

**CITY OF WATERLOO SUPPLEMENTARY CONDITIONS
TO CCDC 2-2020 STIPULATED PRICE CONTRACT**

AMENDMENTS TO THE STIPULATED PRICE CONTRACT, CCDC2-2020

The Standard Construction Document for Stipulated Price *Contract*, English version, consisting of the Agreement Between *Owner* and *Contractor*, Definitions, and General Conditions of the Stipulated Price *Contract*, is part of these *Contract Documents* with the following amendments, additions and modifications:

1. AGREEMENT BETWEEN OWNER AND CONTRACTOR

1.1 ARTICLE A-3 – CONTRACT DOCUMENTS

1.1.1 Amend paragraph 3.1 by adding the following after the words, “The General Conditions of the Stipulated Price Contract”:

- “These Supplementary Conditions
- The Special Conditions, if any
- Drawings
- Specifications”

1.2 ARTICLE A-5 – PAYMENT

1.2.1 Delete paragraph 5.2 in its entirety and replace with the following:

“Interest

Interest will be paid by the City on any amount that is not paid when it is due to be paid under Part I.1 of the *Construction Act*, commencing the date that the payment was due, at the prejudgment interest rate determined under subsection 127 (2) of the *Courts of Justice Act*. In no other circumstances, will interest accrue on any amount due by the City to the Contractor.”

2. DEFINITIONS

2.1.1 Add a new Definition, “Act”, as follows:

“Act means the *Construction Act* (Ontario), as amended.”

2.1.2 Add a new Definition, “OHSA”, as follows:

“OHSA means the *Occupational Health and Safety Act* (Ontario).”

2.1.3 Add a new Definition, “WSIB”, as follows:

“WSIB means the Workplace Safety and Insurance Board.”

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3. 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 number of the deleted items will be retained, unused.

3.1 GC 1.1 – CONTRACT DOCUMENTS

3.1.1 Amend paragraph 1.1.4 by adding the following at the end thereof:

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

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

“1.1.7.1 If there is a conflict within the *Contract Documents*, the order of priority of the documents, from highest to lowest, shall be:

- any amendments to the *Agreement* between the *Owner* and the *Contractor*,
- the *Agreement* between the *Owner* and the *Contractor*, as amended by these Supplementary Conditions
- the *Definitions*,
- *Special Conditions*,
- *Supplementary Conditions*,
- the *General Conditions*,
- *Division 01 of the Specifications*,
- *Technical Specifications*,
- *Material and finishing schedules*, and,
- the *Drawings*”

3.2 GC 1.4 – ASSIGNMENT

3.2.1 Delete paragraph 1.4.1 in its entirety and replace it with the following:

“1.4.1 The *Contractor* shall not assign the *Contract*, either in whole or in part, without the written consent of the *Owner*.”

3.3 GC 2.2 – ROLE OF THE CONSULTANT

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- 3.3.1 Amend paragraph 2.2.6 by deleting the words “except with respect to GC 5.1 – FINANCING INFORMATION REQUIRED OF THE OWNER.”

3.4 GC 2.4 – DEFECTIVE WORK

- 3.4.1 Add new subparagraphs 2.4.1.1 and 2.4.1.2:

“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*.

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 operations of the *Owner*.”

3.5 GC 3.2 – CONSTRUCTION BY OWNER OR OTHER CONTRACTORS

- 3.5.1 Delete subparagraph 3.2.2.3 and 3.2.2.4 in their entirety.

3.6 GC 3.5 – SUPERVISION

- 3.6.1 Amend paragraph 3.5.1 by adding the following after the words, “competent representative”, “who shall be a Competent Person, as the term is defined in the *OHSA*”, and by deleting the last sentence, and replacing it with the following, “The *Contractor* shall not be entitled to change the Competent Person without the prior written authorization of the *Owner*, which shall not be unreasonably withheld.”

3.8 GC 3.7 – LABOUR AND PRODUCTS

- 3.8.1 Paragraph 3.7.2 is amended by adding the following sentence to the end:

“The *Contractor* shall not change the source of supply of any *Product* without the written authorization of the *Consultant*.”

3.9 GC 3.9 – CLEANUP

- 3.9.1 Add new General Condition 3.9 as follows:

“3.9.1 The *Contractor* shall maintain the *Work* in a safe and tidy condition and free from the accumulation of waste products and debris, other than that caused by the *Owner*, other contractors or their employees.

3.9.2 The *Owner* shall have the right to back charge cleaning to the *Contractor* if the cleaning is not completed within 24 hours of written notice to clean and the

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Owner shall have the right to back charge the cost of damage to the Place of the Work caused by the Contractor's, Subcontractor's or Supplier's transportation in and out of the Place of Work if not repaired within 5 Working Days or written notice to repair or before final payment, whichever is earlier."

3.10 GC 3.10 – STANDARD OF CARE

3.10.1 Add new General Condition 3.10 as follows:

"3.10.1 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 experience and prudent *Contractor* supplying similar services for similar projects. The *Contractor* acknowledges and agrees throughout the *Contract*, the *Contractor's* obligations, duties and responsibilities shall be interpreted in accordance with this standard. The *Contractor* shall exercise the same standard of due care and diligence in respect of any *Products*, personnel, or procedures which may be recommended by the *Owner*.

3.10.2 The *Contractor* further represents, covenants and warrants to the *Owner* that there are no pending, threatened or anticipated claims that would have a material effect on the financial ability of the *Contractor* to perform its *Work* under the *Contract*."

3.11 GC 4.1 – ALLOWANCES

3.11.1 Paragraph 4.1.4 is amended by adding the following sentence to the end:

"The maximum mark up on the authorized overrun on cash allowances shall be 5%."

