



SUPPLEMENTARY CONDITIONS TO CCDC2 – 2020 STIPULATED PRICE CONTRACT

Project Name: 25-031 Coats Marsh Dam Decommissioning

These Supplementary Conditions modify and amend the CCDC 2 – 2020 – Stipulated Price Contract between the parties and form a part of the *Contract*. In the event of any conflict between the provisions of any of the other *Contract Documents* and any provision of these Supplementary Conditions, the provision contained in these Supplementary Conditions shall govern.

AGREEMENT BETWEEN OWNER AND CONTRACTOR

1. In Article A-5.2.1, replace subsections (1) and (2) with the following:

“(1) 2% per annum above the prime rate.”

DEFINITIONS

2. In the definition of ‘Contract Documents’, add the words “in writing” immediately after “...between the parties”.
3. In the definition of ‘Change Order’, delete the words “prepared by the Consultant and”.
4. Add the following definitions:

“Force Majeure Event

Force Majeure Event means an event that occurs after the effective date of this *Contract*, is not caused by and is beyond the reasonable control of the party claiming the *Force Majeure Event* and could not be prevented or overcome by the exercise of due diligence by the party claiming the *Force Majeure Event*. *Force Majeure Events* include adverse weather or floods occurring of a magnitude having a statistical reoccurrence that is less frequent than 1-in-25 years, collective bargaining disputes, earthquake, epidemic or pandemic, explosion, fire, landslides or similar geotechnical events, and lightning, but do not include lack of funds or escalation in prices of material unless such escalation in prices is caused by one of the listed *Force Majeure Events*.”

“Milestone Dates

Milestone Dates means any date specified in the *Contract Documents* for completion of the *Work*, or a portion of the *Work*, including the date for *Substantial Performance of the Work* and date for attainment of *Ready-for-Takeover*.”

GENERAL CONDITIONS

5. In GC 1.1.5.1, move “Supplementary Conditions” to the top of the list, such that it appears above “the *Agreement* between *Owner* and *Contractor*”. Add new item “Construction Environmental Management Plan” after “the *Drawings*”.
6. Delete the contents of GC 1.1.10 entirely and insert the word "Reserved".
7. In GC 2.2.11, add the following after the last sentence:

“The failure of the *Consultant* to exercise its authority under this GC 2.2.11 shall not relieve the *Contractor* of its obligation to perform the *Work* in accordance with the *Contract*.”
8. Add new GC 2.2.19 as follows:

“2.2.19 Provisions contained in GC 2.2.1 through GC 2.2.18 are only intended to create rights and responsibilities as between the *Owner* and *Contractor*. Nothing in GC 2.2.1 through GC 2.2.18 is intended to create any rights as between the *Owner* and *Consultant* or as between the *Consultant* and *Contractor*.”
9. Add new GC 2.3.8 as follows:

“2.3.8 For clarity, any review or inspection of the *Work* shall be for the *Owner’s* benefit only and shall not relieve the *Contractor* of its obligation to perform the *Work* in accordance with the *Contract*.”
10. Delete the contents of GC 3.4.1.1 entirely and insert the following:

“1.1 prepare and submit to the *Owner* within ten (10) *Working Days* after the date of execution of the *Agreement*, a construction schedule to the reasonable satisfaction of the *Owner* that indicates the timing of the major activities of the *Work* and provides sufficient detail of the critical events and their interrelationship to demonstrate the *Work* will be performed in conformity with the *Contract Time* including meeting all *Milestone Dates*;
11. Add new GC 3.4.2 – GC 3.4.4 as follows:

“3.4.2 Time shall be of the essence in this *Contract*.

3.4.3 The *Contractor* shall perform the *Work* in such a manner that progress of *Work* is consistent with the construction schedule and all *Milestone Dates* are met.

3.4.4 A failure by the *Contractor* to meet GC 3.4.3 shall be deemed to be a default to which the provisions of GC 7.1.2 to GC 7.1.6 (inclusive) apply.”

12. Delete the contents of GC 5.1 entirely and insert the word "Reserved".
13. Add the following at the end of GC 5.2.7:

"If the *Owner* reasonably believes that the *Contractor* has not paid, or is likely not to pay, *Subcontractors* duly owed payments in a timely manner, the *Owner* may demand and the *Contractor* must provide a breakdown of each application for payment, whether past or future, indicating what portion of the amount claimed under that application of payment is attributed to which *Subcontractor*."
14. In GC 5.3.1.1, replace the last instance of "Owner" with "Consultant".
15. Add the following as new GC 5.3.2:

"5.3.2 To the extent of payment received by the *Contractor* on account of work by *Subcontractors*, *Contractor* shall: (i) within seven (7) calendar days of receiving such payment, pay each of its *Subcontractors* the amount to which *Subcontractor* is entitled.

