

GENERAL CONDITIONS FOR SUPPLY OF SERVICES

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GENERAL CONDITIONS FOR SUPPLY OF SERVICES

C1. DEFINITIONS

C1.1 Where used in these General Conditions and in the other documents forming part of the Contract:

- (a) “**Award Authority**” means the authority having the jurisdiction to award the Contract according to the City’s by-laws, policies or procedures;
- (b) “**Bid**” or “**Proposal**” means the documents and other things, including but not limited to forms contained in the Bid Submission or Proposal Submission, which must be completed or provided and submitted by the Submission Deadline in order to constitute a responsive offer;
- (c) “**Bid Opportunity**” means the Tender, Request for Proposal, Request for Qualification, or any other bid solicitation document;
- (d) “**Bid Submission**” or “**Proposal Submission**” means that portion of the Bid Opportunity by that name which contains forms to be included in the Bid;
- (e) “**Bidder**” or “**Proponent**” means any person submitting a Bid or Proposal for the Work;
- (f) “**Bidding Procedures**” means the portion of the Bid Opportunity by that name which sets out the terms and conditions governing the Bid or Proposal, and a reference to a section, clause or subclause with the prefix “**B**” designates a section, clause or subclause in that portion of the Bid Opportunity;
- (g) “**Business Day**” means any Calendar Day, other than a Saturday, Sunday, or a statutory or civic holiday;
- (h) “**C**” designates a section, clause or subclause in these General Conditions;
- (i) “**Calendar Day**” means the period from one midnight to the following midnight;
- (j) “**Change in Work**” means an addition, deletion or modification to the Work as described in the Contract at the time that the Contract is awarded and includes modifications in quantity or nature of Plant, Material or labour, methods, location or work schedule;
- (k) “**Chief Administrative Officer**” means the City employee holding that office or, if applicable, the successor to the authority or responsibility of such office;
- (l) “**City**” means The City of Winnipeg as continued under The City of Winnipeg Charter, Statutes of Manitoba 2002, c. 39, and any subsequent amendments thereto;
- (m) “**City Solicitor**” means the City employee holding that office or, if applicable, the successor to the authority or responsibility of such office;
- (n) “**Contract**” means the terms and conditions that govern the legal relationship between the City and Contractor with respect to the Work;
- (o) “**Contract Administrator**” means the person designated as such in the Supplemental Conditions;
- (p) “**Contract Documents**” means the documents prepared by the City and forwarded to the Contractor pursuant to C4, setting out the Contract and includes without limitation, the Bid Opportunity and any documents and Drawings referred to and incorporated therein, the Bid or Proposal, together with any submissions required to be made by the Contractor after award, and all amendments to the foregoing;
- (q) “**Contract Price**” means the price agreed upon for the Work and any adjustments thereto which may be required or agreed to pursuant to the Contract;
- (r) “**Contract Time**” means the time from the date of award until any milestone including a critical stage and/or Total Performance, excluding the warranty period;

- (s) “**Contractor**” means the person undertaking the performance of the Work under the terms of the Contract;
- (t) “**Council**” means the Council of The City of Winnipeg;
- (u) “**Drawings**” means drawings which show the nature and scope of the Work to be performed and which have been prepared or approved by the Contract Administrator and are referred to in the Contract Documents;
- (v) “**Final Determination**” means a written notice approving a Change in Work or including the term Final Determination;
- (w) “**Good Industry Practice**” means using standards, practices, methods and procedures to a good commercial standard, conforming to applicable law and exercising that degree of skill and care, diligence, prudence and foresight which would reasonably and ordinarily be expected from a qualified, skilled and experienced person engaged in a similar type of undertaking under the same or similar circumstances;
- (x) “**Manager of Materials**” means the Manager of Purchasing or the City employee holding that office or, if applicable, the successor to the authority or responsibility of such office;
- (y) “**Material**” means any things, including goods, parts and equipment, which are to form part of the permanent Work;
- (z) “**Materials Management Website**” means the City’s Purchasing website that can be accessed at <https://winnipeg.ca/MatMgt/>
- (aa) “**may**” indicates an allowable action or feature which will not be evaluated;
- (bb) “**must**” or “**shall**” indicates a mandatory requirement which will be evaluated on a pass/fail basis;
- (cc) “**Order**” means an authoritative direction or instruction to do something or a determination in relation to any aspect of the Work or the Contract given by the Contract Administrator to the Contractor;
- (dd) “**Person**” means an individual, firm, partnership, association or corporation, or any combination thereof, and includes heirs, administrators, executors or legal representatives of a person;
- (ee) “**Plant**” means any things brought to or constructed upon the Site by the Contractor for the performance of the Work, including goods, tools, equipment, consumable supplies, fuel, power and utility connections therefor, but does not include Material;
- (ff) “**Prohibited Item**” means any design, device, material or process covered by letters patent, copyright, trademark or trade name which the City or the Contractor is prevented by injunction from using;
- (gg) “**RFI**” means a written communication from the Contractor to the Contract Administrator to obtain information that is not contained in, nor can it be inferred by reading, the Contract;
- (hh) “**Request for Proposal**” means the Proposal Submission, the Bidding Procedures, these General Conditions, the Supplemental Conditions, the Specification, the Drawings and all addenda;
- (ii) “**Shop Drawings**” means all drawings, diagrams, illustrations, schedules, performance charts, brochures and other data which are prepared by the Contractor, Subcontractor, manufacturer, supplier or distributor and which illustrate some portion of the Work;
- (jj) “**should**” indicates a desirable action or feature which will be evaluated on a relative scale;
- (kk) “**Site**” means the lands and other places, including structures, on, under, in or through which the Work is to be performed but does not include a Contractor’s Facility;
- (ll) “**Specifications**” means the portion of the Bid Opportunity by that name which sets out the written description of the physical or functional characteristics of the Work, or any part thereof, including without limitation any requirement for testing or inspection, and a

reference to a section, clause or subclause with the prefix “E” designates a section, clause or subclause in that portion of the Bid Opportunity;

- (mm) “**Subcontractor**” means a person contracting with the Contractor for the performance of a part or parts of the Work or for the furnishing of Plant or Material and includes a Subcontractor’s subcontractor;
- (nn) “**Submission Deadline**” means the time and date set out in the Bidding Procedures for final receipt of Bids;
- (oo) “**Supplemental Conditions**” means the portion of the Bid Opportunity by that name which sets out terms and conditions specific to the Contract, and supplements or modifies the General Conditions, and a reference to a section, clause or subclause with the prefix “D” designates a section, clause or subclause in that portion of the Bid Opportunity;
- (pp) “**Tender**” means the Bid Submission, the Bidding Procedures, these General Conditions, the Supplemental Conditions, the Specifications, the Drawings and all addenda;
- (qq) “**Total Performance**” means that the entire Work, except those items arising from the provisions of C13, have been performed in accordance with the Contract;
- (rr) “**Work**” means the carrying out and the doing of all things, whether of a temporary or permanent nature, that are to be done by the Contractor pursuant to the Contract and, without limiting the generality of the foregoing, includes the furnishing of all Plant, Material, labour and services necessary for or incidental to the fulfilment of the requirements of the Contract, including all Changes in Work which may be ordered as herein provided;
- (ss) “**Working Day**” means any Calendar Day, other than a Saturday, Sunday, or a statutory or civic holiday, on which the Contract Administrator determines atmospheric and Site conditions are such that the Contractor is able to work at least seven (7) hours during the period between 7:00 a.m. Winnipeg time or the time the Contractor's operations normally commence, whichever is the earlier, and 7:00 p.m. Winnipeg time.

C2. INTERPRETATION

- C2.1 Where the Contractor consists of more than one person, the obligations of the Contractor shall be joint and several.
- C2.2 Wherever the singular is used, it shall be construed to mean the plural as the context may reasonably require.
- C2.3 Headings, titles and margin notes in the Contract Documents are inserted for convenience only and shall not be considered in any construction or interpretation of the Contract.
- C2.4 In the event of conflicts between portions of the Contract Documents, the following shall apply:
 - (a) the executed agreement between the City and Contractor shall govern over all schedules or other documents forming part of the Contract Documents;
 - (b) the Supplemental Conditions shall govern over the General Conditions;
 - (c) the General Conditions shall govern over Specifications;
 - (d) Specifications of a later date shall govern over Specifications of an earlier date;
 - (e) Specifications shall govern over Drawings;
 - (f) Drawings of a later date shall govern over Drawings of an earlier date;
 - (g) Drawings of larger scale shall govern over those of smaller scale;
 - (h) figured dimensions shown on a Drawing shall govern over scaled or implied dimensions on the same Drawing; and
 - (i) Drawings shall govern over the Bid.

