

**NIAGARA FALLS PUBLIC LIBRARY BOARD**  
**PART C**  
**SUPPLEMENTARY CONDITIONS TO**  
**CCDC 2 STIPULATED PRICE CONTRACT, 2008**

**Rev 1 MSC Date: 9 March 2021**

**Note to users:**

- (1) This version of the Niagara Falls Public Library Board to CCDC2-2008 is only intended for use with contracts that are subject to the *Construction Act*, R.S.O. 1990, c. C.30, as amended, which came into force on July 1, 2018, and was further amended on December 6, 2018, and again on October 1, 2019. Accordingly, these supplementary conditions are only to be used where the following conditions are met:
- (i) 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
  - (ii) 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 to the *Place of the Work*;
    - b. the construction, erection or installation at the *Place of the Work*, including the installation of industrial, mechanical, electrical or other equipment at the *Place of the Work* that is essential to the normal or intended use of the *Place of the Work*; or
    - c. the complete or partial demolition or removal of any building structure or works at the *Place of the Work*.

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 Article A-1.3 and replace with the following:

“1.3 commence the *Work* at the *Place of the Work* following execution of the contract and, subject to an adjustment in *Contract Time* as provided for in the *Contract Documents* and approved by the *Owner*, the *Contractor* shall attain *Substantial Performance of the Work* within twenty-eight (28) weeks following execution of the contract and attain *Total Completion of the Work* no later than thirty-two (32) weeks following execution of the contract.”

### **ARTICLE A-5 PAYMENT**

2. In subparagraph A-5.1.1, delete “...in the amount certified by the *Consultant*...” and replace with “...in the amount certified by the *Owner*...”.

3. Delete subparagraph A-5.1.2 in its entirety and replace it with the following:

“.2 upon *Substantial Performance of the Work*, as certified by the *Consultant*, or the *Owner* and *Contractor* jointly, and on the 61st day after the publication of the certificate of *Substantial Performance of the Work*, there being no claims for lien registered against the title to the *Place of the Work* and no written notices of lien delivered to the *Owner*, pay the *Contractor* the unpaid balance of the holdback together with such *Value Added Taxes* as may be applicable to such payment, less any amount stated in the *Owner’s Notice of Non-Payment*, and”

4. Delete subparagraph A-5.1.3 in its entirety and replace it with the following:

“.3 upon receipt of the final certificate for payment from the *Owner*, and on the 61st day after the date on which the *Contractor* completes the *Work*, there being no claims for lien registered against the title to the *Place of the Work* and no written notices of lien delivered to the *Owner*, pay the *Contractor* the unpaid balance of the *Contract Price* together with such *Value Added Taxes* as may be applicable to such payment, less any amount stated in the *Owner’s Notice of Non-Payment*.”

5. Delete paragraph A-5.3.1. in its entirety and replace it with:

“.1 Should either party fail to make payments as they become due under the terms of the *Contract* or in an award by arbitration or 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.”

6. Add new Article A-5.4 as follows:

“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**

7. Delete the text of ARTICLE A-6 RECEIPT OF AND ADDRESSES FOR NOTICES IN WRITING (retaining the provision for the addresses of the *Owner*, *Contractor* and *Consultant*) and replace it with the following:

“6.1 *Notices in Writing* between the parties or between them and the *Consultant* shall be considered to have been received by the addressee on the date of receipt if delivered by hand or by commercial courier or if sent during normal business hours by e-mail during the transmission of which no indication of failure of receipt is communicated to the sender, and addressed as set out below. Such *Notices in Writing* will be deemed to be received by the addressee on the next business day if sent by e-mail after normal business hours or if sent by overnight commercial courier. Such *Notices in Writing* will be deemed to be received by the addressee on the fifth *Working Day* following the date of mailing, if sent by pre-paid registered post, when addressed as set out below. An address for a party may be changed by *Notice in Writing* to the other party setting out the new address in accordance with this article. *Notices in Writing* to the *Owner* shall be delivered to the *Owner's* Project Manager at the address below and to Legal Services at [legalservices@niagarafalls.ca](mailto:legalservices@niagarafalls.ca).”

8. Add new Article A-6.2 as follows:

“6.2 Notwithstanding the provisions of Article A-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 16.06.1(1) of the *Rules of Civil Procedure* (Ontario), 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 addresses set out in Article A-6.1, as amended from time to time in writing, which emails shall contain the following information:

- (a) The sender's name, address, telephone number, 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**

9. 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 and the Niagara Falls Public Library Board. 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 and the Niagara Falls Public Library Board, 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 and the Niagara Falls Public Library Board.
- 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, 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 9.4 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 Three Hundred Fifty Dollars (\$350.00) 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**

### **10. 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 DPAI Architecture Inc. and the *Consultant's* representative will be Pablo Navarro.

#### 11. Definition 20. Substantial Performance of the Work

Delete the definition for *Substantial Performance of the Work* and replace it with the following:

“*Substantial Performance of the Work* means:

- (a) has satisfied the requirements for being substantially performed in accordance with Section 2(1) and Section 2(2) of the *Construction Act*, provided that, for the purposes of Section 2(2) of the *Construction Act*, interruption of *Work* caused by the winter season shall not be interpreted to mean that the *Work* cannot be completed expeditiously; and
- (b) for the purposes of Section 2(2), 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.”

#### 12. Definition 25. Work

Delete the definition of *Work* and replace it with the following:

“*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*.”

#### 13. 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*.

**14. Definition 27. Construction Act**

Add new Definition 27 for the *Construction Act* as follows:

**“27. Construction Act**

*Construction Act* shall mean the *Construction Act*, R.S.O. 1990, c. C.30, as amended, and 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.e. the “improvement” as that term is defined in the *Construction Act*) was commenced on or after October 1, 2019.”

**15. Definition 28. Adjudication**

Add new Definition 28 for *Adjudication* as follows:

**“28. Adjudication**

*Adjudication* means construction dispute interim adjudication as defined under the *Construction Act*.”

**16. Definition 29. ‘Construction Schedule’ or ‘construction schedule’**

Add new Definition 29 for *Construction Schedule* or ‘construction schedule’ as follows:

**“29. Construction Schedule or ‘construction schedule’**

*Construction Schedule* or ‘construction schedule’ means the schedule referred to in GC 3.5.1.1.”

**17. Definition 30. Final Pre-Invoice Submission Meeting**

Add new Definition 30 for *Final Pre-Invoice Submission Meeting* as follows:

**“30. Final Pre-Invoice Submission Meeting**

*Final Pre-Invoice Submission Meeting* has the meaning given to it in GC 5.7.2.”

**18. Definition 31. Force Majeure**

Add new Definition 31 for *Force Majeure* as follows:

**“31. Force Majeure**

*Force Majeure* means any cause, beyond the reasonable control of the affected party, other than bankruptcy or insolvency, which prevents the performance by a party of any of its obligations under the *Contract* and the event of *Force Majeure*

did not arise from a party's default or active commission or omission and could not be avoided or mitigated by the exercise of reasonable effort or foresight. *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, declared epidemic or pandemic outbreak or other public health emergency (e.g. SARS, COVID-19) or acts of God."

## 19. Definition 32. Intellectual Property

Add new Definition 32 for *Intellectual Property* as follows:

### "32. 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."

## 20. Definition 33. Long Lead Products

Add new Definition 33 for *Long Lead Products* as follows:

### "33. Long Lead Products

*Long Lead Products* has the meaning given to it under Article A-1.3."

## 21. Definition 34. Notice of Non-Payment

Add new Definition 34 for *Notice of Non-Payment* as follows:



**“34. Notice of Non-Payment**

*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.”

**22. Definition 35. OHSA**

Add new Definition 35 for *OHSA* as follows:

**“35. OHSA**

*OHSA* means the *Occupational Health and Safety Act*, R.S.O, 1990, c. O.1, as amended, including all regulations thereto.”

**23. Definition 36. Payment Period**

Add new Definition 36 for *Payment Period* as follows:

**“36. Payment Period**

*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.”

**24. Definition 37. Pre-Invoice Submission Meeting**

Add new Definition 36 for *Pre-Invoice Submission Meeting* as follows:

**“37. Pre-Invoice Submission Meeting**

*Pre-Invoice Submission Meeting* has the meaning given to it in GC 5.2.1.”

**25. Definition 38. Proper Invoice**

Add new Definition 38 for *Proper Invoice* as follows:

**“38. Proper Invoice**

*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” to these Supplementary Conditions.”