The *Contractor* shall indemnify, defend and hold harmless the *Owner* from and against any claims, damages, suits or losses the *Owner* may suffer as a result of the breach of the *Contractor's* obligation under the preceding sentence or a payment made by the *Owner* in reliance on an inaccurate or false statutory declaration required under GC 5.2.7. The amount of payment by the *Owner* in reliance on a false or inaccurate statutory declaration shall be deemed not to have been due to the *Contractor*, and the *Owner* may recover such amounts by setting off against any future payments due to the *Contractor*."
16. Add the following as new GC 5.3.3:

"5.3.3 As a further condition of payment, there shall be no liens or other encumbrances registered against title to any part of the *Place of the Work* or any property of the *Owner* arising from or connected with the *Work*, other than those caused by non-payment by the *Owner*. In the event that a lien or encumbrance has been registered, the *Contractor* shall take all steps necessary, including the payment of alternate security into a court of competent jurisdiction, to have such lien or encumbrance immediately discharged. No further payments shall be made while such lien or encumbrance remains registered."
17. Delete the contents of GC 5.4.2 entirely and insert the word "Reserved".
18. Add new GC 5.4.7 as follows:

- “5.4.7 Prior to *Substantial Performance* of the *Work* and in addition to the lien holdback, a deficiency holdback shall be established for *Work* determined by the *Consultant* to be defective or incomplete (the “*Deficiency Holdback*”). The *Consultant* shall establish the amount of the *Deficiency Holdback* at 150% of the estimated cost to rectify the defective work and can finish incomplete *Work* using the services of another contractor or the *Owner’s* own forces. No part of the *Deficiency Holdback* shall become payable to the *Contractor* until all of the defective *Work* is corrected and all of the *Work* is complete. If the defective or incomplete *Work* is not corrected or completed within a reasonable time as determined by the *Consultant*, then all or a portion of the *Deficiency Holdback* as determined by the *Consultant* may be retained by the *Owner* to be applied against the cost suffered by the *Owner* to correct or complete the *Work*.”
19. In GC 5.5.3, replace “*Owner*” with “*Consultant*”.
20. In GC 5.7.1, after “No payment by the *Owner*”, add “or certification by the *Consultant*”.
21. Add new GC 6.1.3 and 6.1.4 as follows:
- 6.1.3 Subject to GC 6.1.4, the *Contractor* shall not be entitled to rely on any oral representation, site meeting discussion, site meeting minutes or other communication except for a *Change Order* or *Change Directive* before proceeding with a change to the *Work*.
- 6.1.4 In an emergency where it is impractical to issue a *Change Order* or *Change Directive*, as determined by the *Consultant*, the *Consultant* may issue an oral direction that the *Contractor* shall follow. In such event the *Consultant* shall issue a *Change Directive* at the first opportunity upon the *Owner’s* approval.
22. In GC 6.5.3.3, replace .1 through .4 with “a *Force Majeure Event*,”.
23. Add new GC 6.5.6 - GC 6.5.7 as follows:
- “6.5.6 If the *Work* is not progressing in a manner that meets the construction schedule and it appears reasonably likely that one or more *Milestone Dates* will not be achieved, the *Owner* may, in its sole discretion, request the *Contractor* by *Notice in Writing* to provide a recovery plan that demonstrates what measures the *Contractor* shall undertake and how such measures will enable the *Contractor* to comply with GC 3.4.3. The *Contractor* shall submit such recovery plan within 10 *Working Days* after receiving a written from the *Owner*. For certainty, the request for a recovery plan under this paragraph shall not entitle the *Contractor* to any extension of the *Contract Time* or modification of *Milestone Dates*.

- 6.5.7 The *Contractor* shall implement the measures outlined in the recovery plan described in GC 6.5.6 at its own cost.

Add new GC 7.1.7:

“7.1.7 If the conditions for the *Owner* to give *Notice in Writing* under GC 7.1.4 have been met, the *Owner* may require the *Contractor* by *Notice in Writing* to temporarily suspend the performance of *Work*, or any portion thereof. Provided the *Contractor* has not corrected the pertinent default or otherwise complied with its obligations set out in GC 7.1.3, such suspension may continue for a continuous period of 30 calendar days, during which any additional cost incurred by the *Contractor* shall be borne by the *Contractor*. If the *Owner* gives *Notice in Writing* to *Contractor* to cease the suspension, the *Contractor* shall immediately commence performance of *Work*.”