- C2.5 The various portions of the Contract Documents are intended to be read together and complement each other, and what is called for by any one shall be deemed to be called for by all.
- C2.6 The City and the Contractor acknowledge and agree that the Contractor is an independent contractor and neither the Contractor, nor any officer or agent of the Contractor, shall be deemed to be an employee, agent or representative of the City.
- C2.7 The Contract shall constitute the entire agreement between the City and the Contractor. There are no representations, warranties, covenants or agreements other than those contained in the Contract.
- C2.8 Any rule of construction to the effect that ambiguities are to be resolved against the drafting party shall not apply to the construction or interpretation of the Contract.
- C2.9 Except as provided for in C7, no amendment of this Contract is effective unless made in writing and signed by a duly authorized representative of each of the City and the Contractor.
- C2.10 Each provision of this Contract shall be valid and enforceable to the fullest extent permitted by law. If any provision of this Contract is declared invalid, unenforceable or illegal by the courts of a competent jurisdiction, such provision may be severed and such invalidity, unenforceability or illegality shall not prejudice or affect the validity, enforceability and legality of the remaining provisions of this Contract. Further, any such severed provision shall be modified only to the extent necessary to render it enforceable and shall then become binding on the parties.
- C2.11 The City may request, in their sole discretion, that this Contract or any part thereof be executed in counterparts, each of which is an original, and all of which taken together shall constitute one agreement. For greater clarity, a satisfactory facsimile or electronically scanned copy delivered in response to such a request shall be deemed a valid counterpart and original execution of same.

Survival

- C2.12 All rights and obligations under this Contract that necessarily extend beyond termination of this Contract in order to fully achieve their intended purpose shall survive termination or expiry of this Contract, including without limiting the generality of the foregoing, all indemnification provisions, intellectual property provisions, confidentiality provisions, and all Contractor default and City remedy provisions.

C3. DECLARATIONS

Site Investigation

- C3.1 The Contractor declares that he:
- (a) has, in accordance with Good Industry Practice, investigated the Site, the nature of the Work to be done and local conditions that might affect their Bid or their performance of the Work, including:
 - (i) the location of any utility which can be determined from the records or other information available at the offices of any public authority or person, including a municipal corporation and any board or commission thereof, having jurisdiction or control over the utility;
 - (ii) the Site conditions, including but not limited to subsurface hazardous materials or other concealed physical conditions;
 - (iii) the location, nature, quality or quantity of the materials to be removed or to be employed in the performance of the Work;
 - (iv) the nature, quality or quantity of the Plant needed to perform the Work;

- (v) all matters concerning access to the Site, power supplies, location of existing services, utilities or materials necessary for the completion of the Work; and
 - (vi) all other matters which could in any way affect the performance of the Work; or ,
- (b) has not investigated the Site, the nature of the Work to be done or local conditions; and, in either event, assumes all risk for conditions now existing or arising in the course of the Work which have been or could have been determined through such investigation, and that they did not and does not rely upon information furnished by the City or any of their agents other than information furnished in writing for or in connection with the Bid or the Contract by the Contract Administrator.

Good Faith

- C3.2 The Contractor declares that, in entering into the Contract, he:
- (a) does so in good faith and that to the best of their knowledge no member of Council or any officer or employee of the City has any pecuniary interest, direct or indirect, in the Contract which has not been disclosed to and approved by the authority having jurisdiction;
 - (b) has not participated in any collusive scheme or combine;
 - (c) shall forfeit all claims under the Contract as well as refund to the City any monies paid to them, beyond their actual proven expenses for Work done, if C3.2(a) or (b) are shown to be false.

C4. FORM AND EXECUTION OF CONTRACT DOCUMENTS

- C4.1 At the City's discretion the City will determine the form of the Contract Documents, which may be one of the following, issued by the City:
- (a) Purchase Order;
 - (b) Award Letter alone; or
 - (c) Award Letter followed by a document package comprising the Contract Documents to sign.
- C4.2 If the form of the Contract Documents is a Purchase Order, the Contract is formed upon receipt of the Purchase Order by the Contractor.
- C4.3 If the form of the Contract Documents is an Award Letter alone, the Contract is formed upon receipt of the Award Letter by the Contractor.
- C4.4 If the form of the Contract Documents is an Award Letter followed by a document package, the Contract is formed upon receipt of the Award Letter by the Contractor. Following issuance of the Award Letter a document package comprising the Contract Documents will be provided to the Contractor for execution and return to the City.
- (a) The Contractor shall execute the Contract Documents in the manner stipulated by the City Solicitor and return the Contract Documents, within seven (7) Calendar Days of receipt of the Contract Documents, to the City Solicitor at the address indicated in the Supplemental Conditions.
 - (b) Payments may be suspended or withheld by the City to the Contractor until the Contractor has executed and returned the Contract Documents as set out in herein.

C5. AUTHORITY OF CONTRACT ADMINISTRATOR

General

- C5.1 The Contract Administrator shall be the City's representative throughout the duration of the Contract and shall have authority to act on behalf of the City to the extent expressly provided for in the Contract.

Contract

- C5.2 The Contract Administrator shall interpret or clarify the Contract or any part thereof which appears indefinite, not clear or contradictory to the Contractor.
- C5.3 The Contract Administrator may at any time correct errors or omissions in the Contract by issuing written instructions or clarifications, or issuing additional Drawings or Specifications further detailing, explaining or modifying the Work. Such written instructions, Drawings or Specifications shall either supplement or supersede those forming part of the Contract at the time the Contract was executed.

Inspection

- C5.4 The Contract Administrator may examine or inspect the Work or any part thereof and determine whether the Work meets the requirements of the Contract. The Contract Administrator may reject the Work or any part thereof which does not meet the requirements of the Contract.

Control

- C5.5 The Contract Administrator may give instructions or orders, in writing, to the Contractor to the extent necessary to ensure that the Work is performed in an orderly manner and meets the requirements of the Contract.
- C5.5.1 The Contract Administrator may give instructions or orders, referred to in C5.5, to the Contractor's supervisor on the Site and such instructions or orders shall be subsequently made in writing and shall be deemed to have been given to the Contractor.
- C5.6 The Contract Administrator may issue a written order directing the Contractor to remove from the Work any person employed or retained by the Contractor or a Subcontractor in the performance of the Work who the Contract Administrator determines and demonstrates reasonably is incompetent, negligent or guilty of misconduct.
- C5.7 The Contract Administrator may issue a written order directing the Contractor to alter or improve their methods, to increase or improve their Plant, to furnish additional or more suitable Material, or to employ additional or more qualified labour if, at any time, the Contract Administrator determines and demonstrates reasonably that:
- (a) the Work is not being, or will likely not be, constructed in accordance with the Contract; or
 - (b) progress is not being, or will likely not be, maintained in accordance with the Contract.
- C5.8 The Contract Administrator may order the Contractor to stop work or to take such remedial measures as the Contract Administrator considers necessary, if, at any time, the Contract Administrator reasonably determines that:
- (a) a danger to life or to property exists; or
 - (b) such stoppage or remedial measures may be necessary to ensure the performance of the Work in accordance with the requirements of the Contract.
- C5.9 Neither the giving of any orders by the Contract Administrator nor the carrying out of such orders by the Contractor shall:

- (a) relieve the Contractor of their responsibilities under C6; nor
- (b) entitle the Contractor to any extra payment unless warranted in accordance with C7.

- C5.10 The Contract Administrator shall determine if and when Total Performance is achieved and shall certify the date thereof.
- C5.11 If the Contractor disputes a Final Determination of the Contract Administrator on any of the foregoing matters, the Contractor shall act in accordance with the Contract Administrator's Final Determination. The Contractor may concurrently appeal the Final Determination of the Contract Administrator to the Chief Administrative Officer as provided for in C21.

C6. RESPONSIBILITIES OF CONTRACTOR

General

- C6.1 Except as otherwise provided in the Contract, the Contractor shall be solely responsible for means, methods, techniques, sequences and procedures, and for coordinating the various parts of the Work so as to ensure its proper completion in a sound and workmanlike manner, in all respects in strict conformity with the Contract and in accordance with the approved work schedule.
- C6.2 The Contractor shall have complete control over the methods of performing the Work and shall direct and supervise the Work so as to ensure conformance with the Contract.
- C6.3 The Contractor shall provide all Plant, Material, labour, services and incidentals necessary for the performance of the Work.
- C6.4 The Contractor shall be responsible for any related Work not explicitly set out in the Contract but which may be reasonably implied for the proper completion of the Work.
- C6.5 Unless otherwise specified in the Specifications, all Material shall be new, and shall meet or exceed the kind, quality and quantity of same specified in the Contract. If required, the Contractor shall provide evidence satisfactory to the Contract Administrator that the foregoing requirements have been met.