## 26. Definition 39. Proper Invoice Submission Date

Add new Definition 39 for *Proper Invoice Submission Date* as follows:

### **“39. Proper Invoice Submission Date**

*Proper Invoice Submission Date* has the meaning given to it in GC 5.2.2.”

## 27. Definition 40. Restricted Period (Adjudication)

Add new Definition 40 for *Restricted Period (Adjudication)* as follows:

### **“40. Restricted Period (Adjudication)**

*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*.”

## 28. Definition 41. Restricted Period (Proper Invoice)

Add new Definition 41 for *Restricted Period (Proper Invoice)* as follows:

### **“41. Restricted Period (Proper Invoice)**

*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*.”

## 29. Definition 42. Request for Information

Add new Definition 42 for *Request for Information* as follows:

### **“42. Request for Information**

*Request for Information* or *RFI* means written documentation sent by the *Contractor* to the *Owner* or to the *Owner’s* representative or to the *Consultant* requesting written clarification(s) and/or interpretation(s) of the *Drawings* and/or *Specifications*, *Contract* requirements and/or other pertinent information required to complete the *Work* of the *Contract* without applying for a change or changes to the *Work*.”

## 30. Definition 43. Total Completion of the Work

Add new Definition 43 for *Total Completion of the Work* as follows:

### **“43. Total Completion of the Work**

*Total Completion of the Work* 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 *Construction Act*.”

### 31. **Definition 44. Warranty Holdback**

Add new Definition 44 for *Warranty Holdback* as follows:

**“44. Warranty Holdback**

*Warranty Holdback* has the meaning given to it under GC 12.3.7.”

### 32. **Definition 45. Warranty Period**

Add new Definition 45 for *Warranty Period* as follows:

**“45. Warranty Period**

*Warranty Period* has the meaning given to it under GC 12.3.4.”

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

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**

33. Add the following to the end of GC 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.”

34. Add the following to the end of GC 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 studying 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*.”

35. Delete GC 1.1.7.1 in its entirety and replace it with the following:

“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
- *Drawings*”

36. Delete GC 1.1.8 in its entirety and replace with the following:

“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*.”

37. Delete GC 1.1.9 in its entirety and replace it with the following:

“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 for or on other projects. 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*.”

38. Add new GC 1.1.11 to GC 1.1.17 as follows:

“1.1.11 One set of signed *Contract Documents* shall be retained by each of the *Owner* and the *Contractor*.”

- 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 that item of work, unless the *Owner* agrees otherwise.
- 1.1.13 Wherever in the *Contract* a 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 be unreasonably withheld or delayed.
- 1.1.14 Where the *Owner* is in possession of software containing or constituting confidential proprietary information belonging to third parties, the *Contractor* shall not, except in the usual incidental manner genuinely necessary for the intended use of such software on the equipment of the *Owner*:
- .1 analyse, copy, decompile, disassemble, translate, convert, reverse engineer or duplicate any physical embodiment or part thereof, or permit any person to do so; or
  - .2 divulge to any unauthorized person the ideas, concepts or techniques, or make any other improper use, of such software.
- 1.1.15 The *Contractor* shall fully defend, save harmless and indemnify the *Owner* from and against any loss or damages suffered by the *Owner* as a result of any failure by the *Contractor*, its officers, directors, partners, contract personnel, agents and employees or any of them to comply with the provisions hereof.
- 1.1.16 Should the *Contractor* include third party components within the documents, expertise, design and any other aspect of its tender submitted to the *Owner* for the award of this *Contract*, the *Contractor* must secure the rights to use and repackage third party components and pass on those rights to the *Owner* without additional charges.
- 1.1.17 The *Owner* will own all intellectual property rights, including (without limitation) copyright, in and to all deliverables provided by the *Contractor* and its *Subcontractors* and *Suppliers*."

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

39. Delete GC 1.2.1 in its entirety and replace it with the following:

“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 all regulations passed under it that are enforceable as of the date of execution of this *Contract* apply to this *Contract*.”

## **GC 1.4 ASSIGNMENT**

40. Delete GC 1.4.1 in its entirety and replace it with the following:

“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**

41. In the first sentence of GC 2.2.7, delete the words “Except with respect to GC 5.1 - FINANCING INFORMATION REQUIRED OF THE OWNER,”.

42. Add the following to the end of GC 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*.”

43. Delete GC 2.2.17 and replace it with the following:

“2.2.17 All certificates will be issued by the *Owner* upon the recommendation of the *Consultant*.”

44. Add new GC 2.2.19 as follows:

“2.2.19 If the *Owner* has appointed one of its own employees as the “*Consultant*” under this *Contract*, any reference to the *Consultant* shall mean the *Owner* and all responsibilities assigned to the *Consultant* under this

*Contract* shall be performed by the *Owner* unless the *Owner* provides otherwise in writing.”

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

45. Throughout GC 2.3.2, delete the word “reasonable” everywhere it appears and replace it with “at least 3 *Working Days*”.

46. Add new GC 2.3.8 as follows:

“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.”

47. Add new GC 2.3.9 as follows:

“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.”

### **GC 2.4 DEFECTIVE WORK**

48. Add new GC 2.4.1.1 and 2.4.1.2 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*, and the *Contractor* shall not be entitled to an increase in the *Contract Price* or an adjustment to the *Contract Time* to perform such rectification.

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**

49. Amend GC 3.1.2 by inserting the following to the end of the paragraph:

“Without limiting the generality of the foregoing, the *Contractor* shall coordinate responses to and the involvement of all required services or facility suppliers, including without limitation natural gas, power, phone and internet access, water, and shall be responsible for all associated costs and fees.”

50. Add new GC 3.1.3 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**

51. Delete GC 3.2.2.2 in its entirety.

52. Add new GC 3.2.3.4 as follows:

“3.2.3.4 Subject to GC9.4 CONSTRUCTION SAFETY, for the *Owner’s* own forces and for other contractors, assume overall responsibility for compliance with all aspects of the applicable health and safety legislation of the *Place of the Work*, including all the responsibilities of the “constructor” under OHS.A.”

53. Add new GC 3.2.7 and 3.2.8 as follows:

“3.2.7 Entry by the *Owner’s* own forces and by other contractors, placing, installation, application and connection of the *Work* by the *Owner’s* own forces or by other contractors on and to the *Work* shall not mean acceptance of the *Work* and shall not relieve the *Contractor* of its responsibility to complete the *Work* or to provide and maintain the warranties specified in the *Contract Documents*.”



- 3.2.8 Placing, installation, application and connection of *Work* by *Owner's* own forces or by other contractors shall in no way relieve the *Contractor* of its responsibility to maintain, oversee, and manage health and safety at the *Place of the Work* as "constructor" for the *Project* pursuant to GC 9.4.1."

### **GC 3.4 DOCUMENT REVIEW**

54. Delete GC 3.4.1 in its entirety and replace it with the following:

"3.4.1 The *Contractor* shall review the *Contract Documents* and any error, inconsistency or omission or has any doubt as to the meaning or intent of any part thereof the *Contractor* may reasonably discover shall immediately be brought to the attention of the *Consultant* by means of an *RFI*. Such review by the *Contractor* shall comply with the standard of care described in GC 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*."

55. Add new GC 3.4.2 and 3.4.3 as follows:

"3.4.2 Upon receipt of an *RFI*, the *Consultant* will provide written instructions or explanations. Neither the *Owner* nor the *Consultant* will be responsible for oral instructions. If the *Contractor* fails to provide an *RFI* 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 RFIs 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

56. Delete GC 3.5.1 in its entirety and replace it with the following:

“3.5.1 The *Contractor* shall:

