the Contractor will, if it has not already been provided, submit to the Contract Administrator, the following documentation:</p> <p>.1 all closeout documentation required by the Contract Documents including, but not limited to, warranties, manuals, guarantees, as-built drawings and all other relevant literature from suppliers and manufacturers including, but not limited to, where applicable:</p> <p>a. Equipment, maintenance and operations manuals;</p>
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		<ul style="list-style-type: none"> b. Equipment specifications, data sheets and brochures, parts lists and assembly drawings, performance curves and other related data; c. Line drawings, value charts and control sheets sequences with description of the sequence of operations; d. Warranty documents; e. Service and maintenance reports; f. Specifications; g. Shop drawings; h. Testing results; and i. Commissioning and quality assurance documentation <p>.04 The documents referenced in GC 8.02.04.07.03 shall constitute requirements for the Proper Invoice for final payment.</p> <p>.05 The Contractor shall submit a Proper Invoice for final payment within five (5) calendar days following the date of the meeting (the "Final Proper Invoice Submission Date") provided that if the fifth (5th) calendar day following the meeting falls on a calendar day that is not a Working Day, the Final Proper Invoice Submission Date shall be deemed to fall on the next Working Day.</p> <p>.06 The Contract Administrator will, after receipt of a Proper Invoice from the Contractor for final payment, review the Work to verify the validity of the Proper Invoice and:</p> <ul style="list-style-type: none"> .1 advise the Contractor in writing that the Work is not completely performed and give reasons why, or; .2 state the date of Completion in a certificate and issue a copy of that certificate to each of the Owner and the Contractor within seven (7) days of signing said certificate. <p>.07 Subject to the provisions of the Construction Act and any other rights conferred on the Owner at law or under this</p>
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		<p>Contract to withhold payment or backcharge or set-off against payment, the Owner shall pay the amount payable under a Proper Invoice for final payment in accordance with the Construction Act.</p> <p>.08 When the Contract Administrator issues a certificate of completion in accordance with GC 8.02.04.07.06, the Contract Administrator shall also issue a certificate for release of any holdback amount. In accordance with the Construction Act, the Owner may retain any amounts which are required by law to satisfy any liens against the Work, in respect of any third party claims made to the Owner in respect of the Contract or the Work, and in respect of any claims the Owner may have against the Contractor. Subject to the foregoing, the Owner shall release the holdback in accordance with the Construction Act.”</p>
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SC28 GC 8.02.04.09 - Interest for Late Payment

SC28.1	8.02.04.09	Delete GC 8.02.04.09 in its entirety, including all subparagraphs thereunder.
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SC29 GC 8.02.04.12 - Delay in Payment

SC29.1	8.02.04.12	<p>Delete GC 8.02.04.12.01 in its entirety and <u>replace</u> with the following:</p> <p>“.01 The Owner shall not be deemed to be in default of the Contract provided any delay in payment does not exceed 30 Days from the due dates as provided for in the Contract Documents or as otherwise set out in the Construction Act”</p>
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SC30 GC 8.02.05.08 - Payment on Time and Material Basis

SC30.1	8.02.05.08.01	<u>Delete</u> subsections GC 8.02.05.08.01 a), b) and c) in their entirety and <u>delete</u> the words “calculated on the following basis” and <u>replace</u> it with the following:
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		"5% of the amount. The 5% markup shall apply to any work performed by a Subcontractor. All equipment rates will be based on those listed in OPS 127 at the time of contract execution."
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SC31 GC 8.02.05.09 - Submission of Invoices

SC31.1	8.02.05.09	<u>Add</u> at the end of 8.02.05.09.01 the following: "All labour rates submitted are to be validated by the Contractor's accountant, licensed to practice in the Province of Ontario and having a professional designation as a CPA or equivalent."
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Exhibit “1”

Project-specific requirements for a “*Proper Invoice*”

To satisfy the requirements for a Proper Invoice, the following criteria, as may be applicable in each case, must be included with the Contractor’s invoices:

Contractor Name, Mailing Address, Phone Number
Project Name & Contract Number
Contractor Project Manager & Contact Information
Invoice Issuance Date
Payment Period (i.e. Period of time in which labour and/or materials supplied)
Amount Contractor is Requesting to be Paid including Value of Work in CWOs (<i>Excl. HST</i>)
HST Rate
Payment Term – Net 28 Days
HST Registration Number
ATTACHMENTS
Payment Certificate (prepared by City Project Manager and signed by the Contractor) <i>Including Certificate, Distribution, Quantities Sheets & Change Work Orders</i>
Current Workplace Safety and Insurance Board Clearance Certificate
Updated Insurance Certificate
Sworn Statutory Declaration

END OF SUPPLEMENTARY CONDITIONS