Contract

- C6.6 The Contractor shall perform, complete and maintain the Work in strict accordance with the Contract.
- C6.7 If the Contract or any part thereof appears indefinite, not clear or contradictory, the Contractor shall issue an RFI in writing referring such feature or features to the Contract Administrator for interpretation or clarification.
- C6.8 The Contractor shall obey, perform and comply with the Contract Administrator's orders, instructions, rules and procedures with respect to the Work or concerning the conduct thereof, promptly, efficiently and to the satisfaction of the Contract Administrator, in accordance with the Contract, and they will cooperate and shall not interfere with other contractors, their employees and agents on the Site in their attempt to do the same.
- C6.9 The Contractor shall be responsible for conveying the interpretation or clarification of the Contract, as given by the Contract Administrator, to Subcontractors.
- C6.10 The Contractor shall prepare and submit all drawings, schedules, documents or information required by the Contract and such other drawings, schedules, documents or information as may reasonably be required by the Contract Administrator, in accordance with the required timelines for review set out in the Contract.

- C6.11 The Contractor shall provide the Contract Administrator with written notice within seven (7) Business Days of any event which may result in the Contractor requesting additional time or cost pursuant to C7.
- C6.12 The Contractor shall keep one copy of the Contract Documents and any other approved drawings, schedules, documents or other information at the Site, and shall make them available at all reasonable times for the inspection and use of the Contract Administrator.

Laws and Regulations

- C6.13 The Contractor shall comply with all laws, by-laws, ordinances, regulations, codes and orders of authorities having jurisdiction which are or come into force during the performance of the Work and which relate to the Work. Where there are two or more laws, by-laws, ordinances, regulations or codes applicable to the Work, the most restrictive shall apply. In the event a law, by-law, ordinance, regulation or code comes into force during the performance of the Work, and determined to be applicable to the Contract by the Contract Administrator, which could not have reasonably been anticipated by the Contractor, the Contractor shall be entitled to an adjustment in Contract Price pursuant to C7.4.
- C6.14 The Contractor shall procure approvals, clearances, permits, licences and certificates required by law or by any by-laws, ordinances, regulations, codes or orders of the authorities having jurisdiction for the performance of the Work, but this shall not include the obtaining of permanent easements or rights of servitude.
- C6.15 The Contractor shall give any notices required by law or by by-laws, ordinances, regulations, codes or orders of the authorities having jurisdiction and which relate to the Work.
- C6.16 The Contractor shall be in good standing under The Corporations Act (Manitoba), or properly registered under The Business Names Registration Act (Manitoba), or otherwise properly registered, licensed or permitted by law to carry on business in Manitoba, or if the Contractor does not carry on business in Manitoba, in the jurisdiction where the Contractor does carry on business, throughout the term of the Contract, and shall provide the Contract Administrator with evidence thereof upon request.
- C6.17 The Contractor shall be registered with the Workers Compensation Board of Manitoba, shall provide and maintain workers compensation coverage throughout the term of the Contract, and shall provide the Contract Administrator with evidence thereof upon request.
- C6.18 The Contractor shall not be responsible for verifying that the Contract complies with the applicable laws, by-laws, ordinances, regulations, codes and orders relating to the Work.

Patents and Royalties

- C6.19 If the Contract requires or the Contractor desires the use of any design, device, material or process covered by letters patent, copyright, trademark or trade name, the Contractor shall provide for such use by suitable legal agreement with the owner or licensee.
- C6.19.1 Upon request of the Contract Administrator, the Contractor shall provide the City with a copy of the said agreement.
- C6.20 If the City or the Contractor is served with a claim or notice of an infringement or alleged infringement of any patent, copyright, trademark or trade name, the party so served shall immediately give notice thereof to the other party.
- C6.21 The Contractor shall:
- (a) in the case of a Prohibited Item that was specifically identified by the City in the Contract, substitute an equally suitable design, device, material or process together with a claim for

adjustment in Contract Price pursuant to C7.4, all subject to the prior approval of the Contract Administrator; or

- (b) in the case of a Prohibited Item that was not specifically identified by the City in the Contract, substitute at their own cost an equally suitable design, device, material, or process, subject to the prior approval of the Contract Administrator.

Personnel

- C6.22 The Contractor shall provide competent, suitably qualified personnel to perform the Work. They shall at all times maintain good discipline and order at the Site.
- C6.23 The Contractor shall employ and keep on the Work, at all times during the performance of the Work, a competent supervisor and assistants, if necessary, acceptable to the Contract Administrator. The supervisor shall represent the Contractor on the Site. The supervisor shall not be replaced without the prior consent of the Contract Administrator unless the supervisor proves to be unsatisfactory to the Contractor and ceases to be in their employ.
- C6.24 If the Contract Administrator orders a person to be removed from the Work, the Contractor shall comply forthwith. Any person so removed shall not be re-employed on the Work by the Contractor or by a Subcontractor.

Control

- C6.25 The Contractor must arrange and carry on their Work so as not to conflict with the Work being carried on or to be carried on for the City by other contractors or by the City's employees. If the Contractor finds it difficult to work in harmony with such parties, they shall notify the Contract Administrator promptly.
- C6.26 The Contractor shall perform the Work so as to progress continuously with the Work or any part thereof and in such a manner as to ensure the proper completion of the Work or any part thereof, within the time stipulated in the Contract.
- C6.27 Where applicable, the Contractor shall be solely responsible for safety at the Site and for compliance with all laws, rules, regulations and practices required by the applicable safety legislation.

Subcontractors

- C6.28 The Contractor shall not employ any Subcontractor to whom the Contract Administrator may reasonably object.
- C6.28.1 The Contractor agrees that the Subcontractors identified in their Bid, or in any subsequent submission, are the Subcontractors to be used to carry out those parts of the Work noted therein.
- C6.28.2 The Contractor shall not add, remove or replace any Subcontractor, or change the part of the Work to be performed by a Subcontractor, without the prior approval of the Contract Administrator.
- C6.29 The Contractor, with respect to Work to be performed under subcontract, shall:
 - (a) enter into contracts or written agreements with their Subcontractors to require them to perform their work in complete conformance with and subject to the terms and conditions of the Contract; and
 - (b) be as fully responsible to the City for acts and omissions of their Subcontractors and of persons directly or indirectly employed by them as for acts and omissions of persons directly employed by them.

- C6.30 The Contractor shall incorporate the terms and conditions of the Contract into all subcontract agreements they enter into with their Subcontractors.
- C6.31 The Contractor shall make prompt payment to their Subcontractors, their employees or on account of the purchase or rental of Plant or Material.
- C6.32 The Contractor shall promptly secure a discharge of a lien or trust claim served upon the City, in connection with the execution of the Work.

Representations and Warranties

- C6.33 The Contractor represents and warrants that:
- (a) it is carrying on business in compliance with all applicable law, and that if the Contractor is a corporation, it is a valid and existing corporation, duly incorporated under applicable law;
 - (b) it has the full power, right and proper authority to execute, deliver and perform this Contract;
 - (c) there are no actions, suits or any legal proceedings pending or, to the knowledge of the Contractor, threatened against or adversely affecting the Contractor which might materially affect the financial condition of the Contractor or which will or may adversely affect the Contractor's performance of their obligations under this Contract;
 - (d) the Contractor is the owner of any intellectual property including patents, copyright, trademarks and industrial designs which it may use in carrying out their obligations under this Contract, or has the right or license to use such intellectual property from the person who is lawfully authorized to give such a right or license;
 - (e) neither it nor their employees shall engage in conduct which brings the City into public disrepute, or which injures, defames, disparages, or diminishes the reputation or goodwill of the City; and
 - (f) it possesses, and will continue to possess, all rights, interests, powers and expertise necessary to perform their obligations under this Contract.
- C6.34 The Contractor declares that all representations and warranties set out above are true in substance and in fact and acknowledges and agrees that the City has relied on them in entering into this Contract.
- C6.35 The Contractor agrees to notify the City promptly if any actions, suits or legal proceedings are brought or threatened against or adversely affect the Contractor which might materially affect the financial condition of the Contractor or which will or may adversely affect the Contractor's performance of their obligations under this Contract.

Records

- C6.36 The Contractor shall maintain full records of the Contractor's estimated and actual cost of the Work together with all tender calls, quotations, contracts, correspondence, invoices, receipts and vouchers relating thereto, and shall make them available on request to audit and inspection by the City or any entities providing funding relating to the Contract or by persons designated to act on behalf of any of them.
- C6.37 The Contractor shall allow any of the persons referred to in paragraph C6.36 to make copies of and take extracts from any of the records and material, and shall furnish such persons or entities with any information those persons or entities may require from time to time in connection with such records and material.
- C6.38 The Contractor shall maintain and keep the records intact until the expiration of two (2) years after the Certificate of Total Performance has been issued or until the expiration of such other period of time as the City may direct.