- .1 within 7 *Working Days* of award of this *Contract*, and at any time as requested by the *Owner*, submit to the *Owner* and the *Consultant* for their approval, a baseline construction schedule in a form acceptable to the *Owner* indicating the critical path for the *Project*, the schedule of operations, the proposed methods of construction and sequence of the *Work* and the time the *Contractor* proposes to complete the various components of *Work* within the *Contract Time* (the “**Construction Schedule**”). The *Construction 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*. Where the *Contractor* fails to deliver a *Construction Schedule* in accordance with this GC 3.5.1.1, or the *Construction Schedule* delivered by the *Contractor* is not approved by the *Owner* or the *Consultant*, the *Owner* may, in its sole discretion, delay the commencement of the *Work*, at the *Contractor's* cost and expense, until such time as the *Contractor* delivers an approved *Construction Schedule*. For certainty, for the purposes of GC 6.5 – DELAYS, any delay caused by the *Contractor's* breach of this GC 3.5.1.1, shall be deemed to be delay caused by the *Contractor* under GC 6.5.6;
- .2 provide the expertise and resources, such resources including sufficient staffing and labour, and equipment, as are necessary to maintain or improve progress under the *Construction Schedule* or any successor or revised schedule approved by the *Owner* pursuant to this GC3.5;
- .3 during performance of the *Work* and in accordance with the controls and reporting requirements in the *Contract Documents*, continuously monitor the progress of the *Work* relative to the baseline *Construction Schedule* and provide for the *Owner* and *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;
- .4 if after applying the expertise and resources required under paragraph 3.5.1.2, the *Contractor* forms the opinion that the slippage in schedule reported in paragraph 3.5.1.3 cannot be recovered by the *Contractor*, it shall, in the same notice provided under paragraph 3.5.1.3, indicate to the

*Consultant* if the *Contractor* intends to apply for an extension of *Contract Time* as provided in PART 6 —CHANGES IN THE WORK;

- .5 if the *Construction Schedule* is affected by the issuance of a *Change Order*, the *Contractor* shall submit an updated *Construction Schedule*, if requested by the *Consultant* or *Owner*, within 7 Working Days of the request. This updated *Construction 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 *Change Orders*;

57. Add a new GC 3.5.2 to 3.5.7 as follows:

- “3.5.2 For the duration of the *Project*, the *Contractor* shall provide progress reports as described in GC 3.5.1.2 for review and approval by the *Owner* as required by the *Contract Documents* and in any event no less than 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 completion of 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, the delay, and perform the *Work* within the *Contract Time* accepted by the *Owner* pursuant to the *Construction Schedule*.
- 3.5.4 If, at any time it should reasonably appear to the *Owner* or the *Consultant* that the actual progress of the *Work* is behind the *Construction Schedule* or is likely to become behind the *Construction Schedule* and notice of such opinion is given to the *Contractor*; or the *Contractor* has noticed slippage in the *Construction Schedule*, then the *Contractor* shall take appropriate steps to cause the actual progress of the *Work* to conform to the *Construction 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 *Construction 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**

58. Add new GC 3.6.3 and 3.6.4 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 *Work* 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 SUPPLIERS**

59. Add the following to the end of GC 3.7.2:

"In the event that the *Contractor* wishes to change any of its *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."

60. Add the following to the end of GC 3.7.5:

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

61. Add new GC 3.7.7 as follows:

"3.7.7 The *Contractor* shall provide the *Owner* with:

(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*.

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 3.7.7 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 3.7.7."

62. Add new GC 3.7.8 as follows:

"3.7.8 From time-to-time as required by the *Owner*, in its sole and absolute discretion, *Subcontractors* and *Suppliers* or any other third party retained by the *Contractor* for the performance of any portion of the *Work* may be required to sign a non-disclosure agreement satisfactory to the *Owner* before being permitted to perform any portion of the *Work*."

63. Add new GC 3.7.9 as follows:

"3.7.9 The *Contractor* acknowledges that it shall be solely responsible for the payment of all its personnel, including, without limitation, all employees, *Subcontractors*, consultants, *Suppliers*, and others employed by the *Contractor* for the performance of the *Work*. The *Owner* shall not be liable for the *Contractor's* failure to make payment to such personnel, nor any increase in the *Contract Price* that arises from such failure."

## **GC 3.8 LABOUR AND PRODUCTS**

64. In GC 3.8.3, delete the words "...*Contractor's* employee's..." and replace with "...*Contractor's* employees, *Subcontractors*, *Suppliers*' and their respective employees..."

65. Add the following to the end of GC 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."

66. Add new GC 3.8.4 to 3.8.19 as follows:

- “3.8.4 If the *Consultant* or the *Owner* determines that any worker, including employees of *Subcontractors*, employed at the *Project* is “incompetent” as defined under 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 or employee from the *Place of the Work*. Such worker or employee shall not return to the *Place of the Work* without the prior written authorization from the *Consultant*.
- 3.8.5 The *Contractor* shall be responsible for coordinating the response to, and involvement of, all other required services of facility suppliers, including natural gas, hydro, telephone, water and all other services and related fees.
- 3.8.7 The *Contractor* warrants that any *Products* or other goods, materials, articles or equipment, to be supplied under this *Contract*:
- .1 that is or are to be made or used for a particular purpose, will be fit and suitable for that purpose; and
  - .2 be supplied in accordance with the functional and technical requirements set out in the *Contract Documents*.
- 3.8.8 Unless otherwise stated in the *Contract Documents*, all *Products* supplied shall be new only, never used, of the latest manufacture and not re-manufactured. Such *Products*, wherever possible, shall be of Canadian origin and manufacture.
- 3.8.9 The *Contractor* shall ensure that all materials and *Products* are delivered to the *Place of the Work* in original containers and packages with labels and seals intact and visible for inspection. The *Contractor* shall ensure that all materials and *Products* are secure and protected from inclement weather and, where necessary, stored at the temperature required by and in accordance with the manufacturer’s requirements.
- 3.8.10 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 approval of substitute *Products* are authorized by the *Owner* in writing.
- 3.8.11 The *Contractor* shall use and install all proprietary *Products* in strict accordance with the manufacturers’ 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*.

- 3.8.12 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*.
- 3.8.13 Subject to GC 3.8.10, after award of the *Contract*, 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.
- 3.8.14 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*.
- 3.8.15 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 *Contractor* shall bear all the responsibility for any additional costs of the *Owner* and the *Consultant* related to their review of the proposed substitution.
- 3.8.16 Acceptance by the *Consultant* of a “reviewed equivalent” shall apply to this *Contract* only.
- 3.8.17 The *Contractor* shall assume responsibility for all liabilities and additional costs, if any, arising from its proposed substitution being accepted by the *Consultant*. For certainty, there shall be no increase to the *Contract Price* for any “reviewed equivalent” substitution.
- 3.8.18 Any design, changes to the *Work*, or changes to the *Contract Time* 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*.

3.8.19 At the request of the *Owner*, the *Contractor* shall provide written documentation that all *Products* and materials proposed meet all applicable federal, provincial and municipal legislation, statutes, codes, regulations, by-laws or standards. Any failure by the *Contractor* to comply with such legislation, statutes, codes, regulations, by-laws or standards, shall entitle the *Owner* to exercise its rights under GC 7.1.”

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

67. Add new GC 3.11.3, 3.11.4, and 3.11.5 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, at its own expense, 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 *Owner’s* legal counsel, signed by each property owner upon whose land the *Contractor* 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:

- .1 operating its business before *Total Completion of the Work*; and
- .2 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*.”

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

68. Add new GC 3.13.4, 3.13.5 and 3.13.6 as follows:

“3.13.4 Without limiting the requirements of GC 3.13.1, GC 3.13.2, and GC 3.13.3, the *Contractor* shall ensure that all removal, disposal, and cleanup is completed in a manner satisfactory to the *Owner*, which shall be at a minimum in a manner that meets or exceeds all applicable federal,



provincial, regional, and municipal legislation, acts, regulations, and bylaws.

3.13.5 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 and the *Contractor* shall be responsible for all costs incurred by the *Owner* in so doing.

3.13.6 As a condition precedent to receiving final payment, 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*, failing which the *Contractor* shall be responsible for all costs incurred by the *Owner* to complete the repairs.”

### **\*NEW\* GC 3.14 PERFORMANCE BY CONTRACTOR**

69. Add new GC 3.14 – PERFORMANCE BY CONTRACTOR 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*.”

## **PART 4     ALLOWANCES**

### **GC 4.1 CASH ALLOWANCES**

70. In GC 4.1.2 add the following to the end of the paragraph:

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

71. In GC 4.1.3, after the word “authorized” add the words “in writing”.

72. In the first sentence of GC 4.1.4., delete the words “plus an amount for overhead and profit on the excess as set out in the *Contract Documents*.”

-and-

in the second sentence of GC 4.1.4, delete the words “but not for the *Contractor’s* overhead and profit on such amount.”

-and-

delete the third sentence of GC 4.1.4 in its entirety.

73. Delete GC 4.1.5 in its entirety and replace it with the following:

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

74. Add new GC 4.1.8 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 portions of the *Work* for which payment is made from Cash Allowances. Any procurement and subsequent award pursuant to this GC 4.1.8 shall be made in consultation with the *Owner* and in accordance with the *Owner’s* purchasing practices.”