3.11.2 Add new paragraph 4.1.8:

"The *Owner* reserves the right to have the *Contractor* call for competitive bids for portions of the *Work* which are to be paid for from cash allowances."

3.12 GC 5.1 - FINANCING INFORMATION REQUIRED OF THE OWNER

3.12.1 Delete GC 5.1 in its entirety.

3.13 GC 5.2 – APPLICATIONS FOR PAYMENT and GC 5.3 – PAYMENT

3.13.1 Delete GC 5.2 and GC 5.3, and replace them with the following:

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5.2.1 A “proper invoice” (as that term is defined in the *Construction Act*) shall be delivered to the *Owner* and the *Consultant* by the first day of every month for the previous month’s work. Subject the terms of the Contract Documents, including the holdback provisions of the Contract Documents and the *Construction Act*, and subject to any notice of non-payment delivered by the City under the *Construction Act*, the *Owner* shall pay the amount approved and certified by the *Consultant* as payable under a proper invoice no later than 28 days after receiving the invoice from the *Contractor*.

5.2.2 The copy of the proper invoice delivered to the *Owner* shall be provided by email along with a hard copy to: <<<insert email/contact info here >>>|

5.2.3 No less than 7 days prior to the delivery of a proper invoice, the *Contractor* shall submit to the *Owner* and the *Consultant* a payment certificate (in a form prescribed by the *Consultant*) and all necessary supporting documentation, a WSIB clearance certificate and a Statutory Declaration of Progress Payment Distribution. For clarity, no proper invoice shall be submitted earlier than 7 days following submission of a duly completed payment certificate.

5.2.4 Notice of non-payment may be made by email to the *Contractor*. For greater clarity, this provision constitutes the consent of the *Contractor* to service of the notice of non-payment in this manner.

5.2.5 The *Contractor* shall, within 10 days of signing the Contract, and prior to the first claim for payment, submit to the *Owner* a detailed breakdown of the lump sum tender price for the purpose of establishing monthly expenses. The *Owner*, acting reasonably, reserves the right to modify costs allocated to the various breakdown items to prevent unbalancing.

5.2.6 Payment for mobilizing and setting up plant, temporary buildings and services, premiums and other disbursements, shall be prorated based on the value of the *Work* performed during a billable period.

5.2.7 Payment for bonds and insurance will be paid 100 percent on the first progress payment, provided that respective invoices are submitted as proof of payment.

5.2.8 Prior to the first progress draw, the Contractor shall submit a monthly projected payment schedule based on the detailed construction schedule for the duration of the Contract.”

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**3.14 GC 5.4 – SUBSTANTIAL PERFORMANCE OF THE WORK AND
PAYMENT OF HOLDBACK**

3.14.1 Delete paragraph 5.4.2 in its entirety.

3.14.2 Delete paragraph 5.4.3 in its entirety and replace it with the following:

“Immediately prior to the issuance of the certificate of *Substantial Performance of the Work*, the *Contractor*, in consultation with the *Consultant*, shall establish a schedule for completion of the *Work* and correcting deficient *Work*, and the construction schedule shall be deemed to be amended to include the completion schedule.”

3.14.3 Delete paragraphs 5.4.4 and 5.4.5 and replace with:

“5.4.4 Prior to submitting its written application for *Substantial Performance of Work*, the *Contractor* shall submit to the *Consultant* all:

- .1 guarantees;
- .2 warranties;
- .3 certificates;
- .4 testing and balancing reports;
- .5 distributing system diagrams;
- .6 spare parts;
- .7 maintenance/operation manuals;
- .8 training manuals;
- .9 samples;
- .10 reports and correspondence from authorities having jurisdiction in the *Place of the Work*;
- .11 *Shop Drawings*, and marked up *Drawings*;
- .12 completed as-built drawings in an electronic format acceptable to the *Consultant*;
- .13 inspection certificates

and any other materials or documentation required to be submitted under the *Contract* or otherwise reasonably requested by the *Consultant*, together with written proof of acceptance to the *Owner* and the *Consultant* that the *Work* has been substantially performed in conformance with the requirement of the municipal, government and utility authorities having jurisdiction in the *Place of the Work*.

5.4.5 Where the *Contractor* is unable to deliver the documents and materials described in paragraph 5.4.4, then, provided that none of the missing documents and materials interferes with the use and occupancy of the *Project* in a material way, and except as described herein, the failure to deliver shall not be grounds for the *Consultant* to refuse to certify the *Substantial Performance of the Work*.

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However, certification of the *Substantial Performance of the Work* may be withheld if the *Contractor* fails to deliver maintenance manuals or completed as-built drawings.”

3.15 GC 5.5 – FINAL PAYMENT

3.15.1 Amend paragraph 5.5.1 by adding the following to the end of the paragraph:

“ The *Contractor’s* application for final payment shall be accompanied by any documents or materials not yet delivered pursuant to paragraph 5.4.4. The *Work* shall be deemed not to be complete until all of the aforementioned materials have been delivered, and the *Owner* may withhold payment in respect of the delivery of any documents in an amount determined by the *Consultant*.”

3.15.2 Amend paragraph 5.5.4 by deleting the number “5” and replacing it with “61”.

3.16 GC 6.2 – CHANGE ORDER

3.16.1 Add new paragraph 6.2.3 as follows:

“6.2.3.1 Any agreement reached by the *Owner* with the *Contractor* on an adjustment of the *Contract Price*, on either a lump-sum or unit price basis shall be subject to the conditions contained in paragraph 6.2.3.