C6.39 The Contractor shall cause all subcontractors at any tier and all other persons directly or indirectly controlled by or affiliated with the Contractor and all persons directly or indirectly having control of the Contractor to comply with the requirements of this clause as if they were the Contractor.

C7. CHANGES IN WORK

General

C7.1 The City shall have the right to order a Change in Work at any time after award of the Contract.

C7.2 If, at any time after award of the Contract, the Contractor is of the opinion that a Change in Work is necessary to accomplish the result intended by the Contract or if the Contractor considers it desirable that a Change in Work be approved, they shall promptly provide notice thereof to the Contract Administrator, including:

- (a) the reason for the proposed Change in Work;
- (b) a detailed description of the proposed Change in Work;
- (c) the Contractor's proposed method(s) to determine the adjustment, if any, in Contract Price pursuant to C7.4; and
- (d) the Contractor's proposed adjustment, if any, to the date of any critical stage and/or the date of Total Performance referred to in the Tender (hereafter collectively the "Contract Time").

C7.2.1 Without limiting the generality of C7.2, if the Contractor observes:

- (a) any substantial difference in the nature of the surface or subsurface conditions at the Site, or the location, nature, quality or quantity of the materials to be removed, from those set out in the Contract; or
- (b) that the Contract is at variance with any laws, ordinances, rules, regulations or codes of authorities having jurisdiction, or if changes are made to any laws, ordinances, rules, regulations and codes subsequent to the Submission Deadline which require modifications to the Contract;

the Contractor shall immediately notify the Contract Administrator and issue a written RFI.

C7.3 The Contract Administrator shall, within fourteen (14) Calendar Days or such other period of time as determined by the Contract Administrator given the relative complexity of the proposed change, of receiving the Contractor's RFI:

- (a) determine whether a Change in Work is necessary or desirable and whether a corresponding adjustment to the Contract Price and Contract Time is required; or
- (b) determine that additional time and/or information is required to respond to the RFI where:
 - (i) the proposed change is complex; and
 - (ii) there is a need for additional information in connection with the RFI;

and communicate that determination to the Contractor in writing.

C7.3.1 If the Contract Administrator determines that no Change in Work is necessary or desirable, they will issue a written notice stating their determination.

C7.3.2 If the Contract Administrator determines that a Change in Work is necessary or desirable but no corresponding adjustment to the Contract Price or Contract Time is required, they will issue a written notice approving the Change in Work and stating their determination.

C7.3.3 If the Contract Administrator determines that a Change in Work is necessary or desirable, which requires a corresponding adjustment to the Contract Price or Contract Time, and they are able to determine such adjustment based on the available information, they shall

issue a written notice approving the Change in Work and stating their determination regarding the method(s) to be used to determine the adjustment in Contract Price and Contract Time pursuant to C7.4.

- C7.3.4 If the Contract Administrator determines that a Change in Work is necessary or desirable, which requires a corresponding adjustment to the Contract Price or Contract Time, and they require further information to determine such adjustment, they shall, within fourteen (14) Calendar Days, issue a written notice stating their determination and requiring the Contractor to submit the Contractor's proposed method(s) to determine the adjustment in Contract Price or Contract Time pursuant to C7.4, within fourteen (14) Calendar Days or such other period of time as determined by the Contract Administrator given the relative complexity of the proposed change and upon receipt and evaluation of such information from the Contractor, they shall issue a written notice in accordance with C7.3.3.

Valuation of a Change in Work

- C7.4 The adjustment in Contract Price resulting from a Change in Work shall be determined by one or more of the following methods:
- (a) by estimate and acceptance in a lump sum;
 - (b) by unit prices indicated on Form B: Prices or as otherwise agreed by the City and the Contractor;
 - (c) by cost plus a percentage;
 - (d) by cost plus a fixed fee;
 - (e) as provided for in the Supplemental Conditions.

- C7.4.1 If none of the above methods can be used by the City and the Contractor, the valuation method shall be determined by C21 Dispute Resolution.

- C7.4.2 When the City orders a change to the Work requiring extra work and it is performed by the Contractor's own forces and valued under C7.4(c), the City will pay only for labour, materials and equipment directly used in the extra work plus mark-ups in accordance with the table below:

Labour:	Labour rates accepted by the City plus 15% for profit.
Material, services and supplies:	Actual cost plus a 10% overhead allowance, plus 5% for profit.
Equipment:	At rental rates provided by the Manitoba Heavy Construction Association (MHCA) or other similar trade association approved by the City, for the time when equipment is in use. There shall be no mark-ups on these rates.
Transport:	Transport of equipment will only be allowed if the equipment is not already present at the Site.
Small tools:	Included in the labour rate.
Equipment not owned by the Contractor and not covered by MHCA rates:	Actual rental cost, confirmed by receipt of quotation from a third party rental agency, plus 10% overhead allowance and 5% for profit.

- C7.4.3 For the purposes of this provision overhead includes corporate office and administration expenses only. Compensable labour supplied includes craft labour, salaried labour and project management labour, provided that they are directly involved in the Work and the change to the Work, and shall include off-site project management services, coordination,

estimating, Health Safety Environment, quality, scheduling, virtual construction and onsite supervisors including superintendents, foremen and field engineers.

- C7.4.4 Prior to commencing execution of the Work, the Contractor shall submit to the City both regular and overtime labour hourly rates.
- C7.4.5 For the purpose of C7.4.2, the labour rates shall include the actual wage paid to the employee, plus a combined payroll burden and overhead allowance of sixty-five percent (65%). The payroll burden and overhead allowance shall include Canada Pension Plan, Employment Insurance, Workers Compensation, union dues and Construction Labour Relations Association of Manitoba premiums (where applicable), payroll tax, employee benefit plans, vacation allowance, payroll services, human resources services, training allowances, information systems & services, small tools & tool management, corporate office expenses, corporate office administration and any other payments required by law.
- C7.4.6 The Contractor shall provide a detailed breakdown clearly showing conformance to C7.4.3 and C7.4.4. The City may audit the rates for compliance. The City hereby recognizes that the makeup of labour rates is commercially sensitive information. As such the audit shall be authorized by the Department head responsible for the Work and delegated to City staff. The results, other than to acknowledge compliance or non-compliance with C7.4.3 and C7.4.4, are to remain confidential from external parties and City staff not delegated to perform the audit, except, in the event of a related dispute, the Legal Services Department and the Chief Administrative Officer's office. The City may review the rate breakdown but may not keep copies for their records.
- C7.4.7 On-site supervision will be calculated utilizing the labour rates provided, but will only be considered where it is demonstrated to be in addition to the site supervision required to perform the Work of the Contract. This consideration shall include any work forced outside regular business hours whether associated with the change or impacted by the change, additional supervisors required for the change in work or additional time if the supervisor was originally required part time and is now required for a period extending beyond the original requirement.
- C7.4.8 Unless the City has extended the Contract Time, all extra work will be valued based on actual labour rates. The City acknowledges that premium time compensation may be necessary in the event that the change requires premium time work, not contemplated in the Contract as at the date the Contract was formed, to maintain the schedule, meet contractual milestones, complete work prior to inclement weather or where additional resources are not available at regular rates.
- C7.4.9 The City will not pay for vehicles used to transport workers.
- C7.4.10 When a Subcontractor performs the extra work and the payment to the Contractor is on a cost plus percentage basis, the City will pay the Contractor:
- (a) an amount equal to the Subcontractor's costs for labour, materials and equipment used for the extra work, provided that the rates, overhead allowance and profits do not exceed those outlined in C7.4.2; and
 - (b) a mark-up for overhead allowance and profit, not exceeding ten percent (10%), on top of the Subcontractor's price. This mark-up shall take account of all additional costs, excluding approved supervision, quality inspectors and other personnel required to ensure that the Subcontractor undertakes the extra work in accordance with the Contract.
- C7.5 If a Change in Work results in a reduction in the Contract Price, no claim may be made for damages on the ground of loss of anticipated profit on Work so diminished or on any other ground provided that the aggregate reduction in the Contract Price does not exceed twenty percent (20%) of the price agreed upon for the Work as of the date of the award of the Contract.

C7.5.1 Reductions in the Contract Price as a result of:

- (a) Changes in Work requested by the Contractor;
- (b) a deduction, pursuant to C11.7(d), for defective or deficient Work;
- (c) a decrease, pursuant to C12.4, due to a change in tax; or
- (d) the City's application of a remedy for an event of default;

shall not be considered in calculating the aggregate reduction in the Contract Price for the purposes of C7.5.