### **GC 4.2 CONTINGENCY ALLOWANCE**

75. Delete GC 4.2 – CONTINGENCY ALLOWANCE in its entirety, including all subparagraphs thereunder.

## **PART 5      PAYMENT**

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

76. Delete GC 5.1 – FINANCING INFORMATION REQUIRED OF THE OWNER, including all subparagraphs thereunder and all references throughout the *Contract* made to GC 5.1 in its entirety.

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

77. Delete GC 5.2.1 and replace it with the following:

“5.2.1 Applications for payment shall be dated the last day of each *Payment Period*. Within 10 calendar days of the end of each *Payment Period*, a representative of each of the *Contractor*, *Owner*, and the *Consultant* shall attend a meeting to discuss and review the work completed during the *Payment Period*, including quantities, if applicable (the “**Pre-Invoice Submission Meeting**”). In the event that the scheduled date for the *Pre-Invoice Submission Meeting* is not a *Working Day*, the *Pre-Invoice Submission Meeting* shall occur on the next *Working Day*. The *Contractor* shall bring with it to the *Pre-Invoice Submission Meeting* the following:

- .1 a draft form of application for payment;
- .2 the schedule of values in accordance with GC 5.2.6;
- .3 an up-to-date *Change Order* log;
- .4 *Subcontractor* and *Supplier* invoices and supporting materials;
- .5 receipts for reimbursable expenses (if any);
- .6 any visual documentation (photos, videos, diagrams) evidencing the progress of the *Work*; and
- .7 any other documents reasonably required by the *Contract Documents*, the *Owner* or *Consultant*.”

78. Delete GC 5.2.2 and replace it with the following:

“5.2.2 Within 5 calendar days following the *Pre-Invoice Submission Meeting*, the *Contractor* shall deliver its application for payment to the *Owner* and to the *Consultant* in accordance with GC 5.2.8 for *Work* performed during a *Payment Period* (the “**Proper Invoice Submission Date**”), subject to the following:

- .1 if the fifth (5th) calendar day following the *Pre-Invoice Submission Meeting*, to which an application for payment 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*.”

79. Amend GC 5.2.3 by adding the following to 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."

80. Delete GC 5.2.5 and replace with the following:

- "5.2.5 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."

81. In GC 5.2.7 add the following to the end of the paragraph:

"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*."

82. Add new GC 5.2.8 to 5.2.13 as follows:

"5.2.8 Applications for payment submitted under GC 5.2.2 shall be given in accordance with the following requirements:

- .1 Applications for payment shall be given to the *Owner* at [krimnyak@nflibrary.ca](mailto:krimnyak@nflibrary.ca) and [costclerk@niagarafalls.ca](mailto:costclerk@niagarafalls.ca) with a copy to the *Consultant*, unless the *Consultant* advises otherwise in writing;
- .2 Applications for payment shall be given during the hours of 9:00 a.m. to 4:00 p.m. (EST) on the *Proper Invoice Submission Date*;
- .3 If an application for payment is given after 4:00 p.m. (EST) on the applicable *Proper Invoice Submission Date*, the application for payment will not be considered or reviewed by the *Owner* and *Consultant* until the next *Proper Invoice Submission Date*, at which

point the *Proper Invoice* will be deemed to have been given to the *Owner* and the *Consultant*. Should the *Owner* decide to accept an application for payment submitted after 4:00 p.m. (EST) 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 5.2.8;

- .4 If an application for payment is given before the *Proper Invoice Submission Date*, the application for payment will not be considered or reviewed by the *Owner* and *Consultant* until the applicable *Proper Invoice Submission Date*, at which point the application for payment will be deemed to have been received by the *Owner Consultant* for the purpose of review and evaluation;
- .5 Notwithstanding any other provision of this *Contract*, the *Contractor* shall not deliver an application for payment, for consideration as a *Proper Invoice* by the *Owner*, during the *Restricted Period (Proper Invoice)*;
- .6 The parties consent to the giving and receiving of *Proper Invoices* electronically and in accordance with the requirements of this GC 5.2.8.

5.2.9 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 application for payment that the *Contractor* purported to be a *Proper Invoice* and gave to the *Owner* in accordance with GC 5.2.2. The *Owner* shall be under no obligation to exercise the right conferred to it under this GC 5.2.9.

5.2.10 The requirements of GC 5.2.1 and 5.2.2 are of the essence.

5.2.11 The *Contractor* shall prepare and maintain current as-built drawings 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 *Consultant* for review with each *Proper Invoice*.

5.2.12 The *Contractor's* actual expense for bonds, if required, shall be included in the first *Proper Invoice* and paid by the *Owner*, provided

that the *Proper Invoice* includes respective invoices as proof of payment.”

### **GC 5.3 PROGRESS PAYMENT**

83. Delete GC 5.3 in its entirety and replace it with the following:

“5.3.1 After receipt by the *Owner* and the *Consultant* of an application for payment, submitted in accordance with GC 5.2.2:

- .1 the *Owner* and the *Consultant* will assess whether all of the criteria for a *Proper Invoice* are satisfied and, if not, the *Owner* may issue a *Notice of Non-Payment* (Form 1.1), in accordance with GC 5.3.2, setting out why the application for payment does not meet the requirements for a *Proper Invoice*; and
- .2 upon the receipt of a *Proper Invoice*, the *Consultant* will either:
  - (a) recommend to the *Owner*, copying the *Contractor*, that a certificate for payment in the amount applied for in the *Proper Invoice* be issued, or
  - (b) make a finding that such other amount is properly due under the *Proper Invoice*, and shall notify the *Owner* and prepare and submit to the *Owner* a draft *Notice of Non-Payment* (Form 1.1) with reasons for the proposed amendment, which the *Owner* may accept or amend prior to issuance in accordance with GC 5.2.9.
- .3 subject to GC 5.3.2, the *Owner* shall make payment to the *Contractor*, on account as provided in Article A-5 of the Agreement – PAYMENT, on the 28<sup>th</sup> calendar day after receipt of a *Proper Invoice*, unless such 28<sup>th</sup> calendar day lands on a day that is other than a *Working Day*, in which case payment shall be made on the next *Working Day* after such 28<sup>th</sup> day.

5.3.2 In the event that the application for payment delivered by the *Contractor* does not include the requirements for a *Proper Invoice* or where the *Owner* disputes the amount claimed as payable in the *Proper Invoice*, then the *Owner* may issue a *Notice of Non-Payment* (Form 1.1) refusing payment to the *Contractor* of the full amount of the application for payment or such other amount as the *Owner* determines in its sole discretion.

5.3.3 Where the *Owner* has delivered a *Notice of Non-Payment*, the *Owner* and the *Contractor* shall first engage in good faith 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*.

- 5.3.4 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*.
- 5.3.5 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 5.3.2.1 or GC 5.3.4 is subject to any rights conferred on the *Owner* at law or under this *Contract* to withhold payment, backcharge or set-off against payment.
- 5.3.6 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.”

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

84. Add the following to the end of GC 5.4.2:

“The *Consultant* 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.”

85. Add new GC 5.4.4 as follows:

“5.4.4 Upon receipt of the certificate described in GC 5.4.2.2, 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* within three (3) Working Days of receiving a copy of the certificate signed by both the *Owner* and the *Contractor*, and the *Contractor* shall provide suitable evidence of the publication to the *Consultant* and the *Owner*. If the *Contractor* fails to publish such certificate of *Substantial Performance of the Work* in accordance with the timeline specified in this GC 5.4.4, the *Owner* shall be at liberty to publish said certificate and back-charge the *Contractor* its reasonable costs for doing so.”

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

86. Add new subparagraphs 5.5.1.3 and 5.5.1.4 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*, in a form satisfactory to the *Owner’s* legal counsel. The *Contractor* shall also provide a list itemizing, if applicable, all outstanding and unsettled claims by the *Contractor*. The release letter shall be in a form satisfactory to the *Owner’s* legal counsel.

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

87. Delete GC 5.5.2 and replace it with the following:

“5.5.2 After receipt of an application for payment of the holdback amount from the *Contractor*, the receipt of any additional documents as the *Owner* or *Consultant* may require, and upon satisfying itself that the application for payment is a *Proper Invoice*, the *Owner*, upon the recommendation of the *Consultant* will issue a certificate for payment of the statutory holdback amount. Where after thirty (30) days following the publication of the certificate of *Substantial Performance of the Work*, pursuant to GC 5.4.4, the value of the *Work* remaining to be complete under the *Contract*, plus the estimated cost to repair any remaining deficiencies, exceeds the amount of the unpaid balance of the *Contract Price* (as determined by the *Payment Certifier*, acting reasonably), the *Owner* may publish a notice of non-payment of holdback in accordance with the *Act* (Form 6) and retain an amount from the holdback to supplement the unpaid value of the *Contract Price* to secure the correction of deficiencies and completion of the *Work*.”