6.2.3.2 Where a change in the *Work* is performed by the *Contractor’s* own forces, the negotiated lump sum price for change in the *Work*, or negotiated unit price(s) for each unit priced items shall be all-inclusive, except HST and mark-up as provided hereafter, and shall include, without limitation, all costs, charges, expenses and fees whatsoever required or related to perform such change, or such unit price item. The *Contractor* shall be allowed a mark-up to a maximum amount of 15% of the lump sum price, or aggregate of unit items and applicable unit price(s), for such change(s), net of taxes on the first \$100,000 total of all change orders and 10% on any change orders thereafter. The *Contractor* shall provide a written quotation identifying each amount to be charged for transportation, labour, *Product*, *Construction Equipment* and services and all other costs for the performance of the *Work*. The HST, as applicable, shall be identified separately in a manner satisfactory to the *Owner*.

6.2.3.3 Where a change in the *Work* is performed by a *Subcontractor’s* forces, the *Subcontractor’s* lump sum price for change in the *Work*, or unit price(s) for each unit priced item shall be inclusive, except HST and mark-up, as provided hereafter, and shall include all of its costs, charges, expenses and fees whatsoever required or related to perform such change or such unit price item. The *Contractor* shall provide a written quotation with back-up documentation from the *Subcontractor*

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identifying each amount to be charged for transportation, *Product*, *Construction Equipment* and services and all other costs for the performance of the *Work* and the total price charged by the *Subcontractor*. The *Subcontractor* shall be allowed a mark-up to a maximum amount of 15% of the lump sum price, or aggregate of unit items and applicable unit price(s), for such change(s), net of taxes, on the first \$100,000 total of all change orders and 10% on any change orders thereafter. The *Contractor* is allowed a mark-up of 5% on the total price charged by the *Subcontractor* to the *Contractor* for such change, net of taxes and *Subcontractor* mark-up. The HST, as applicable, shall be identified separately in a manner satisfactory to the *Owner*.

6.2.3.4 Notwithstanding paragraphs 6.2.3.2 and 6.2.3.3, in the event that any of the change in the *Work* contains items or parts that, in the opinion of the *Consultant*, are the same or equivalent to items for which the *Contractor* submitted unit prices in the tender submitted by the *Contractor*, then the prices in the tender shall be the prices paid by the *Owner* for the work or parts of the work in respect of any change in the *Work*.

6.2.3.5 Where a change in the *Work* is performed either by the *Contractor* or a *Subcontractor*, and requires *Construction Equipment*, reasonable rental charges for *Construction Equipment*, such as tractors, bulldozers, ditching machines, air compressors, concrete mixers and graders, for the actual time required in operation for the performance of the *Work* must be agreed upon before commencing the *Work*.

6.2.3.6 The mark-ups provided for in paragraphs 6.2.3.2, 6.2.3.3 and 6.2.3.4 shall constitute the only compensation the *Contractor* shall be entitled to for any and all overhead, profit, incidental and administrative costs whatsoever related to the change, including but not limited to, costs related to superintendence and supervision, shop drawing production, estimating, site office and home office expenses, workers tools, temporary facilities and controls, and coordination of any and all *Work*-related activities.

6.2.3.7 No claim whatsoever for a change in the *Contract Time*, delay, prolongation charges, remobilization or otherwise shall be permitted with respect to a change, unless authorized by the *Consultant* and approved by the *Consultant* and set out in the *Change Order* or *Change Directive*, as the case may be, by the *Owner*.

6.2.3.8 No compensation for any change in the *Work* shall be allowed unless such change is first ordered in writing by the *Consultant* and authorized by the *Owner*.

3.17 GC 6.3 – CHANGE DIRECTIVE

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3.17.1 Delete paragraph 6.3.7.1 in its entirety and replace it with the following:

“.1 salaries, wages and benefits paid to personnel in the direct employ of the *Contractor*, applying the labour rates set out in the wages schedule in the *Contract Documents* or as otherwise agreed between the *Owner* and the *Contractor* for personnel,

- (1) carrying out the *Work*, including necessary supervisory services;
- (2) engaged in expediting the production or transportation of material or equipment, at shops or on the road; or
- (3) engaged in the preparation of Shop Drawings, fabrication drawings, coordination drawings and Contract as-built drawings.”

3.17.2 Delete paragraph 6.3.7.17 in its entirety.

3.17.3 Amend paragraph 6.3.8 by adding the words “except for paragraph 6.3.14” after the word “*Contract*” in the first line.

3.17.4 Add new paragraph 6.3.14 as follows:

“6.3.14 For greater certainty, and without limitation, the cost of performing the *Work* attributable to the *Change Directive* does not include, and no payment shall be made for:

- .1 head office salaries and benefits and all other overhead or general expenses, except only for wages, benefits, compensation, contributions, assessments, or taxes described in paragraph 6.3.7.1;
- .2 capital expenses and interest on capital;
- .3 general clean-up, except where the performance of the *Work* in the *Change Directive* causes specific additional and extraordinary clean-up requirements;
- .4 wages paid for project managers, superintendents, assistants, watch persons and administrative personnel, provided the *Change Directive* does not result in extension of *Contract Time*;
- .5 wages, salaries, rentals, or other expenses that exceed the rates that are standard in the locality of the *Place of the Work*, that are otherwise deemed unreasonable by the *Consultant*;

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- .6 any costs or expenses attributable to the negligence, improper *Work*, deficiencies, or breaches of *Contract* by the *Contractor* or *Subcontractor*;
- .7 any cost of quality assurance, such as inspection and testing services, charges levied by authorities, and any legal fees unless any such costs or fees are pre-approved in writing by the *Owner*.”