C7.6 If a Change in Work diminishes the Work, or any part thereof, resulting in:

- (a) extra cost to the Contractor, directly attributable to the diminution, for which they would not be entitled to payment on a unit price basis (e.g., loss of volume discounts); or
- (b) loss to the Contractor in respect of Material required by the City to be purchased by them for the Work but not used thereon as a direct result of the diminution (e.g., restocking charges);

the Contractor shall be compensated therefor by the City in the sum or sums determined by the Contract Administrator.

C7.7 If the method of valuation or measurement or the adjustment to the Contract Price cannot be promptly agreed upon within twenty-one (21) Calendar Days, or such other period of time upon which the Contract Administrator and the Contractor may agree, of the Contractor's submission to the Contract Administrator and the Contract Administrator requires the Change in Work to proceed, then the Contract Administrator will determine the method of valuation and measurement and the adjustment to the Contract Price. The Contract Administrator shall issue a notice approving the Change in Work and setting out the method of valuation, measurement, and any approved adjustments to the Contract Price.

C7.8 If the Contractor disputes a determination made by the Contract Administrator, the Contractor shall act in accordance with the Contract Administrator's determination. The Contractor may concurrently appeal the determination of the Contract Administrator to the Chief Administrative Officer as provided for in C21.

Cost Records

C7.9 If a valuation is required pursuant to C7.4 or C7.6, the Contractor shall provide the Contract Administrator with:

- (a) detailed and accurate statements showing:
 - (i) description, cost (including expenses for operation and maintenance) and time for Plant used by the Contractor;
 - (ii) description, cost and quantity for Material used by the Contractor;
 - (iii) rate of pay and hours of work for each of the persons employed by the Contractor; and
- (b) access to any cost records (including payroll records, time books and invoices) or other data necessary to verify the accuracy of such statements. The City hereby recognizes that such records may be commercially sensitive information. As such the audit shall be authorized by the Department head responsible for the Work and delegated to City staff. The results, other than to acknowledge compliance or non-compliance with C7.4.3 and C7.4.4, are to remain confidential from external parties and City staff not delegated to perform the audit, except, in the event of a related dispute, the Legal Services Department and the Chief Administrative Officer's office. The City may not keep copies of such records.

C8. RIGHT OF ENTRY

- C8.1 The Contractor shall not be entitled to exclusive possession of the Site.
- C8.2 The City shall have the right, for itself, their agents, representatives or other persons, to enter, occupy or use any portion of the Site or the Work, at any time and for so long a time as the Contract Administrator may require. While on Site, the City, their agents, representatives or other persons acting on their behalf shall observe the Contractor's safety rules and requirements.
- C8.3 Such entry, occupation or use shall not constitute acceptance of the Work by the City nor shall it relieve the Contractor of responsibility to complete the Work.

C9. CONTROL OF PLANT AND MATERIAL

- C9.1 The Contractor shall not remove any Plant, except Contractor owned tools and equipment, or Material that they have brought to the Site and which is required to complete the Work without the prior consent of the Contract Administrator until the date of Total Performance.
- C9.2 Plant or Material that is the property of the City shall not be removed from the Site, disposed of or used except for the purposes of the Work without the prior consent of the Contract Administrator.
- C9.3 The Contractor shall keep such records of all Plant and Material supplied or placed in the care, custody and control of the Contractor by the City as the Contract Administrator may from time to time require and shall satisfy the Contract Administrator, when requested, that such Plant and Material are at the place and in the condition required by the City.

C10. RISK AND RESPONSIBILITY

- C10.1 Plant or Material brought to the Site or the Work by the Contractor shall remain at the risk and the responsibility of the Contractor from the commencement of the Work until:
- (a) Material is incorporated into the Work, as verified by the Contract Administrator; or
 - (b) Plant or Material is removed from the Site or the Work by the Contractor.
- C10.2 The Contractor shall be liable to the City for any loss of or damage to Plant or Material that is supplied to or placed in the care, custody and control of the Contractor by the City in connection with the Contract, whether or not that loss or damage is attributable to causes beyond the Contractor's control, from the commencement of the Work until:
- (a) Material is incorporated into the Work, as verified by the Contract Administrator; or
 - (b) Plant or Material is returned, in its original condition, to the City.
- C10.3 The Work shall remain at the risk and the responsibility of the Contractor from the commencement of the Work until the date of Total Performance.
- C10.4 The Contractor shall, at their own cost, be required to maintain the Work, make good all damage thereto and imperfections therein and to deliver the completed Work to the City in accordance with the provisions of the Contract.

C11. INSPECTION

General

- C11.1 The Contractor shall provide the Contract Administrator access, whether at the Site or at the premises of the Contractor or any Subcontractor, to observe and inspect the Work and its progress.
- C11.2 The Contractor shall provide the Contract Administrator any samples required to inspect the Work.
- C11.3 The Contractor shall provide the Contract Administrator any and all assistance which they may reasonably require to observe and inspect the Work.
- C11.4 Before beginning or resuming operations upon any portion of the Work, the Contractor shall notify the Contract Administrator so as to enable them to arrange for inspection. If the Contractor fails to notify the Contract Administrator, the Contractor shall, if and when required by the Contract Administrator, forthwith take down or expose and rebuild that portion of the Work required to facilitate inspection. The cost of such taking down or exposure, and rebuilding, if any, shall be borne by the Contractor.
- C11.5 If and when required by the Contract Administrator, the Contractor shall take down or expose forthwith any portion of the Work where the Contract Administrator determines that the Work is not in accordance with the Contract. The cost of such taking down or exposure, and rebuilding, if any, shall fall upon the City if the taking down or exposure indicates that the portion exposed is properly constructed and of satisfactory Material, but if otherwise the cost shall be borne by the Contractor.
- C11.6 The inspection herein provided for shall in no way relieve the Contractor of full responsibility for the quality, proper operation and performance of the Work.

Defective Work

- C11.7 If the Contract Administrator determines that the Work, or any part thereof, is defective or deficient, the City shall have the right to do any one or more of the following in addition to anything permitted elsewhere in the Contract or by law:
- (a) if the Contract Administrator determines that any Plant is defective, deficient or otherwise not in accordance with the Contract, the Contract Administrator may direct the Contractor to remove such Plant from the Site and promptly replace it with Plant which meets the requirements of the Contract;
 - (b) if the Contract Administrator determines that any Material which is not yet incorporated into the Work is defective, deficient or otherwise not in accordance with the Contract, the Contract Administrator may direct the Contractor to remove such Material from the Site and promptly replace it with Material which meets the requirements of the Contract;
 - (c) if the Contract Administrator determines that the Work or any portion thereof, including any Material which is incorporated therein, is defective, deficient or otherwise not in accordance with the Contract, the Contract Administrator may direct the Contractor to repair, rebuild, replace or otherwise remedy the defect or deficiency;
 - (d) if the Contract Administrator determines that it is not expedient to correct defective or deficient Work, the City may deduct from the Contract Price the difference between the value of the Work as done and that called for by the Contract, the amount of which shall be determined by the Contract Administrator.
- C11.8 The Contractor shall, without delay, carry out the directives of the Contract Administrator pursuant to C11.7. In addition, the Contractor shall be responsible for the cost of any additional inspections necessitated thereby.

C11.9 The City shall be entitled, in their sole discretion, to use the Work or any portion thereof notwithstanding that it may be defective or deficient, and such use shall not constitute acceptance of any defects or deficiencies nor shall it relieve the Contractor of responsibility to complete the Work.

C12. MEASUREMENT AND PAYMENT

General

- C12.1 Unless otherwise specified in the Supplemental Conditions, the City shall only be required to pay the Contractor for Material required for the Work upon the installation and total incorporation of same permanently in the Work.
- C12.2 The amounts to be paid by the City to the Contractor shall be the sums certified by the Contract Administrator.
- C12.2.1 For unit price Contracts, such sums shall be determined by the Contract Administrator upon the basis of the unit prices for the various classes of the Work stated on Form B: Prices. The total amount to be paid to the Contractor for the Work will be the amount arrived at by measuring the amount of each class of the Work listed on Form B: Prices and performed in accordance with the Contract, and pricing the same, in accordance with the unit prices stated thereon.
- C12.2.2 For lump sum Contracts, such sums shall be determined by the Contract Administrator upon the basis of the lump sum price stated on Form B: Prices.
- C12.2.3 Prices stated on Form B: Prices shall be deemed to include:
- (a) duty;
 - (b) freight and cartage;
 - (c) Federal and Provincial taxes [except the Goods and Services Tax (GST) and Manitoba Retail Sales Tax (MRST also known as PST), which shall be extra where applicable] and all charges governmental or otherwise paid;
 - (d) profit and all compensation which shall be due to the Contractor for the Work and all details necessarily connected with the completion of the Work and all risks and contingencies connected therewith.