88. Delete GC 5.5.3 in its entirety.

89. Delete the first and second sentences in GC 5.5.4 and replace it with the following:



“Subject to the preservation of any claims for lien or the receipt by the *Owner* of any written notices of lien in respect to the *Project*, the holdback amount authorized by the certificate for payment of the holdback amount is due and payable on the 61<sup>st</sup> calendar day following publication of the certificate of *Substantial Performance of the Work* referred to in GC 5.4.3.2.”

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

90. add the following as new GC 5.6.4:

“5.6.4 For release of holdback on subcontract *Work* which is 100% complete prior to the release of holdback contemplated under GC 5.5 – PAYMENT OF HOLDBACK UPON SUBSTANTIAL PERFORMANCE OF THE WORK, the *Contractor* may make an application to the *Owner* and the *Consultant* by written request for a review by the *Owner* and *Consultant* to determine the date of completion of the subcontract and shall submit such supporting material as the *Owner* and *Consultant* may, in their discretion require, including:

- .1 Description of the scope of *Work* included in the subcontract.
- .2 Declaration of Last Supply by the *Subcontractor* or *Supplier* as prescribed in subsection 31(5) of the *Construction Act* (Form 7).
- .3 Certificate of Completion of Subcontract as prescribed in subsection 33(1) of the *Construction Act* (Form 8).
- .4 the extent of all additions to or deductions from the *Work* of the *Subcontractor* or the *Supplier* as a result of *Change Orders* or *Change Directives*,
- .5 a letter or certificate from WSIB for the *Contractor*, the *Subcontractor* or *Supplier* concerned, and any other *Subcontractors* or *Suppliers* who have provided any services to the *Subcontractor* or *Supplier* concerned stating that the *Subcontractor* or *Supplier* has paid all assessments to WSIB up to the date of application for partial release of holdback covering the *Work* of the *Subcontractor* or *Supplier*;
- .6 a statutory declaration made by the *Subcontractor* or the *Supplier* in the form of CCDC 9B-2001 Document;
- .7 *Contractor's* written acknowledgement to the *Owner* that the requirements of the *Contract Documents* will not be altered by early release of the holdback of the completed subcontracts;

- .8 Confirmation by the bonding company that it has been notified of the intent to claim early release of holdback and does not object; and
- .9 sufficient evidence to the *Owner's* reasonable satisfaction that, as of the date of the *Contractor's* application, no claims for lien have been preserved against the *Place of the Work* that have not been vacated by the posting of security, discharged, or otherwise addressed in accordance with GC 5.10 – CONSTRUCTION LIENS.”

91. Add new GC 5.6.5 as follows:

“5.6.5 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*. 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 to the *Contractor*, whichever is earlier.”

## **GC 5.7 FINAL PAYMENT**

92. Delete GC 5.7 in its entirety and replace it with the following:

“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 Immediately following the end of the *Warranty Period*, the *Contractor*, *Owner*, and *Consultant* 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*, including work related to and required under the *Warranty Period* (the “**Final Pre-Invoice Submission Meeting**”). In the event that the scheduled date for the *Final Pre-Invoice Submission Meeting* is not a *Working Day*, the *Pre-Invoice Submission 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 *Final Pre-Invoice Submission Meeting* the following:

- .1 any documents the *Contractor* is required to bring to the *Pre-Invoice Submission Meeting* as stipulated in the *Contract Documents*; and
  - .2 any other documents reasonably required by the *Owner* or *Consultant*.
- 5.7.3 No later than 5 calendar days prior to the *Final Pre-Invoice Submissions Meeting*, the *Contractor* will, if it has not already been provided, submit to the *Consultant*, the following documentation:
- .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:
    - a. Equipment, maintenance and operations manuals;
    - 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.
- 5.7.4 The documents referenced in GC 5.7.3 shall constitute requirements for the *Proper Invoice* for final payment.
- 5.7.5 The *Contractor* shall submit an application for final payment within 5 calendar days following the conclusion of the *Final Pre-Invoice Submission Meeting* to which the final application for payment relates (the “**Final Proper Invoice Submission Date**”), subject to the following:
- .1 if the fifth calendar day following the conclusion of the *Final Pre-Invoice Submission* 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.

5.7.6 After receipt by the *Owner* and the *Consultant* of an application for payment, submitted in accordance with GC 5.7.5:

- .1 the *Owner* and the *Consultant* will assess whether all of the criteria for a *Proper Invoice* are satisfied and, if not, the *Owner* may issue a *Notice of Non-Payment* (Form 1.1), in accordance with GC 5.7.7, setting out why the application for payment does not meet the requirements for a *Proper Invoice*; and
- .2 upon the receipt of a *Proper Invoice*, the *Consultant* will either:
  - (a) recommend to the *Owner*, copying the *Contractor*, that a certificate for payment in the amount applied for in the *Proper Invoice* be issued, or
  - (b) make a finding that such other amount is properly due under the *Proper Invoice*, and shall notify the *Owner* and prepare and submit to the *Owner* a draft *Notice of Non-Payment* (Form 1.1) with reasons for the proposed amendment, which the *Owner* may accept or amend prior to issuance in accordance with GC 5.2.9.

5.7.7 In the event that the final application for payment delivered by the *Contractor* does not include the requirements for a *Proper Invoice* or where the *Owner* disputes the amount claimed as payable in the *Proper Invoice*, then the *Owner* may issue a *Notice of Non-Payment* (Form 1.1) refusing payment to the *Contractor* of the full amount of the application for payment or such other amount as the *Owner* determines in its sole discretion.

5.7.8 Subject to GC 5.7.6, the *Owner* shall not issue final payment to the *Contractor* until and unless the *Owner* is fully satisfied that the *Contractor* has achieved *Total Completion of the Work*, including but not limited to delivery and proper installation of all *Products* and materials.”

## **GC 5.8 WITHHOLDING OF PAYMENT**

93. Add new GC 5.8.2 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.

94. Add new GC 5.10 – CONSTRUCTION LIENS as follows:

**“GC 5.10 CONSTRUCTION LIENS**

5.10.1 Notwithstanding any other provision in the *Contract* and subject to the requirement to issue a *Notice of Non-Payment* (Form 1.1), the *Owner* shall not be obligated to make payment to the *Contractor*, if at the time such payment was otherwise due:

- .1 a claim for lien has been registered against title to the *Place of the Work*, or delivered to the Clerk of the *Owner*, by a *Subcontractor* or a *Supplier* of any tier that has not been vacated or discharged by the *Contractor* in accordance with the requirements of this *Contract*,
- .2 if 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 *Place of the Work* by the *Contractor*, that has not been vacated or discharged by the *Contractor*.

5.10.2 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.

5.10.3 In the event 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 *Place of the Work*, then the *Contractor* shall, at its own expense:

- .1 within 10 calendar days of registration of the construction 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.
- 5.10.4 If, at any time, the *Owner* receives written notice of a lien or a claim for lien, the *Owner* may 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 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.
- 5.10.5 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 or written notice of a lien and, where necessary, any certificate of action in respect of such lien. In doing so, the *Owner* will be entitled to a full indemnity from the *Contractor* for costs of so doing, including legal costs on a solicitor and client basis together with all interest, costs and expenses incurred by the *Owner*.
- 5.10.6 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*.
- 5.10.7 Where any lien claimant makes a request to the *Owner* pursuant to section 39 of the *Construction Act*, the *Contractor* shall 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.
- 5.10.8 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.

5.10.9 Any and all fees, costs, or expenses of any nature whatsoever which are the responsibility of the *Contractor* under this GC 5.10 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 6.1 OWNER’S RIGHT TO MAKE CHANGES**

95. Add the following to the end of GC 6.1.2:

“This requirement is of the essence and it is the express intention of the parties that any claims by the *Contractor* for a change in the *Contract Price* and/or *Contract Time* shall be barred unless there has been strict compliance with PART 6 - CHANGES IN THE WORK. No verbal dealings between the parties and no implied acceptance of alterations or additions to the *Work* and no claims that the *Owner* has been unjustly enriched by any alteration or addition to the *Work*, whether in fact there is any such unjust enrichment or not, shall be the basis of a claim for additional payment under this *Contract* or a claim for any extension of the *Contract Time*.”