3.18 GC 6.5 – DELAYS

3.18.1 Amend paragraphs 6.5.1, and 6.5.2 by deleting the period at the end of each paragraph, and substituting the following words, “, but excluding any consequential, indirect or special damages, loss of profits, loss of opportunity or loss of productivity resulting from such delay.”

3.18.2 Add new paragraphs 6.5.6, 6.5.7, 6.5.8, 6.5.9, 6.5.10 as follows:

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

6.5.7 The *Contractor* shall be responsible for the care, maintenance and protection of the *Work* in the event of any suspension of construction as a result of the delay described in paragraph 6.5.1, 6.5.2 or 6.5.3. In the event of such suspension, the *Contractor* shall be reimbursed by the *Owner* for the reasonable costs incurred by the *Contractor* for such care, maintenance and protection, but excluding the costs of the *Contractor*’s head office personnel. The *Contractor*’s entitlement to costs pursuant to paragraph 6.5.7, if any, shall be in addition to amounts, if any, to which the *Contractor* is entitled pursuant to paragraphs 6.5.1, 6.5.2 or 6.5.3.

6.5.8 Without limiting the obligations of the *Contractor* described in GC 3.2 – CONSTRUCTION BY OWNER OR OTHER CONTRACTORS and GC 9.4 – CONSTRUCTION SAFETY, the *Owner* may, by *Notice in Writing*, direct the *Contractor* to stop the *Work* where the *Owner* determines that there is an imminent risk to the safety of the persons or property at the *Place of the Work*. In the event that the *Contractor* receives such notice, it shall immediately stop the *Work* and secure the *Project* site. The *Contractor* shall not be entitled to an extension of the

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Contract Time or to an increase in the *Contract Price* unless the resulting delay, if any, would entitle the *Contractor* to an extension of the *Contract Time* or the reimbursement of the *Contractor's* costs as provided in paragraphs 6.5.1, 6.5.2 or 6.5.3.

6.5.9 In addition to the amount set out in paragraph 6.5.6, the *Contractor* recognizes and agrees that the *Owner* will suffer a financial loss if the *Work* is not completed within the time prescribed by the *Contract*. The *Contractor* also recognizes the delays, expenses and difficulties involved in proving the actual loss suffered by the *Owner* if the *Work* is not completed on time. Accordingly, instead of requiring any such proof, the *Contractor* agrees that as liquidated damages for delay (but not as penalty) the *Contractor* shall pay the *Owner* an amount per day, as designated in the Special Conditions of Contract for each and every day's delay from the specified time for *Ready-for-Takeover* until the actual date of *Ready-for-Takeover*, and it is further expressly acknowledge and agreed by the *Contractor* that:

- (a) this amount is a reasonable estimate of the actual damages that will be incurred by the *Owner* due to any failure to attain *Ready-for-Takeover* within the time required by this *Contract*;
- (b) the *Owner* may deduct the amount due under this section from any monies that may be due or payable to the *Contractor*, whether under the *Contract* or any other agreement; and,
- (c) the liquidated damages provided for in this section shall be without prejudice to any other remedy to which the *Owner* is entitled at law or in equity.

6.5.10 In the event that paragraph 6.5.9 is held by a court of competent jurisdiction to be invalid, unenforceable or void, or if no liquidated damages are designated in the Special Conditions of the *Contract*, the *Contractor* shall be held responsible for the payment of the *Owner's* actual costs associated with the delay in achieving *Ready-for-Takeover*. The *Owner's* costs will include, but are not limited to, the amounts relating to the items set out in paragraph 6.5.6 and all other costs directly or indirectly associated with the delay in the completion of the *Work* by the *Contractor*. The amounts payable pursuant to paragraph 6.5.10 are in addition to the amounts payable by the *Contractor* to the *Owner* pursuant to paragraph 6.5.6.”

3.19 GC 6.6 CLAIMS FOR CHANGE IN CONTRACT PRICE

- 3.19.1 Amend paragraph 6.6.1 by deleting the period at the end of the paragraph and adding the following:

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“within 30 *Working Days* of the commencement of the *Work* giving rise to the claim.”

3.20 GC 7.1 – OWNER’S RIGHT TO PERFORM THE WORK, TERMINATE THE CONTRACTOR’S RIGHT TO CONTINUE WITH THE WORK OR TERMINATE THE CONTRACT

3.20.1 Delete paragraph 7.1.2 in its entirety and replace it with the following:

“If the *Contractor* neglects to perform the *Work* properly or otherwise fails to comply with the requirements of the *Contract* to a substantial degree, the *Owner* may, without prejudice to any other right or remedy the *Owner* may have, give the *Contractor Notice in Writing*, containing particulars of the default including references to applicable provisions of the *Contract*, that the *Contractor* is in default of the *Contractor’s* contractual obligations and instruct the *Contractor* to correct the default in the 5 *Working Days* immediately following the receipt of such *Notice in Writing*. Failure by the *Owner* to provide such notice shortly after the default has occurred shall not constitute condonation of the default.”

3.20.2 Add a new subparagraph 7.1.5.5 as follows:

“.5 charge the *Contractor* for any damages the *Owner* may have sustained as a result of the default.”

3.21 GC 7.2 – CONTRACTOR’S RIGHT TO SUSPEND THE WORK OR TERMINATE THE CONTRACT

3.21.1 Delete paragraph 7.2.1 and 7.2.3.1 in their entirety.

3.21.2 Delete subparagraph 7.2.3.4 and replace it with the following:

“.4 the *Owner* violates the requirements of the *Contract* to a substantial degree.”

3.21.3 Delete paragraph 7.2.5 and replace it with the following:

“7.2.5 If the default cannot be corrected within the 5 *Working Days* specified in paragraph 7.2.4, the *Owner* shall be deemed to have cured the default if it:

- .1 commences the correction of the default within the specified time;
 - .2 provides the *Contractor* with an acceptable schedule for such correction;
- and,

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.3 completes the correction in accordance with such schedule.”