Increased or Decreased Costs

- C12.3 The Contract Price shall not be increased or decreased by reason of any increase or decrease in the cost of the Work to the Contractor except as provided for herein.
- C12.4 Subject to C6.13, the Contract Price shall be adjusted if any change in a law or tax imposed under the Excise Act, the Excise Tax Act, the Customs Act, the Customs Tariff, The Mining Tax Act (Manitoba), or The Retail Sales Tax Act (Manitoba):
- (a) occurs after the Submission Deadline;
 - (b) applies to Material; and
 - (c) affects the cost of that Material to the Contractor.
- C12.5 If a change referred to in C12.4 occurs, the Contract Price shall be increased or decreased by an amount equal to the amount that is established, by an examination of the relevant records of the Contractor, to be the increase or decrease in the cost incurred that is directly attributable to that change.
- C12.6 For the purpose of C12.4, where a tax is changed after the Submission Deadline but public notice of the change has been given by either the Federal or Provincial Minister of Finance

before that date, the change shall be deemed to have occurred before the Submission Deadline and the Contractor shall not be entitled to an increase in the Contract Price.

Final Payment

- C12.7 Approval by the City of final payment shall be subject to issuance by the Contract Administrator of a certificate of Total Performance.
- C12.8 Neither the issuance of a certificate of Total Performance nor the final payment shall relieve the Contractor from their responsibilities either under C13 or as a result of any breach of the Contract by the Contractor including, but not limited to, defective or deficient Work appearing after Total Performance, nor shall it conclude or prejudice any of the powers of the Contract Administrator or the Chief Administrative Officer hereunder.
- C12.9 Subject to C12.10, acceptance by the Contractor of final payment shall constitute a waiver and release by them of all claims against the City whether for payment for Work done, damages or otherwise arising out of the Contract.
- C12.10 If the Contractor disputes a determination made by the Contract Administrator with respect to an interim or final payment, the Contractor shall be paid in accordance with the Contract Administrator's determination. The Contractor may concurrently appeal the determination of the Contract Administrator to the Chief Administrative Officer as provided for in C21.

C13. WARRANTY

General

- C13.1 The Contractor warrants that the Work will be free of any and all defects or deficiencies during the warranty period.

Warranty Period

- C13.2 Unless specifically stated otherwise in the Supplemental Conditions, the warranty period shall begin on the date of Total Performance and shall expire one (1) year thereafter unless extended pursuant to C13.2.1 or C13.2.2, in which case it shall expire when provided for under these sections.
- C13.2.1 If a defect or deficiency prevents the full and normal use or operation of the Work or any portion thereof, for purposes of calculating the warranty period, time shall be deemed to cease to elapse for the defective or deficient portion, and for any portion of the Work whose use or operation is prevented by such defect or deficiency, as of the date on which the defect or deficiency is observed or the use or operation is prevented and shall begin to run again when the defect or deficiency has been corrected or the Work may be used or operated to the satisfaction of the Contract Administrator.
- C13.2.2 If all outstanding defects or deficiencies have not been corrected to the satisfaction of the Contract Administrator by at least two (2) weeks prior to the date on which the warranty would expire except for this C13.2.2, then the Contract Administrator may require the Contractor to extend the warranty period for a further period of one (1) year for those defects or deficiencies in the Work identified by the Contract Administrator as still outstanding and uncorrected or for any portion of the Work whose use or operation is prevented by such defects or deficiencies.
- C13.3 Notwithstanding C13.2, if any law of Manitoba or of the jurisdiction in which the Work was manufactured requires, or if the manufacturer provides, a longer warranty period or a warranty which is more extensive in its nature, then the provisions of such law or manufacturer's warranty shall apply and shall be assigned to the City.

Warranty Inspection

- C13.4 Within a reasonable time before the warranty expires, the Contract Administrator shall request that the Contractor arrange, attend at and assist the Contract Administrator in carrying out an inspection of the Work.
- C13.5 Where the warranty period has been extended pursuant to C13.2.2, a second inspection shall be carried out in accordance with C13.4 before the warranty period, as extended, expires.

Warranty Work

- C13.6 The Contract Administrator shall notify the Contractor of observed defects or deficiencies and damage, if any, arising or resulting from such defects or deficiencies, within the warranty period.
- C13.7 The Contractor shall correct, to the satisfaction of the Contract Administrator, all defects, deficiencies and damage identified by the Contract Administrator in the manner and within the time period(s) specified in the notice.
- C13.8 If the Contractor disagrees with the Contract Administrator's determination under C13.6, they shall nonetheless comply with C13.7. The Contractor may concurrently appeal the determination of the Contract Administrator as provided for in C21.

Acceptance of the Work

- C13.9 The Contract Administrator shall certify acceptance of the Work upon:
- (a) the satisfactory performance of the Work during the warranty period;
 - (b) the Contractor having fully complied with C13.7; and
 - (c) the successful conclusion of any tests required under the Contract.
- C13.10 Only certification of acceptance of the Work shall constitute:
- (a) acceptance of the Work; or
 - (b) acceptance that the Work or any part thereof has been duly performed; or
 - (c) acceptance of the accuracy of any claim of the Contractor.
- C13.11 Certification of acceptance of the Work shall not, however, relieve the Contractor from their responsibilities for any breach of the Contract including, but not limited to, defective or deficient Work appearing after the date of such certification.

C14. GOVERNING LAW

- C14.1 The Contract has been entered into in the Province of Manitoba and shall be governed by and construed and enforced in accordance with the laws of the Province of Manitoba and of Canada as applicable therein. The parties hereby irrevocably and unconditionally agree to the exclusive jurisdiction of the Courts in the Province of Manitoba and all courts competent to hear appeals therefrom.

C15. ASSIGNMENT

- C15.1 The Contractor shall not assign the Contract or any payments thereunder without the prior consent of the City.
- C15.2 The Contract shall inure to the benefit of and be binding on the respective heirs, executors, administrators, successors and assigns of the City and the Contractor.

C16. FORCE MAJEURE

- C16.1 If the Contractor is delayed in the performance of the Work by reason of strikes, lock-outs (including lock-outs decreed for their members by a recognized contractors' association of which the Contractor is a member), an act of God, or any other cause which the Contractor satisfies the Contract Administrator to be totally beyond their control, the work schedule shall be adjusted by a period of time equal to the time lost due to such delays and costs related to such delays will be determined in accordance with C7.
- C16.2 No extension for delay shall be approved unless a notice of the claim is received by the Contract Administrator from the Contractor within seven (7) Calendar Days of the date on which the cause of delay arose.
- C16.3 Any delay or failure by the City to perform their obligations under this Contract shall be excused, to the extent that the delay or failure is caused by an event or occurrence beyond the reasonable control of the City and without their fault or negligence, such as by way of example and not by way of limitation, strikes, lock-outs, or acts of God, provided that written notice of the delay shall be given by the City within seven (7) Calendar Days of the date on which the cause of delay arose.
- C16.4 Any notice or claim for extension must state the cause of delay and the length of extension requested.
- C16.4.1 In the case of a continuing cause of delay, only one claim for an extension shall be necessary.

C17. INDEMNITY

- C17.1 The Contractor shall save harmless and indemnify the City in the amount of two million dollars (\$2,000,000), plus a minimum of twice the Contract value against all costs, damages or expenses arising from actions, claims, demands and proceedings, by whomsoever brought, made or taken as a result of acts or omissions of the Contractor, their Subcontractors, employees or agents in the performance or purported performance of the Work, and more particularly from:
- (a) accidental injury to or death of any person whether retained by or in the employ of the Contractor or not, arising directly or indirectly by reason of the performance of the Work, or by reason of any trespass on or damage to property;
 - (b) damage to any property owned in whole or in part by the City, or which the City by duty or custom is obliged, directly or indirectly, in any way or to any degree, to construct, repair or maintain;
 - (c) damage to, or trespass or encroachment upon, property owned by persons other than the City;
 - (d) any claim for lien or trust claim served upon the City;
 - (e) failure to pay a Workers Compensation assessment, or Federal or Provincial taxes;
 - (f) unauthorized use of any design, device, material or process covered by letters patent, copyright, trademark or trade name in connection with the Work;
 - (g) inaccuracies in any information provided to the City by the Contractor.
- C17.2 The City has the right, acting reasonably and upon notice to the Contractor, to settle any such action, proceeding, claim or demand and charge the Contractor with the amount so paid or to be paid in effecting a settlement.
- C17.3 The Contractor shall pay to the City the value of all legal fees and disbursements required to settle any such claim or to defend the City against any such claim, action, proceeding, claim or

demand notwithstanding that the settlement or defence of the said action, proceeding, claim or demand was undertaken on behalf of the City by a salaried employee of the City.