### **GC 6.2 CHANGE ORDER**

96. Add the following to the end of GC 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 in writing, or,
- .3 time and materials, in accordance with paragraph 6.3.7.”

97. Add new GC 6.2.3, 6.2.4, 6.2.5 and 6.2.6 as follows:

6.2.3 The following mark-ups (for overhead and profit combined) shall apply to *Change Orders* under GC 6.2.2:

- .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.

Each percentage of markup as listed in this GC 6.2.3 shall not be cumulative and shall only be applied to the costs of the *Work*.

6.2.4 The mark-up referred to in GC 6.2.3 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 *Work* of the *Contractor* are 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**

98. Amend GC 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 replacing it with the following:

- “.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.”

99. Add the following to the end of GC 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.”

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

100. Delete paragraph 6.4.1 in its entirety and replace with the following:

“6.4.1.1 Prior to the submission of its tender on which the *Contract* was awarded, the *Contractor* confirms that it carefully investigated the *Place of the Work* and carried out such tests as it deemed appropriate and, in doing so, applied to that investigation the degree of care and skill required by paragraph 3.14.1. If the *Contractor* has not conducted such careful investigation, it is deemed to assume all risk of conditions or circumstances now existing or arising in the course of the *Work* which could make the *Work* more expensive or more difficult to perform than was contemplated at the time the *Contract* was executed. No allowances will be made for additional costs and no claims by the *Contractor* will be entertained in connection with conditions which could reasonably have been ascertained by such investigation or other due diligence undertaken prior to the execution of the *Contract*.

6.4.1.2 No claim by the *Contractor* nor any extension of the *Contract Time* will be considered by the *Owner* or the *Consultant* in connection with conditions which could reasonably have been ascertained by such investigation or other due diligence undertaken prior to the execution of the *Contract*.

101. Add new GC 6.4.5 as follows:

“6.4.5 The *Contractor* confirms, that prior to submitting its tender for the *Project*, it may have been prevented from carefully investigating the *Place of the Work* as a result of *Force Majeure*. Understanding such limitations, the *Contractor* proceeded with its tender. The *Contractor* shall not, therefore, make any claim arising from *Force Majeure* conditions which may have prevented the *Contractor* from fulfilling its obligations under this GC 6.4.”

#### **GC 6.5 DELAYS**

102. Amend GC 6.5.1 by deleting the words at the end of the fifth line following the word “for” and replacing them with “... reasonable direct costs directly flowing from the delay but excluding any consequential, indirect or special damages.”

103. Amend GC 6.5.2 by:

(a) deleting the words “not issued as the result of an act or fault of the *Contractor* or any person employed or engaged by the *Contract* directly or indirectly,” and replace

them with “issued on account of a direct breach, violation, contravention, or a failure to abide by any laws, ordinances, rules, regulations, or codes by the *Owner*, the *Owner’s* other contractor(s), or the *Consultant*, and relating to the *Work* or the *Place of the Work*,” and

(b) deleting the last sentence and replacing it with:

"The *Contractor* shall be reimbursed by the *Owner* for reasonable direct costs directly flowing from the delay but excluding any indirect, consequential, or special damages."

104. Delete GC 6.5.3 and replace it with the following:

“6.5.3 If the performance of the *Work* or the performance of any other obligation(s) of a party to this *Contract* is delayed by *Force Majeure*, then the *Contract Time* shall be extended for such reasonable time as the *Owner* and the *Contractor* shall agree. 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. Neither party shall be entitled to payment for its costs or reimbursement of its expenses incurred by such delays. Upon reaching agreement on the extension of the *Contract Time* attributable to the *Force Majeure* event, the *Owner* and the *Contractor* shall execute a *Change Order* indicating the length of the extension to the *Contract Time* and confirming that there are no costs payable by either party to the other for the extension of *Contract Time*.”

105. Add new GC 6.5.6 as follows:

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

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

106. In GC 6.6.1, delete the words “shall give timely *Notice in Writing*” and replace them 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*”.

107. Delete GC 6.6.3 and replace it with the following:

“6.6.3 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**

108. Amend GC 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 the first line.

109. Amend GC 7.1.3.1 by adding the words "and is diligently proceeding with" immediately following the word “commences”.

110. Amend GC 7.1.3.2 by substituting the words "an acceptable schedule" with the words "a schedule acceptable to the *Owner*".

111. Amend GC 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."

112. Amend GC 7.1.5.4 by substituting the words "the difference" at the end of GC 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."

113. Add new GC 7.1.7, 7.1.8, 7.1.9, 7.1.10, 7.1.11 and 7.1.12 as follows:

“7.1.7 The *Owner* may, if conditions arise which make it necessary for reasons other than as provided in GC 7.1.1 and 7.1.4, suspend performance of the

*Work* by giving *Notice in Writing* to that effect to the *Contractor* which shall identify the reason for the suspension and the expected length of the suspension. Such suspension 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 *Owner*, in its sole discretion, may terminate this *Contract* at any time for any reason and without cause upon giving the *Contractor* fifteen (15) *Working Days' Notice in Writing* to that effect.

7.1.9 The *Contractor* upon receiving notice of suspension or termination from the *Owner* pursuant to GC 7.1.7 or 7.1.8 shall suspend or terminate all operations as soon as reasonably possible, or as set out in the *Owner's* notice, 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 a suspension or termination pursuant to GC 7.1.7 or 7.1.8, 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.

7.1.10 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*.

7.1.11 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*. Any adjustment to the *Contract Price* shall exclude any indirect, consequential, or special damages.

7.1.12 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**

114. Amend GC 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*."

115. Delete GC 7.2.3.1 in its entirety.

116. Amend GC 7.2.3.2 by deleting the word "*Consultant*" and replacing it with "*Owner*".

117. 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"

118. Amend GC 7.2.3.4 by deleting the words ", except for GC 5.1 – FINANCING INFORMATION REQUIRED OF THE OWNER,".

119. Delete GC 7.2.5 in its entirety and replace it with the following:

"7.2.5 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."

120. Add new GC 7.2.6 as follows:

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

**PART 8      DISPUTE RESOLUTION**

**GC 8.2 NEGOTIATION, MEDIATION, AND ARBITRATION**

121. Delete GC 8.2.6 and replace it with the following:

"8.2.6 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.”

122. Add new GC 8.3 – ADJUDICATION as follows:

**“GC 8.3 ADJUDICATION**

8.3.1 Notwithstanding any other provisions in the *Contract* 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*.

8.3.2 The following procedures shall apply to any *Adjudications* the parties engage in under the *Construction Act*:

- .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.

8.3.3 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.

8.3.4 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 8.3.4 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 8.3.4 as a complete defence to any such claims or disputes.

8.3.5 The parties hereby acknowledge and agree,

- .1 that counterclaims, claims of set-off or the exercise or use of other contractual rights that permit the *Owner* to 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*;
- .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*;
- .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 *Total Completion of the Work*, abandonment, or termination of the *Contract*;
- .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 8.3.5.4; and
- .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)*.”

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

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

123. Amend GC 9.1.1.1 by adding at the following to the end of that paragraph:

"...which the *Contractor* could not reasonably have discovered applying the degree of care and skill described in paragraph 3.14.1 to its review of the *Contract Documents*."

124. Delete GC 9.1.2 in its entirety and replace it with the following:

"9.1.2 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."

125. Add new GC 9.1.5 as follows:

"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**

126. Add new GC 9.2.10 and 9.2.11 as follows:

"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.

9.2.11 The *Contractor* must supply a supplier label and appropriate Material Safety Data Sheet under *R.R.O. 1990, Reg. 860: Workplace Hazardous Materials Information System* (WHMIS) and, where applicable, the *Hazardous Products Act R.S.C., 1985, c. H-3* for all toxic, hazardous, or controlled substances or *Products* to be supplied under this *Contract*. Any toxic, hazardous, or controlled substances or *Products* supplied without



appropriate data sheet and proper labeling will not be accepted and will be returned at the sole cost to the *Contractor*."