3.21.4 Add new paragraph 7.2.6:

“7.2.6 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 Equipment*. The *Contractor* shall not be entitled to any recovery for special, indirect or consequential losses, loss of use or loss of profit.”

3.22 GC 9.1 – PROTECTION OF WORK AND PROPERTY

3.22.1 Delete subparagraph, 9.1.1.1 in its entirety and replace it with new subparagraph 9.1.1.1:

“9.1.1.1 errors in the *Contract Documents* which the *Contractor* could not have discovered applying the standard of care described in GC 3.14 – STANDARD OF CARE.”

3.22.2 Amend paragraph 9.1.1.2 by adding the word, “negligent” at the beginning thereof.

3.22.3 Add new paragraphs 9.1.5 and 9.1.6 as follows:

“9.1.5 Without in any way limiting the *Contractor’s* obligations under this GC 9.1, should the *Contractor* or any *Subcontractor* or supplier cause loss or damage to trees or other plantings, whether owned by the *Owner* or third parties, the *Contractor* shall be liable for the replacement cost of the trees or the plantings damaged, including the cost of any arborist or other *Consultant*, and such costs may be deducted by the *Owner* from amounts otherwise owing to the *Contractor*.

9.1.6 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.”

3.23 GC 9.4 – CONSTRUCTION SAFETY

3.23.1 Delete paragraph 9.4.1 in its entirety and substitute new paragraph 9.4.1:

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“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 applicable construction health and safety legislation and shall be responsible for initiating, maintaining and supervising all safety precautions and programs in connection with the performance of the *Work*.”

3.23.2 Add new paragraphs 9.4.6 and 9.4.7:

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

- .1 a current *WSIB* clearance certificate;
- .2 documentation of the *Contractor*’s in-house safety-related programs; and,
- .3 a copy of the Notice of Project filed with the Ministry of Labour naming itself as “constructor” under the *OHS*A.

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* or *Subcontractors* under the *OHS*A, including the payment of legal fees and disbursements on a full indemnity basis.

3.24 GC 10.1 – TAXES AND DUTIES

3.24.1 Add the following to the end of paragraph 10.1.1:

“Any *Value Added Taxes* (including Harmonized Sales Tax), where applicable, shall be listed as line items separate from the total *Contract Price*.”

3.24.2 Delete paragraph 10.1.2 and replace it with the following:

“Any increase or decrease in costs to the *Contractor* due to changes in such included taxes, duties and tariffs at the time of the bid closing shall increase or decrease the *Contract Price* accordingly. For greater certainty, the *Contractor* shall not be entitled to any mark-up for overhead or profit on any increase in such taxes, duties and tariffs.”

3.24.3 Add new paragraphs 10.1.3, 10.1.4, 10.1.5 and 10.1.6 as follows:

“10.1.3 Where the *Owner* is entitled to an exemption or a recovery of sales taxes, custom duties, excise taxes or *Value Added Taxes* applicable to the *Contract*, the *Contractor* shall, at the request of the *Owner* or the *Owner*’s representative, assist

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with the application for any exemption, recovery or refund of all such taxes and duties and all amounts recovered or exemptions obtained shall be for the sole benefit of the *Owner*. The *Contractor* agrees to endorse over to the *Owner* any cheques received from the Federal or provincial governments, or any other taxing authority, as may be required to give effect to this paragraph.

10.1.14 The *Contractor* shall maintain accurate records of *Construction Equipment, Product* and component costs reflecting the taxes, custom duties, excise taxes and *Value Added Taxes* paid.

10.1.15 Any refund of taxes, including, without limitation, any government sales tax, customs duty, excise tax or *Value Added Tax*, whether or not paid, which if found to be inapplicable or for which exemption may be obtained, is the sole and exclusive property of the *Owner*. The *Contractor* agrees to cooperate with the *Owner* and to obtain from all *Subcontractors* and *Suppliers* cooperation with the *Owner* in the application for any refund of any taxes, which cooperation shall include but not be limited to, making or concurring in the making of an application for any such refund or exemption and providing to the *Owner* copies, or where required, originals of records, invoices, purchase orders and other documentation necessary to support such applications for exemptions or refunds. All such refunds shall either be paid to the *Owner*, or shall be a credit to the *Owner* against the *Contract Price*, in the *Owner's* discretion. The *Contractor* agrees to enable, assist with and submit to any reasonable audit requested by the *Owner* with respect to the potential refunds under this paragraph.

10.1.16 Custom duties, penalties, or any other penalty, fine or assessment levied against the *Contractor*, shall not be treated as a tax or customs duty for the purpose of this GC 10.1.”

3.25 GC 10.2 LAWS, NOTICES, PERMITS AND FEES

3.25.1 Add to the end of paragraph 10.2.4, the following:

“The *Contractor* shall notify the Chief Building Official or the registered code agency where applicable, of the readiness, substantial completion, and Ready-for-Takeover stages of construction. The *Contractor* shall be present at each site inspection by an inspector or registered code agency as applicable under the Ontario *Building Code*.”

3.25.2 Delete paragraph 10.2.6 and replace it with the following:

“10.2.6 If the *Contractor* fails to notify the *Owner* and the *Consultant* in writing, fails to obtain direction required in paragraph 10.2.5, or performs work that contravenes any laws, ordinances, guidelines, standards, permits, statutes, by-laws,

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rules, regulations, or codes, the *Contractor* shall be responsible for and shall correct the violations thereof, and shall bear the costs, expenses, and damages attributable to the failure to comply with the provisions of such laws, ordinances, guidelines, standards, permits, statutes, by-laws, rules, regulations, or codes and, notwithstanding any limitation described in Part 13, shall indemnify and hold harmless the *Owner* and the *Consultant* from and against any claims, demands, losses, costs, damages, actions, suits or proceeding resulting from failure or breach of law.”