24. Delete the contents of GC 7.2.3.1 entirely and insert the word “Reserved”.
25. Delete GC 8.3.8.
26. In GC 9.1.3, after “the *Owner’s* property” add “, the property of others at the *Place of Work*”.
27. Add the following sentence at the end of GC 9.4.1:
- “The *Contractor* shall be the “prime contractor” under the *Workers Compensation Act*, RSBC 2019, c 1, for the *Place of the Work* and fulfill all the obligations of the “prime contractor” under the said statute, including by ensuring that the activities of any employers, workers and other persons at the *Place of the Work* relating to occupational health and safety are coordinated and by doing everything that is reasonable possible to establish and maintain a process that shall ensure compliance with that statute and regulations thereunder.”
28. Delete GC 9.4.5 entirely.
29. Delete all paragraphs under GC 11.1 and insert the following:
- “11.1.1 Without restricting the generality of GC 13.1 INDEMNIFICATION, the *Contractor* shall obtain and pay for the following insurance coverages per CCDC41-2020:
- .1 Commercial General Liability providing coverage with a limit of not less than \$10,000,000 million inclusive per occurrence for bodily injury and property damage on an all-risk basis. This insurance will include the *Owner*, Northwest Hydraulic Consultants Ltd., and Environmental Dynamics Inc. as additional insured with respect to liability arising out of the operations of the *Contractor*.

- .2 Motor-vehicle insurance providing coverage to a minimum of \$5,000,000 million against third-party liability for bodily injury and property damage for each motor-vehicle owned or operated by the *Contractor* in connection with this *Contract*.
- .3 Course of construction insurance (Builder's Risk) providing coverage to a minimum of 100% of the *Total Contract Price* covering all materials, property, structures, and equipment purchased for or forming part of the *Work*, while in transit or storage and during construction, erection, installation and testing until completed and handed over and accepted by the *Owner*. The coverage shall include as a protected entity, the *Owner*, the *Consultant*, and each *Subcontractor* who is engaged in the *Work*. The coverage will contain a waiver of subrogation against all protected entities except where a loss is deemed to have been caused by or resulting from any error in design or any other professional error or omission.
- .4 The *Contractor* is responsible for Equipment Breakdown (Boiler and Machinery) Insurance.

11.1.2 Unless specified otherwise, the *Contractor* shall maintain the insurance coverages listed in 11.1.1 from the date of commencement of the *Work* until the date of final certificate for payment.

11.1.3 The *Contractor* shall provide the *Owner* with proof of insurance in a form acceptable to the *Owner* prior to the commencement of the *Work* and upon request of the *Owner* for the duration of this *Contract*.

11.1.4 If the *Contractor* hires a sub-contractor to perform any of the *Work*, the *Contractor* shall, in turn, require such sub-contractor to maintain insurance coverages under the same terms listed in 11.1.1.

11.1.5 The *Contractor* shall be responsible for any deductible amounts under the policies of coverage and insurance."

30. Add new GC 11.2 as follows:

"GC 11.2 CONTRACT SECURITY

11.2.1 The *Contractor* shall, before execution of the *Agreement*, provide to the *Owner* the following security:

- .1 a performance bond, in the form of CCDC 221 or an equivalent format reasonably acceptable to the *Owner* and in the amount of 50% of the *Total Contract Price*; and
- .2 a labour and material payment bond, in the form of CCDC 222 or an equivalent format reasonably acceptable to the *Owner* and in the amount of 50% of the *Total Contract Price*."



31. Add new GC 12.1.1.9:
 - .9 All the *Work*, including the resolution of any known defects or deficiencies, is completed, except those items which may arise under GC-12.3 - WARRANTY.
32. In GC 13.1.1.1(1), replace “negligent acts or omissions” with “the negligent acts, omissions, or willful misconduct”.
33. In GC 13.1.2.2, delete its contents entirely and insert the following:
 - “.2 In respect to losses suffered by the *Owner* and the *Contractor* for which insurance is not required to be provided by either party in accordance with GC 11.1 – INSURANCE, the *Contract Price*.”

END OF REVISED SUPPLEMENTARY CONDITIONS