## **GC 9.4 CONSTRUCTION SAFETY**

127. Delete GC 9.4.1 in its entirety and replace it with the following:

"9.4.1 The *Contractor* shall be solely responsible for construction safety at the *Place of the Work* and for compliance with the rules, regulations, and practices required by the *OHSA*, including, but not limited to those of the "constructor", and shall be responsible for initiating, maintaining and supervising all safety precautions and programs in connection with the performance of the *Work*. Without limiting the foregoing, the *Contractor* shall be solely responsible for construction safety in respect of its *Consultants*, other *Consultants*, *Subcontractors* and *Suppliers*, the *Owner's* own forces, and other contractors, subcontractors, and suppliers during the course of the *Project*."

128. 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 *Work* 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 (or, if the *Contractor* operates under "Independent Operator Status", a document from the WSIB stating that WSIB has deemed the *Contractor* as an independent operation, as required by the *Owner*);
- .2 copies of the *Contractor's* insurance policies having application to the *Project* or certificates of insurance, at the option of the *Owner* and pursuant to GC 11.1;
- .3 documentation of the *Contractor's* in-house safety-related programs;
- .4 and at any other time as required, supply a supplier label and appropriate Material Safety Data Sheet pursuant to WHMIS and the *Hazardous Products Act*, R.S.C, 1985, c. H-3;

- .5 if requested by the *Owner*, the completed forms, and evidence of satisfactory completion of the other requirements, of the *Owner's* "Contractor Safety Program", which instructions and forms are available at [www.niagarafalls.ca/bids](http://www.niagarafalls.ca/bids); and
  - .6 a copy of the Notice of Project filed with the Ministry of Labour naming itself as "constructor" under the OHSa."
- 9.4.4 Any controlled good supplied without appropriate Material Safety Data Sheet and proper labeling will not be accepted and will be returned at the sole cost to the *Contractor*.
- 9.4.6 When requested by the *Owner*, the *Contractor* shall provide the *Owner* with a Pre-Start Health and Safety Report as required under the Industrial Establishments regulation (R.R.O. 1990, Reg. 851) to the OHSa.
- 9.4.7 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 OHSa, including the payment of legal fees and disbursements on a full indemnity basis.
- 9.4.8 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**

129. Add new GC 10.1.3 and 10.1.4 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

130. Amend GC 10.2.1 by adding the following to the end of the paragraph:

"The *Contractor* shall comply with all federal, provincial and municipal legislation, statutes, acts, regulations and bylaws relevant to the *Work*, including by not limited to:

(i) the *Construction Act*;

(ii) OHSA;

(iii) the *Workplace Safety and Insurance Act, 1997*, S.O. 1997, c.16, Sched. A;

(iv) *Municipal Freedom of Information and Protection of Privacy Act*, R.S.O. 1990, c. M.56;

(v) *Highway Traffic Act*, R.S.O. 1990, c. H.8;

(vi) *Employment Standards Act, 2000*, S.O. 2000, c. 41; and

(vii) *Accessibility for Ontarians with Disabilities Act, 2005*, S.O. 2005, c. 11.

131. Delete GC 10.2.2 and replace it with the following:

"10.2.2 The *Contractor* shall, at its own cost, obtain or assist the *Owner* with obtaining development approvals, building permit, permanent easements, rights of servitude and all other necessary approvals and permits required to perform the *Work*."

132. Amend GC 10.2.5 by adding the words, "Subject to paragraph 3.4.1" to the beginning of the paragraph;

-and-

add the following 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*."

133. Amend GC 10.2.6 by adding at the following to 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 GC 10.2.5, and notwithstanding any limitations described in GC 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*."

134. Amend paragraph 10.2.7 by inserting the words "which changes were not, or could not have reasonably been known to the *Owner* or to the *Contractor*, as applicable, at the time of bid closing and which changes did not arise as a result of a public emergency or other *Force Majeure* event" to the second line, after the words "authorities having jurisdiction".

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

135. Delete GC 10.4.1 and replace it 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."

136. Add new GC 10.5 – NON-RESIDENT CONTRACTORS as follows:

#### **"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**

137. Delete GC 11.1.1 and replace it with the following:

"The *Contractor* shall, at its expense, maintain the following insurance satisfactory to the *Owner*, underwritten by an insurer licensed to conduct business in the Province of Ontario:

- .1 Commercial General Liability insurance with a limit of not less than \$5,000,000 per occurrence, which shall include:

- (i) the *Owner*, and those parties listed under (i) General - Section 3 of the Instructions to Bidders, as additional insureds
  - (ii) contain a provision for cross liability in respect of the *Contractor*;
  - (iii) non-owned automobile coverage with a limit not less than \$2,000,000 and shall include contractual non-owned coverage;
  - (iv) products and completed operations coverage;
  - (v) broad form property damage coverage;
  - (vi) contractual liability coverage;
  - (vii) not contain any exclusions of liability for damage to property, building or land, arising from the removal or weakening of support of any property, building or land whether such support is natural or otherwise;
  - (viii) bodily injury and personal coverage; and
  - (ix) shall be written on an “occurrence basis”; and
- .2 automobile liability insurance covering third party property damage and bodily injury liability (including accident benefits) as may be required by the applicable law on all owned and leased automobiles to a limit of no less than \$2,000,000. A limit of \$5,000,000 will be required if heavy equipment is to be used to complete the *Work*.
- .3 Contractor’s Pollution Liability Policy for a limit of not less than five million dollars (\$5,000,000). Coverage shall include bodily injury, property damage, clean-up and remediation costs.
- .4 Broad Form Builders’ Risk Insurance written in the joint names of the Contractor, Owner, Sub-contractors, and underwritten by an insurer licensed to conduct business in the Province of Ontario. The policy shall have limits of not less than 1.1 times the Contract Price and the full value as stated in the Agreement. Should the Owner provide any property to be incorporated into the structure, the policy must be endorsed to include the Owner’s property. Coverage shall be maintained during the term of the contract and until 10 calendar days after the date of Substantial Performance of the Work.

The Builders’ Risk shall:

- (i) Be endorsed to grant permission to occupy prior to the completion or acceptance of the entire work.

- (ii) Include the installation, testing, commissioning and subsequent use of any machinery and equipment including boilers, pressure vessels or vessels under vacuum.
- (iii) Apply to all products, labour, equipment and supplies of every nature, the property of the Owner or Contractor or for which the Owner or Contractor may have assumed responsibility (whether on site or in transit), that is to be used in or pertaining to site preparation, erection, fabrication, construction or reconstruction of the structure.
- (iv) Be subject to a waiver of coinsurance.
- (v) Include coverage for materials while in transit, awaiting installation or stored at off-site locations. Coverage shall be in an amount equal to the value of the material.
- (vi) (*on Contractor purchased policies*) provide that in the case of a loss or damage payment shall be made to the Owner and the Contractor as their respective interests may appear, the Contractor shall act on behalf of the Owner for the purpose of adjusting the amount of such loss or damage payment with the insurer. When the extent of the loss or damage is determined, the Design Builder shall proceed to restore the Work. Loss or damage shall not affect the rights and obligations of either party under the Contract except that the Contractor shall be entitled to a reasonable extension of Contract Time

- .5 Contractor's Equipment Floater. The contractor shall provide and maintain during the term of this Agreement. Coverage will be provided, on a broad form basis, for construction machinery, equipment, tools and stock that will be used by the Contractor in the performance of the work. The coverage will also include rental expense. Coverage is to be carried from the date of commencement of the work until one year after the date of Substantial Performance of the Work.

All insurance required under this GC 11.1 shall remain in force until final acceptance of the *Work* is provided by the *Owner* to the *Contractor*. Coverage and limits of insurances will be provided and maintained by all *Subcontractors* in accordance with GC 11.1."

138. Delete GC 11.1.2 and replace it with the following:

"11.1.2 Prior to the execution of this *Contract*, the *Contractor* shall provide certificates of insurance (in the standard form used by the *Owner*, evidencing the insurance required under this GC 11.1. No substitutes for the certificates of insurance shall be acceptable to the *Owner* and all certificates of insurance shall state that coverage will not be suspended,

voided, cancelled, reduced in coverage or limits except after 30 calendar days' *Notice in Writing* to the *Owner*."

139. Add new GC 11.1.9 as follows:

"11.1.9 The *Contractor* acknowledges and agrees that in the event of a claim, any deductible or self-insured retention under the policies of insurance required under GC 11.1 shall be the sole responsibility of the *Contractor* and that the coverages under GC 11.1 shall be primary insurance. Any insurance or self-insurance maintained by the *Owner* shall be considered excess of the *Contractor's* insurance."