3.25.3 Add a new paragraph 10.2.8 as follows:

“10.2.8 Without limiting the generality of any other provision in the *Contract Documents*, the *Contractor* shall cause all certificates to be furnished that are required or given by the appropriate governmental or quasi-governmental authorities as evidence that the *Work* as installed conforms with the laws and regulations of any authorities having jurisdiction over the *Place of the Work*, including, without limitation, certificates of compliance for the *Owner’s* occupancy or partial occupancy. The certificates are to be final certificates giving complete clearance of the *Work*, in the event that such governmental or quasi-governmental authorities furnish such certificates.”

3.26 GC 10.3 – PATENT FEES

3.26.1 Amend paragraph 10.3.1 by adding the words, “indemnify and” before the words, “hold the”, in the second line.

3.26.2 In paragraph 10.3.2, add the words, “by the *Owner*”, after the words, “supplied to the *Contractor*”.

3.27 GC 11.1 – INSURANCE

3.27.1 Delete GC 11.1 and replace them with the following:

“11.1.1 It is the responsibility of the Contractor and their Insurance Broker to review all potential operations and exposures to determine if the coverage and limits noted below are sufficient to address all insurance related exposures presented by the specifications of the Project, Work or Supply. The Contractor shall insure its undertaking, business and equipment under the following coverage so as to protect and indemnify and save harmless the City:

- (a) **General Liability Insurance:** The Contractor shall maintain liability insurance acceptable to the City throughout the term of this Agreement from the date of commencement of work until one year from the date of Ready-for-Takeover. Liability coverage shall be provided for completed operations

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hazards from the date of substantial performance of the work, as set out in the certificate of substantial performance of work, on an ongoing basis for a period of 6 years following substantial performance of work. Coverage shall consist of a comprehensive policy of public liability and property damage insurance, with all available coverage extensions/endorsements, in an amount of not less than \$5,000,000 per occurrence. **Such insurance shall name The Corporation of the City of Waterloo and any other person or party identified in the contract documents, as an additional insured with a cross liability endorsement and severability of interests provision.** The policy SIR/deductible shall not exceed \$100,000 per claim and if the policy has an aggregate limit, the amount of the aggregate shall be double the required per occurrence limit. A combination of primary coverage plus umbrella or excess liability insurance may be used.

If applicable to the construction project described in the Agreement: such insurance coverage shall be endorsed to cover shoring, blasting, excavation, underpinning, demolition, pile driving, caisson work and work below ground surface including tunnelling and grading.

The City reserves the right to request an alternative to the Commercial General Liability Insurance coverage in the form of a **Wrap-Up Liability Insurance** policy.

- (b) **Owned and Non-Owned Automobile Liability Insurance:** The Contractor shall maintain liability insurance on all Owned, Non-Owned and Leased Automobiles used in the performance of this work to a limit of \$5,000,000 per occurrence throughout the term of this Agreement from the date of commencement of work and until one year after the date of substantial performance of work.
- (c) The Contractor shall provide and maintain during the term of the Agreement, **Broad Form Contractors' Equipment Insurance** coverage for construction machinery and equipment used by the Contractor for the performance of the work. Such insurance shall be in a form acceptable to the City and shall not allow subrogation claims by the Insurer against the City.
- (d) The Contractor shall provide and maintain during the term of the Agreement an **All Risk Installation Floater Insurance** policy covering the installation of any machinery and equipment associated with the construction project. Coverage shall be in an amount equal to the value of the machinery and/or equipment and shall include coverage while it is in transit to, while stored at a temporary location and awaiting installation at the work site.

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- (e) The Contractor shall provide and maintain **Boiler & Machinery Insurance** coverage on a Comprehensive Plus Form to the full replacement cost of the boiler and machinery equipment.
- (f) The Contractor shall **ensure** its professional consultants, architects, landscape architects, planners and engineers, providing a professional service in connection with the contract, maintain until three (3) years after the Agreement, **Professional Liability Insurance** to a limit not less than \$1,000,000 per claim providing coverage for acts, errors and omissions arising from their professional services performed under this Agreement. The policy SIR/deductible shall not exceed \$100,000 per claim and if the policy has an aggregate limit, the amount of the aggregate shall be double the required per claim limit. Certificates evidence such coverage shall be supplied to the City prior to the completion of the project and in accordance with the provisions stated above.
- (g) The Contractor shall take out and keep in force **Contractor's Pollution Liability** (CPL) coverage to ensure that their work does not exacerbate any pre-existing environmental condition during construction. Coverage shall be in an amount of not less than \$2,000,000 per claim or per occurrence, or such greater amount as the municipality may from time to time require, naming the City as an additional insured, which coverage shall be maintained in force for 1 year following the termination of the Contract. The policy SIR/deductible shall not exceed \$100,000 per claim (unless approved by risk management) and if the policy has an aggregate limit, the amount of the aggregate shall be double the required per occurrence limit.
- (h) **Provisions:** Prior to the commencement of work the Contractor shall forward a Certificate of Insurance evidencing this insurance with the executed Agreement and thereafter on or prior to the expiry of the insurance coverage. The Certificate shall state that coverage will not be suspended, voided, cancelled, reduced in coverage or in limits except after thirty (30) days (ten (10) days if cancellation is due to non-payment of premium) prior written notice by certified mail to the City.