- C17.4 If the Contractor fails to make any payment required to be made to the City pursuant to C17.2 and C17.3, the City shall be entitled to deduct the amount of such payment from any payment required to be made by the City to the Contractor under the Contract or take whatever other remedies against the Contractor that the City may have at law.

C18. EVENTS OF DEFAULT

- C18.1 An event of default will be deemed to have occurred if the Contractor:

- (a) abandons the Work; or
- (b) is adjudged bankrupt or files for bankruptcy, becomes insolvent, makes a general assignment for the benefit of their creditors, or has a receiver or liquidator appointed in respect of their assets; or
- (c) is not performing or has not been performing the Work, or any part thereof, in a sound and workmanlike manner and in all respects in strict conformity with the Contract; or
- (d) is not progressing continuously with the Work or any part thereof, and in such a manner as to ensure the completion of the Work or any part thereof, in accordance with the work schedule; or
- (e) fails to take down, repair, redo, replace or otherwise remedy any defective or deficient Work, or to remove any defective or deficient Plant or Material; or
- (f) fails to remedy defects or deficiencies during the warranty period in the manner and within the time periods specified by the Contract Administrator; or
- (g) fails to make prompt payment to their Subcontractors, their employees or on account of the purchase or rental of Plant or Material; or
- (h) fails to promptly secure a discharge of a claim for lien or trust claim served upon the City; or
- (i) fails to comply with any laws, by-laws or statutory regulations; or
- (j) fails to provide competent supervision at the Site; or
- (k) fails to submit any schedules, documents or information required by the Contract; or
- (l) refuses or neglects to comply with an order given by the Contract Administrator; or
- (m) commits any other breach of the Contract.

- C18.2 If the City, acting reasonably, deems an event of default as defined in C18.1 to have occurred the Contract Administrator shall give the Contractor notice in writing, pursuant to C22, that the Contractor is in default of their obligations under the Contract, which notice shall include detailed information as to the nature of the default, and instruct the Contractor to correct the default within seven (7) Calendar Days immediately following the receipt of such written notice. If the default cannot be corrected in seven (7) Calendar Days or in such other time period as may be subsequently agreed in writing by the parties, the Contractor shall be in compliance with the City's instructions if the Contractor:

- (a) commences the correction of the default within the specified time; and
- (b) provides the City with an acceptable schedule for such correction; and
- (c) corrects the default in accordance with the Contract terms and a schedule acceptable to the Contract Administrator.

- C18.2.1 Should an event of default as defined in C18.1 occur that results in an emergency or an issue of health and safety, the Contract Administrator shall give the Contractor notice in

writing that the Contractor is in default of their obligations under the Contract, which notice shall include detailed information as to the nature of the default, and instruct the Contractor to correct the default immediately upon receipt of such written notice. If the default cannot be corrected immediately, the Contractor shall be in compliance with the City's instructions if the Contractor commences the correction of the default within a timeframe subsequently agreed to by the parties.

- C18.3 Any provision of the Contract may be waived only by express waiver in writing by the Contract Administrator. No express waiver of any provision shall imply the waiver of any other provision.

C19. CITY'S RIGHTS AND REMEDIES

General

- C19.1 If an event of default has occurred, and the Contractor has failed to comply with the curative provisions set out in C18.2, the City may, without process or action at law, do any one or more of the following:

- (a) withhold or retain the whole or part of any payment;
- (b) take the whole of the Work, or any part or parts thereof out of the hands of the Contractor;
- (c) demand payment for any amount owed to the City, including amounts paid or costs incurred by the City in connection with the event of default;
- (d) terminate the Contract;

all as more particularly set forth in C19.3 to C19.14 below.

- C19.2 The duties and obligations imposed upon the Contractor by the Contract and the rights and remedies available to the City hereunder shall be in addition to and not a limitation of any duties, obligations, rights and remedies otherwise imposed upon the Contractor or available to the City at law.

Withholding of Payment

- C19.3 If the City withholds or retains the whole or part of any payment pursuant to C19.1(a) the City may apply the amount withheld or retained to:

- (a) pay any person to whom the Contractor is indebted in respect of Material, labour or services furnished for the Work;
- (b) secure the discharge of a lien or trust claim served upon the City;
- (c) indemnify, compensate or reimburse the City for amounts paid or costs incurred by the City in connection with the event of default.

- C19.4 Payment of such amounts shall discharge the City's liability to the Contractor to the same extent as payment directly to them.

- C19.5 Upon remedy of the event of default, any amount remaining from the amount withheld will be released to the Contractor.

Taking the Work out of the Contractor's Control

- C19.6 If the City takes the whole of the Work, or any part or parts thereof out of the hands of the Contractor pursuant to C19.1(b), the Contractor shall immediately discontinue the Work or any part or parts thereof specified in the said notice.

- C19.7 The taking of the Work or any part thereof out of the Contractor's control pursuant to C19.6 shall not relieve or discharge the Contractor from any obligation under the Contract or imposed upon

them by law except the obligation to complete the performance of that part of the Work that was taken out of the Contractor's control.

- C19.8 If the Work or any part thereof is taken out of the Contractor's control pursuant to C19.6, all Plant and Material, and the interest of the Contractor in all licences, powers and privileges acquired, used or provided by the Contractor under the Contract shall be assigned by the Contractor to the City without compensation to the Contractor.
- C19.9 The City shall have the right, subject to C20, to complete, by contract or with their own forces, the Work taken out of the Contractor's control, and the Contractor agrees that the City shall have the right to take possession of and use any of the Contractor's material and property of every kind provided by the Contractor for the purpose of the Work, and to procure other Plant or Material for the completion thereof. The City shall not be required to obtain the lowest price to complete the Work taken out of the Contractor's control.
- C19.10 When the Contract Administrator certifies that any Plant, Material or any interest of the Contractor referred to in C19.8, is no longer required for the purposes of the Work, or that it is not in the best interest of the City to retain that Plant, Material or interest, it shall revert to the Contractor.
- C19.11 If the cost to the City of completing the Work or portion thereof as aforesaid is less than the amount to which the Contractor would have been entitled under the Contract for so doing, the Contractor shall have no claims in respect thereof against the City. If the cost of the Work performed by the City is more than the amount to which the Contractor would have been entitled under the Contract for the same Work, the City shall have a claim against the Contractor for such excess costs.
- C19.12 When any portion of the Work is being carried on by the City, by contract or otherwise, the Contractor shall continue to perform the remainder of the Work in accordance with the Contract, and in such manner as in no way to hinder or interfere with the persons performing the portion of the Work being carried on by the City.

Demand for Payment

- C19.13 If the City demands payment pursuant to C19.1(c) the Contractor shall, within seven (7) Calendar Days of receipt of a notice from the City, pay the City the amount set out in the notice.

Termination

- C19.14 If the City terminates the Contract pursuant to C19.1(d) the Contractor shall immediately discontinue the Work, and shall:
- (a) deliver any Work completed prior to termination; and
 - (b) transfer control of the Site to the City in the condition as it was upon termination of the Contract.
- C19.15 Upon termination of the Contract, all Plant and Material, and the interest of the Contractor in all licences, powers and privileges acquired, used or provided by the Contractor under the Contract shall be assigned by the Contractor to the City, at the City's sole discretion, without compensation to the Contractor. Upon termination, the City's only obligation to the Contractor is to pay for Work satisfactorily performed up to the date of termination, in accordance with C12.

C20. SURETY'S OPTION TO ASSUME THE CONTRACT

- C20.1 Where a Performance Bond is a requirement of the Contract, and the City has given notice to the Contractor that the Work or part thereof has been taken out of the Contractor's control, the City shall promptly provide the Surety with a copy of such notice.

- C20.2 The Surety may, at their option, assume the Contract in respect of the Work specified in the notice and proceed to perform same.
- C20.3 Within fourteen (14) Calendar Days after the date on which the Surety is provided with a copy of the notice given to the Contractor, the Surety shall advise the City whether it intends to exercise such option. The said option shall expire if the Surety fails to so advise the City within the time specified.
- C20.4 If the Surety has exercised their option in accordance with the foregoing, it shall take the Contractor's place in all respects. The Surety shall be bound by all terms and conditions of the Contract and shall be paid in accordance with the terms of the Contract for all Work performed by it.
- C20.5 The Surety may, with the consent of the Chief Administrative Officer, subcontract the Work so taken over or any portion thereof.