## **GC 11.2 CONTRACT SECURITY**

140. Delete paragraph 11.2.1 and replace it with the following:

"11.2.1 If required by the *Contract Documents*, the *Contractor* shall, prior to the execution of the *Contract* and within 7 calendar days of receiving *Notice in Writing* to do so, furnish a performance bond and labour and material payment bond which meets the requirements under GC 11.2.2."

141. Delete GC 11.2.2 and replace it with the following:

"11.2.2 The performance bond and labour and material payment bond, if required, shall:

- .1 be issued by a duly licensed surety company, which has been approved by the *Owner* and is permitted under the *Construction Act*,
- .2 be issued by an insurer licensed under the *Insurance Act* (Ontario) and authorized to transact a business of suretyship in the Province of Ontario;
- .3 shall be in the form prescribed by the *Construction Act*;
- .4 have a coverage limit of at least 50 per cent of the *Contract Price*, or such other percentage of the *Contract Price* as stated in the *Contract Documents*;
- .5 extends protection to *Subcontractors*, *Suppliers*, and any other persons supplying labour or materials to the *Project*; and
- .6 shall be maintained in good standing until the fulfillment of the *Contract*, including all warranty and maintenance periods set out in the *Contract Documents*."

142. Add new GC 11.2.3 and GC 11.2.4 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**

143. Delete GC 12.1 in its entirety and replace it with the following:

"12.1.1 The *Contractor* shall indemnify and hold harmless the *Owner* and the *Consultant*, their subsidiaries and affiliates, their respective partners, trustees, officers, directors, agents and employees from and against claims, demands, losses, costs, damages, actions, suits, or proceedings (hereinafter called "**Claims**"), whether in respect of claims suffered by the *Owner* or by third parties that directly or indirectly arise out of, or are attributable to, the *Contractor’s* performance of the *Contract*, attributable to bodily injury, sickness, disease, or death, or to injury to or destruction of tangible property, and caused by negligent acts or omissions of the *Contractor* or anyone for whose acts the *Contractor* may be liable,.

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**



144. Delete GC 12.2 in its entirety and replace it with the following:

“12.2.1 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.

12.2.2 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**

145. At the end of GC 12.3.1 add the words “(the “**Warranty Period**”).”

146. Add the following to the end of GC 12.3.4:

“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*.”

147. Add GC 12.3.7 to 12.3.15 as follows:

“12.3.7 If the *Contract Documents* provide, the *Owner* may holdback from each payment to the *Contractor* 2.5% of the total amount payable under each such *Proper Invoice* as security for the *Contractor's* performance of its warranty obligations (the “**Warranty Holdback**”). 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 12.3.12, the *Contractor* shall have the right to apply for the balance of the *Warranty Holdback* at the end of the *Warranty Period* or extra warranty period as described in GC 12.3.4 as a part of its application for final payment as set out under GC 5.7.

- 12.3.8 If the correction of the defects or deficiencies in the *Work* cannot be completed within 5 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.
- 12.3.9 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*.
- 12.3.10 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.
- 12.3.11 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*.”
- 12.3.12 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 until all warranties and extended warranties have been transferred to the *Owner* pursuant to this GC 12.3.12.

- 12.3.13 In accordance with GC 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 the *Work* shall be borne by the *Contractor*.
- 12.3.14 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.
- 12.3.15 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."

148. Add New Part 13 – OTHER PROVISIONS as follows:

**“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 *Construction Schedule* was prepared pursuant to GC 3.5.

**GC 13.4 CONFIDENTIAL INFORMATION**

13.4.1 In this Part, “**Confidential Information**” includes information, whether oral, written, visual, electronic, or in any other form, relating in any way to this *Contract*, 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*.

13.4.2 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 *Contract*, including information marked "Confidential", and shall not, without the *Owner'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 *Contract* by any Contractor parties.

13.4.3 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.

13.4.4 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.

13.4.5 The harm that would be suffered by the *Owner* in the event of a breach of the provisions of this *Contract* 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.

13.4.6 The provisions of this *Contract* relating to Confidential Information will remain in effect after the expiry or other termination of this *Contract*."

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.

149. Confirmation of coverages noted in paragraphs 1 and 2 shall be provided using the Library Board's standard Certificate of Insurance form.
150. Delete paragraphs 3 and 5.
151. "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".

## 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:

- (a) be in the form of a written bill, invoice, application for payment, or request for payment;
- (b) be in writing;
- (c) contain the *Contractor’s* name, telephone number and mailing address and contact information of the *Contractor’s* project manager;
- (d) contain the title of the *Project* and the *Owner’s* contract number or purchase order number under which the *Work* was performed and the related request for qualification, tender, or request for proposal number, as applicable;
- (e) contain the *Contractor’s* unique invoice number (in the case of a revised invoice also include the original invoice # and date);
- (f) contain the date the written bill, invoice, application for payment, or request for payment is being issued by the *Contractor*;
- (g) identify the period of time in which the services or materials were supplied to the *Owner*;
- (h) reference to the provisions of the *Contract* under which payment is being sought (.g. GC 5.3 – PROGRESS PAYMENTS for progress payments, GC 5.7 – FINAL PAYMENT for final payment, etc.);
- (i) a description, including quantities where appropriate, of the services or materials, or a portion thereof, that were supplied and form the basis of the *Contractor’s* request for payment;
- (j) the amount the *Contractor* is requesting to be paid by the *Owner*, set out in a statement based on the schedule of values approved under GC 5.2.5, separating out any statutory or other holdbacks, set-offs and HST;
- (k) attach a a sworn statement that all accounts for labour, subcontracts, products, materials, construction machinery and equipment and other indebtedness which may have been incurred by the *Contractor* for the work performed and the products and materials supplied under the *Contract* and for which the *Owner* might in any way be held responsible to pay for up to and including the latest progress payment received, have been paid in full, except for amounts

properly retained as holdback, that are in dispute, or as otherwise agreed upon by the Owner and the Contractor (such Statutory Declaration may be in the form of a CCDC 9A-2018 “Statutory Declaration of Progress Payment Distribution by Contractor” or in such other form when prescribed by the Owner).;

- (l) attach a current WSIB clearance certificate (or, if the *Contractor* operates under “Independent Operator Status”, a document from the WSIB stating that WSIB has deemed the *Contractor* as an independent operation, as required by the *Owner*);
- (m) attach an updated and current *Construction Schedule*;
- (n) the value of *Work* and approved changes in the *Work* performed to date itemized by *Change Orders* and *Change Directives*;
- (o) the amount payable for the *Work* and changes in the *Work* performed during the *Payment Period*;
- (p) Remit to *Subcontractor/Supplier* Name (if different than Contractor Name);
- (q) Remit to *Subcontractor/Supplier* Address (if different than Contractor Address);
- (r) *Subcontractor/Supplier* accounts receivable contact email address and phone number;
- (s) Daily *Contractor* work records;
- (t) if requested by the *Owner* or *Consultant*, a current and valid certificate(s) of insurance as required under GC 11.1;
- (u) the following statement: “Provided this Proper Invoice complies with the requirements of the Contract and the *Construction Act*, R.S.O. 1990, c. C.30, and provided no Notice of Non-Payment is issued by the Owner, payment is due within 28 days from the date the Proper Invoice is received by the Owner.”;
- (v) the name, title, telephone number and mailing address of the person at the place of business of the *Contractor* to whom payment is to be directed; and
- (w) for advance payment, if applicable, for *Products* not yet incorporated into the *Work*: (1) list such *Products* (and the advance payment calculations in respect thereof) as a separate line item; and (2) be supported by invoices and such other evidence as the *Consultant* may reasonably request to establish the value and delivery of such *Products*;
- (x) list the lien holdback and contractual holdback amounts (if applicable) as separate line items;



- (y) include the *Contractor's* registration number for Harmonized Sales Tax (H.S.T.) and, in the case of a remittance directly to a supplier the supplier H.S.T. registration number, list the total amount of H.S.T. separate from the total amount payable and list the total amount due (total amount of H.S.T. plus the amount payable for the *Work* in the current *Payment Period*);
- (z) include any testing and commissioning reports required by the *Contract Documents* in respect of the *Work* to which the *Proper Invoice* relates;
- (aa) any amount claimed by the *Contractor* pursuant to GC 6.5 for delays incurred during the *Payment Period*;
- (bb) in the case of the *Contractor's Proper Invoice* for final payment, sufficient evidence of the *Contractor's* compliance with GC 3.13 – Cleanup; and
- (cc) any other documentation or proof of the *Contractor's* performance of the *Work* or expenses incurred as requested by the *Owner*.