It is also understood and agreed that in the event of a claim any deductible or self-insured retention under these policies of insurance shall be the sole responsibility of the Contractor and that this coverage shall preclude subrogation claims against the City and any other person insured under the policy and be primary insurance in response to claims. Any insurance or self-insurance maintained by the City and any other person insured under the policy shall be considered excess of the Contractor's insurance and shall not contribute with it. The minimum amount of insurance required herein

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shall not modify, waive or otherwise alter the Contractor's obligation to fully indemnify the City under this Agreement.

The City reserves the right to modify the insurance requirements as deemed suitable. If the City requests to have the amount of insurance increased or to obtain other special insurance for this Project then the Contractor shall endeavour forthwith to obtain such increased or special insurance at the City's expense.

- (i) **Third Party Claims Process:** The City's claims process for Third Party claims is to refer the claimant directly to the Contractor and to leave the resolution of the claim with the Contractor. This applies regardless of whether or not it is an insured loss.

As the City has a responsibility to the taxpayers, we must ensure that claimants are dealt with in a fair and efficient manner. Claims reported to the Contractor, either directly by a third party or through the City shall be promptly investigated by the Contractor (its insurer or adjuster). The Contractor shall make contact with the third party claimant upon receipt of notice of a claim. The Contractor shall initiate an investigation of the claim immediately upon notice, and advise the third party claimant in writing (preferably by a qualified third party adjusting firm), with a copy to the City, of its position regarding the claim upon completion of this investigation. Such investigation shall be done in a professional manor and reasonable time frame consistent with Insurance Institute of Canada practices. The Contractor shall include in their response the reasons for their position. Should this position not resolve the claim and be accepted by the third party claimant, the Contractor shall immediately report the claim to its Insurer. If the Contractor fails to follow this procedure, the City may report such claims to the Contractor's insurer.

Nothing herein shall limit the right of the City to investigate and resolve any such claims notwithstanding the response of the Contractor and/or its Insurer and to seek indemnification from the Contractor or to exercise any other rights under the Contract. (Costs may include but not limited to: adjusting fees, settlement awards, reasonable legal fees, administrative costs, etc.)

The City may, without breaching this contract, retain from the funds owing to the Contractor an amount that, as between the City and the Contractor, is

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equal to the balance in the City's favour of all outstanding debts, claims or damages, whether or not related to this contract."

3.28 GC 12.3 – WARRANTY

3.28.1 Amend paragraph 12.3.1 by deleting the words, "one year", and replacing them with the words, "two years", and by adding the following at the end of the paragraph, "With respect to equipment installed at the request of the *Owner*, and successfully operating at its intended design capacity before completion of the *Work*, the warranty period shall be two years from the date the equipment commenced its successful operations."

3.28.2 Amend paragraphs 12.3.3, 12.3.4, and 12.3.6 by deleting the words, "one year", and replacing them with the words, "two year".

3.28.3 Add the following clauses as 12.3.7, 12.3.8 and 12.3.9:

"12.3.7 Any *Product*, or equipment 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 take effect from the time that the defect has been corrected so as to cause excessive servicing to terminate.

12.3.8 Following *Substantial Performance of the Work*, and without limiting the *Contractor's* warranty under GC 12.3, the *Contractor* shall assign to the *Owner*, to the extent assignable, the benefit of all warranties and guarantees relating to the *Work*. The assignment shall expressly reserve the rights of the *Contractor* to make any claims under such warranty and guarantees and such assignment shall in no way prejudice any rights of or benefits accruing to the *Contractor* pursuant to such warranties and guarantees.

12.3.9 The provisions of GC 12.3 shall not deprive the *Owner* of any action, right or remedy otherwise available to the *Owner* for the *Contractor's* failure to fulfill its obligations or responsibilities under the *Contract* and shall not be construed as a waiver of claims in favour of the *Contractor* or as limitation on the time in which the *Owner* may pursue such other action, right to remedy. The warranties set out in the *Contract* are supplemental to and do not limit or preclude the application of any other conditions and warranties, express or implied, by law or trade usage."

3.29 GC 13.1 – INDEMNIFICATION

3.29.1 Delete paragraph 13.1.1 through 13.1.6 and replace them with the following:

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“13.1.1 The *Contractor*, both during and after the term of this Agreement, shall at all times, and at its own cost, expense and risk, defend, indemnify and hold harmless the City, its elected officials, officers, employees, volunteers, agents, contractors, and all respective heirs, administrators, executors, successors and assigns from any and all losses, damages (including, but not limited to, incidental, indirect, special and consequential damages, or any loss of use, revenue or profit by any person, organization or entity), fines, penalties and surcharges, liabilities (including, but not limited to, any and all liability for damage to property and injury to persons, including death), judgments, claims, demands, causes of action, contracts, suits, actions or other proceedings of any kind (including, but not limited to proceedings of a criminal, administrative or quasi criminal nature) and expenses (including, but not limited to, legal fees on a substantial indemnity basis), which the indemnified person or persons may suffer or incur, howsoever caused, arising out of or in consequence of or directly or indirectly attributable to the Services required to be performed by the Contractor, its agents, employees and sub-contractors on behalf of the City, provided such losses, damages, fines, penalties and surcharges, liabilities, judgments, claims, demands, causes of action, contracts, suits, actions or other proceedings of any kind and expenses as defined above are due or claimed to be due to the negligence, breach of contract, and/or breach of law of the Contractor, its agents, employees or sub-contractors.”