C21. DISPUTE RESOLUTION

Appeals & Requests for Appeals

- C21.1 If the Contractor disagrees with a Final Determination of the Contract Administrator they may, within seven (7) Calendar Days after receiving notice of the Contract Administrator's Final Determination, submit a properly completed Dispute Resolution Process Application Form ("Application Form"), as set out on the City's Materials Management Website, to the City of Winnipeg Legal Services Department ("Legal Services") at the address specified therein.
- C21.2 The Appeal Process detailed in C21.3 through C21.10 ("Appeal Process") will only be available to Contractors where the disagreement under C21.1 is with respect to factual matters. There will be no access to the Appeal Process for disagreements with respect to legal matters. Legal Services is the sole and final authority to determine whether an Application Form raises a Disputed Matter that is a factual dispute and suitable for the Appeal Process, and no appeal is available to the Contractor from such a determination. If the Contractor neglects or fails to observe fully and faithfully the above and following conditions for participation in the Appeal Process, they shall be deemed to have waived any ability to participate in the Appeal Process with respect to the Disputed Matter.
- C21.3 Within ten (10) Business Days of the receipt by Legal Services of the Application Form pursuant to the above C21.1, Legal Services shall:
- (a) review the Application Form to determine if the matter(s) contained therein ("Disputed Matter") are permitted under the Appeal Process with respect to factual matters as provided in the above C21.2, and;
 - (b) issue a letter to the Contractor identifying Legal Services' determination ("Legal Services Response Letter").
- C21.4 If Legal Services has determined that the Disputed Matter may proceed in the Appeal Process, the Contractor and Contract Administrator's management level representatives (including the applicable Department head) must, within fifteen (15) Business Days of the date of the Legal Services Response Letter, begin negotiations in good faith on the Disputed Matter. Both the Contractor and Contract Administrator's representatives must make all reasonable good faith efforts to resolve the Disputed Matter. As these negotiations are not an adjudicative hearing, neither party may have legal counsel present during the negotiations.
- C21.5 If the negotiations required by C21.4 do not successfully resolve the Disputed Matter within thirty (30) Business Days of the date of the Legal Services Response Letter, the Contractor must, within ten (10) Business Days of the end of the period provided in this C21.5 for negotiations, or of the date the parties otherwise agree negotiations have failed, submit their

written Appeal Form, in the manner and format set out on the City's Materials Management Website, to the Chief Administrative Officer, and to the Contract Administrator. The Contractor may not raise any other disputes other than the Disputed Matter in their Appeal Form.

- C21.6 The Contract Administrator shall submit an Appeal Form identifying their Department's position to the Chief Administrative Officer and to the Contractor within ten (10) Business Days of the Contract Administrator's receipt of the Contractor's Appeal Form submitted pursuant to C21.5.
- C21.7 The Contractor and Contract Administrator's respective Appeal Forms, and documents appended by reference, must contain all information, known to that party to be relevant to the Disputed Matter, including relevant excerpts of the Contract. For the avoidance of doubt, sections of the Contract which are not relevant to the Disputed Matter, or any other irrelevant information or documents, should not be submitted in either Appeal Form.
- C21.8 The City's Chief Administrative Officer shall review the Appeal Forms submitted by the Contractor and Contract Administrator, and shall issue a written decision on the Disputed Matter contained therein ("CAO's Determination") within thirty (30) Business Days of their receipt of the Contract Administrator's Appeal Form ("CAO Review Period"). The Chief Administrative Officer may request additional documents or information once from either party at any time during the CAO Review Period, and may extend the CAO Review Period by up to thirty (30) Business Days following receipt of new information or documents, up to a maximum period of sixty (60) Business Days after the Chief Administrative Officer's receipt of the Contract Administrator's Appeal Form. If the Chief Administrative Officer has requested additional information or documentation from one party during the CAO Review Period, the other party shall also receive such additional information or documentation, and may issue a response thereto; however, each party is limited to one (1) additional response during the CAO Review Period.
- C21.9 There is no opportunity for the parties to appear in person, or to present oral submissions to the Chief Administrative Officer.
- C21.10 The CAO's Determination may not be further appealed. If the Contractor disagrees with the CAO's Determination they may request that the Disputed Matter be referred to arbitration in accordance with C21.11, by providing notice to the Chief Administrative Officer within seven (7) Calendar Days after receiving notice of the Chief Administrative Officer's determination.

Arbitration & Requests for Arbitration

- C21.11 If, at any time before the termination of the warranty period (except as limited by the above C21.10), any dispute, difference or question shall arise between the City and the Contractor regarding the Work, then every such dispute, difference or question may, with the consent of the Chief Administrative Officer, on behalf of the City, and the Contractor, be referred to arbitration. Notwithstanding that the parties may have consented to arbitration, no arbitration shall proceed before the date of Total Performance.
- C21.12 The party desiring arbitration (the "Requesting Party") shall request the consent of the other party (the "Other Party") to refer a particular dispute, difference or question to arbitration.
- C21.13 The Other Party shall reply to the request within seven (7) Calendar Days of receiving same.

Referral to a Single Arbitrator

- C21.14 If the Other Party has consented to arbitration, the Requesting Party shall nominate an arbitrator (the "Requesting Party's Nominee") within seven (7) Calendar Days of receiving the reply. The Other Party shall have seven (7) Calendar Days after receiving notice of the nomination to accept or reject the Requesting Party's Nominee.

C21.15 If the Other Party accepts the Requesting Party's Nominee, the dispute, difference or question shall be promptly referred to them.

Referral to a Panel of Arbitrators

C21.16 If the Other Party rejects the Requesting Party's Nominee, it shall, within seven (7) Calendar Days of rejection, appoint their own arbitrator.

C21.17 The Requesting Party shall, within seven (7) Calendar Days of receiving the Other Party's rejection, appoint their own arbitrator.

C21.18 The arbitrators appointed under C21.16 and C21.17 shall, within seven (7) Calendar Days of the date on which the last of them was appointed, appoint a third arbitrator (the "Panel Chair") who will act as chair of the arbitration panel.

General

C21.19 The Arbitration Act (Manitoba) or any successor legislation thereto shall apply to the arbitration in all respects except as expressly otherwise provided in these General Conditions.

C21.20 The single arbitrator or the Panel Chair, as the case may be, shall determine the procedure to be followed in the arbitration, which shall be consistent with The Arbitration Act (Manitoba) or any successor legislation thereto.

C21.21 Where the matter proceeds with a single arbitrator, each party shall be responsible for their own legal expenses, expenses to produce expert evidence or other expenses voluntarily incurred, and for an equal share of the fees and expenses of the single arbitrator and of any other expenses related to the arbitration.

C21.22 Where the matter proceeds with an arbitration panel, each party shall be responsible for their own legal expenses, expenses to produce expert evidence or other expenses voluntarily incurred, for the fees and expenses of the arbitrator appointed by it, and for an equal share of the fees and expenses of the Panel Chair and of any other expenses related to the arbitration.

C22. NOTICES

C22.1 A notice or other communication required or permitted to be given under the Contract shall be in writing and delivered by mail, hand, facsimile transmission (fax) or electronic method such as email that provides a paper record of the text of the notice or communication.

C22.2 A notice or other communication shall be sent to the Contract Administrator.

C22.3 Either party may, by giving notice, designate another address at which it will accept notices or other communications.

C22.4 Delivery by hand to the Contractor's designated supervisor at the Site shall constitute delivery to the Contractor.

C22.5 A notice or other communication shall:

- (a) if delivered by mail, be deemed to have been received on the second Business Day on which mail is delivered by Canada Post following the date of mailing;
- (b) if delivered by hand, be deemed to have been received on the day of delivery;
- (c) if delivered by fax, be deemed to have been received on the day of transmission, if a Business Day, and if not a Business Day, on the next Business Day after the day of transmission; and

- (d) if delivered by email, be deemed to have been received on the day the sender receives an email 'read' receipt confirming receipt of the notice at the recipient's email address.

C23. OWNERSHIP OF INFORMATION, CONFIDENTIALITY AND NON DISCLOSURE

- C23.1 The Contract, all deliverables produced or developed, and information provided to or acquired by the Contractor are the property of the City and shall not be appropriated for the Contractor's own use, or for the use of any third party.
- C23.2 The Contractor shall not make any public announcements or press releases regarding the Contract, without the prior written authorization of the Contract Administrator.
- C23.3 The following shall be confidential and shall not be disclosed by the Contractor to the media or any member of the public without the prior written authorization of the Contract Administrator;
 - (a) information provided to the Contractor by the City or acquired by the Contractor during the course of the Work;
 - (b) the Contract, all deliverables produced or developed; and
 - (c) any statement of fact or opinion regarding any aspect of the Contract.
- C23.4 A Contractor who violates any provision of C23 may be determined to be in breach of Contract.