3.30 GC 13.2 – WAIVER OF CLAIMS

3.30.1 Delete paragraph 13.2.5 in its entirety.

3.30.2 In paragraph 13.2.8, replace the words, “The Party” with “The *Contractor*.”

3.31 PART 14 – OTHER PROVISIONS

3.31.1 Add new PART 14 as follows:

“GC 14.1 – OWNERSHIP OF MATERIALS

14.1.1 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 14.2 – CONSTRUCTION LIENS

14.2.1 In the event that a construction lien is registered or is delivered to the *Owner* in respect of the *Project*, or written notice of lien is delivered to the *Owner*, the

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Contractor, at its own expense and within ten (10) days, shall ensure that such lien or notice of lien is vacated, discharged or withdrawn.

14.2.2 In the event that the *Contractor* fails to comply with the requirements of 14.2.1, the *Owner* may set off and deduct from any amount owing to the *Contractor*, all costs and associated expenses, including legal fees and disbursements incurred to vacate or discharge the lien, including costs of obtaining and posting a lien bond or other security. The *Contractor* shall reimburse the *Owner* for all of the said cost and associated expenses.

14.2.3 Notwithstanding any other provision of the *Contract*, the *Owner* shall not be obligated to pay any amount otherwise owing to the *Contractor* until any liens are vacated or discharged.

GC 14.3 – CONTRACTOR DISCHARGE OF LIABILITIES

14.3.1 In addition to the obligation assumed by the *Contractor* pursuant to GC 3.6 and 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 and which have been identified to the party or parties, from whom payment has been withheld.

GC 14.4 – DAILY REPORTING/DAILY LOGS

14.4.1 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.

14.4.2 The *Contractor* shall also maintain records, either at its head office or at the job site, recording manpower and material resourcing on the *Project*. The *Contractor* shall make these records available to the *Owner* and/or the *Consultant* for inspection upon reasonable notice.

GC 14.5 – PUBLIC STATEMENTS

14.5.1 The *Contractor* shall not publish issue or make any statements or news release, electronic or otherwise concerning the *Contract*, the *Work*, or the *Project*, without the express written consent of the *Owner*.

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GC 14.6 – OWNER SET-OFF

14.6.1 In addition to and without limiting any other rights the *Owner* may have under the *Contract* and at law, the *Owner* may retain from monies owing to the *Contractor* under the *Contract* an amount sufficient to cover any outstanding or disputed liabilities including the cost to remedy deficiencies, the reduction in value of substantial portion of the *Work*, claims for damages by third parties, and any assessment due to the Workplace Safety and Insurance Board.”

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“GC 14.7 – CONFIDENTIALITY, FREEDOM OF INFORMATION AND PUBLICITY

14.7.1 Without limiting the generality of the sections of the *Contract* relating to compliance with all applicable laws and statutes, the *Contractor* acknowledges that the *Owner* is governed by the *Municipal Freedom of Information and Protection of Privacy Act*, R.S.O. 1990 c. M.56 (“MFIPPA”) and the *Contractor* covenants to comply with this Act and to protect the privacy of residents in keeping with this Act, as agent of the *Owner* for the purpose of this section.

14.7.2 The *Contractor* shall not at any time before, during or after the completion of the *Contract*, divulge any confidential information communicated to or acquired by the *Contractor* or disclosed by the *Owner* in the course of carrying out *Work* provided for herein. No such information shall be used by the *Contractor* before, during or after the completion of the *Contract* on any project without the prior written consent of the *Owner*. For the purpose of this *Contract*, “confidential information” means any information that is not in the public domain.

14.7.3 In accordance MFIPPA or other applicable privacy legislation, the *Contractor* agrees that any personal information it has provided as a proponent or bidder in the course of submitted a proposal or tender has been collected under the authority of the *Municipal Act, 2001*, S.O. 2001 c. 25 and has been properly used in the proposal or tender evaluation process and is now properly used for the purpose of this *Contract*. All correspondence, documentation and other information, including the proposal or tender, provided to the *Owner* or its employees, agents or representatives by the *Contractor*, as a proponent or bidder or now, or in the future in connection with, or arising out of, the proposal or tender process or this *Contract*, is or shall become property of the *Owner* and a record of the *Owner*. Such records and the Contract Documents are subject to the provision of MFIPPA and the *Owner*’s obligations under this or other privacy legislation and may be released pursuant to such Acts. The *Contractor*’s name at a minimum will be made public on request. In addition, certain contractual information must be disclosed to the *Owner* and accordingly may become part of the public record. All correspondence, documentation and information provided to the *Owner* may be produced for the purpose of evaluating the *Contractor*’s or proponent’s proposal or bid, or for purposes of this *Contract*.

14.7.4 All correspondence, documentation and information provided by the *Owner* to any bidder or contractor in connection with or arising out of any tender, request for proposal, or contract or the acceptance of any of the aforesaid remains the property of the *Owner* and must not be used for any purpose other than as related to the tender or proposal or in the fulfilment of any purpose other than as related to the tender or proposal or this *Contract* must be maintained at all times by the

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Contractor. Where any proprietary or confidential information belonging to or in the care of the *Owner* is disclosed to the *Contractor*, the *Contractor* shall:

- safeguard all information provided by the *Owner* at the request of the *Owner*;
- maintain in strict confidence and not reproduce or disclose any such information to any person except as required by law or as expressly permitted in advance and in writing by the *Owner*;
- return forthwith upon demand all such information as may be in documentary form or recorded electronically; and,
- not use any such information for any purpose other than the purpose for which it was provided by the owner or by any other person at the request of the *Owner*.

14.7.5 Any publicity or press releases with respect to this *Contract* shall be within the sole discretion and control of the *Owner*. The *Contractor* shall obtain prior approval from the *Owner* before making any information public with regard to this *Contract* at any time, during or after the term of the *Contract*.”

END OF SUPPLEMENTARY CONDITIONS