



**THE CITY OF WINNIPEG**

**REQUEST FOR  
QUALIFICATIONS**

**BID OPPORTUNITY NO. 118-2007**

**WINNIPEG WATER TREATMENT PROGRAM - REQUEST FOR QUALIFICATIONS  
FOR THE SUPPLY OF HMI HARDWARE AND PLC AND HMI SOFTWARE  
CONFIGURATION SERVICES**

## TABLE OF CONTENTS

### **PART A - QUALIFICATION SUBMISSION**

Form A: Qualification Application	1
Form B: Qualification Questionnaire	3

### **PART B - INSTRUCTIONS**

B1. Request Title	1
B2. Submission Deadline	1
B3. Definitions	1
B4. Enquiries	2
B5. Addenda	2
B6. Qualification Submission	3
B7. Qualification Application	3
B8. Clarifications Requested By the City	4
B9. Opening of Qualification Submissions and Release of Information	4
B10. Qualification Evaluation	4
B11. Notification of Status	5

### **PART C - TECHNICAL REQUIREMENTS**

C1. Introduction	1
C2. Description of Control System	1
C3. Critical Stages	1

### **PART D - ATTACHMENTS**

D1. Attachments	2
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## PART B - INSTRUCTIONS

### B1. REQUEST TITLE

- B1.1 WINNIPEG WATER TREATMENT PROGRAM - REQUEST FOR QUALIFICATIONS FOR THE SUPPLY OF HMI HARDWARE AND PLC AND HMI SOFTWARE CONFIGURATION SERVICES

### B2. SUBMISSION DEADLINE

- B2.1 The Submission Deadline is 4:00 p.m. Winnipeg time, April 4, 2007.
- B2.2 Qualification Submissions determined by the Manager of Materials to have been received later than the Submission Deadline will not be accepted and will be returned upon request.
- B2.3 The City may extend the Submission Deadline by issuing an addendum at any time prior to the time and date specified in B2.1.

### B3. DEFINITIONS

- B3.1 Where used in this RFQ:
- (a) “**Applicant**” means any person submitting a Qualification Submission;
  - (b) “**Business Day**” means any Calendar Day, other than a Saturday, Sunday, or a statutory or civic holiday;
  - (c) “**City Solicitor**” means the City employee holding that office or, if applicable, the successor to the authority or responsibility of such office;
  - (d) “**Commissioning Operations Agent**” means a qualified maintenance/operations team that takes primary responsibility for operation and maintenance of the WTP during the Commissioning Period;
  - (e) “**Commissioning Period**” means the time between the completion of Performance Verification and Total Performance during which a system is operated under the Commissioning Operations Agent’s control (with Contractor’s support) to demonstrate to the City that it operates in conformance with the design intent;
  - (f) “**Contract**” means a future agreement entered into between the City and a successful Applicant.
  - (g) “**FDS**” or “**Functional Design Specification**” means a submittal developed by the Contractor that details the solution he will supply and install to meet the City defined requirements for the WTP control system. The FDS will provide the basis of the software configuration and will be validated during Performance Verification to ensure that all required functions are present and that they operate correctly;
  - (h) “**HDS**” or “**Hardware Design Specification**” means a submittal developed by the Contractor that fully describes all the hardware aspects of the Work;
  - (i) “**HMI**” means human machine interface;
  - (j) “**Manager of Materials**” means the City employee holding that office or, if applicable, the successor to the authority or responsibility of such office;
  - (k) “**Performance Verification**” means all factory and field tests, demonstrations and other activities required from the Contractor to demonstrate to the Contract Administrator’s satisfaction that the equipment installed under his Contract is performing as specified and is ready to control all of the WTP systems and to be operated by the Commissioning Operations Agent during the Commissioning Period;
  - (l) “**PLC**” means programmable logic controller;
  - (m) “**Professional Engineer**” means an engineer registered in the Province of Manitoba;

- (n) “**Qualification Submission**” means that portion of the Request for Qualification which must be completed or provided and submitted by the Submission Deadline;
- (o) “**Request for Qualifications**” or “**RFQ**” means the Qualification Submission, these Instructions, the Attachments and all addenda;
- (p) “**SCADA**” means supervisory control and data acquisition;
- (q) “**SDS**” or “**Software Design Specification**” means a submittal prepared by the Contractor that describes how the software will be encoded in a structured and efficient manner;
- (r) “**Submission Deadline**” means the time and date set out in the Instruction for final receipt of Qualification Submissions;
- (s) “**WTP**” means means the Winnipeg Water Treatment Plant and includes the structure and all equipment and materials supplied and installed into the building, under multiple construction contracts.

B3.2 Unless otherwise defined above, terms used in this RFQ shall have the meaning attributed to them in the General Conditions For The Supply and Delivery of Goods.

#### **B4. ENQUIRIES**

B4.1 All enquiries shall be directed to :

Bill Richert, P. Eng.  
UMA Projects (CM) Ltd.  
1479 Buffalo Place  
Winnipeg, MB  
R3T 1L7

e-mail: bill.richert@uma.aecom.com

Telephone No. (204) 986-6053  
Facsimile No. (204) 986-8393

B4.2 If the Applicant finds errors, discrepancies or omissions in the Request for Qualification, or is unsure of the meaning or intent of any provision therein, the Applicant shall notify UMA Projects (CM) Ltd of the error, discrepancy or omission, or request a clarification as to the meaning or intent of the provision at least five (5) Business Days prior to the Submission Deadline.

B4.3 Responses to enquiries which, in the sole judgment of UMA Projects (CM) Ltd, require a correction to or a clarification of the Request for Qualifications will be provided by The City to all Applicants by issuing an addendum.

B4.4 Responses to enquiries which, in the sole judgment of UMA Projects (CM) Ltd, do not require a correction to or a clarification of the Request for Qualification will be provided by UMA Projects (CM) Ltd only to the Applicant who made the enquiry.

B4.5 The Applicant shall not be entitled to rely on any response or interpretation received pursuant to B4.4 unless that response or interpretation is provided by UMA Projects (CM) Ltd in writing.

#### **B5. ADDENDA**

B5.1 The City may, at any time prior to the Submission deadline, issue addenda correcting errors, discrepancies or omissions in the Request for Qualifications, or clarifying the meaning or intent of any provision therein.

B5.2 The City will issue each addendum at least two (2) Business Days prior to the Submission Deadline, or provide at least two (2) Business Days by extending the Submission Deadline.

B5.2.1 Addenda will be available on the Bid Opportunities page at The City of Winnipeg, Corporate Finance, Materials Management Branch internet site at <http://www.winnipeg.ca/matmgt>.

B5.2.2 The Applicant is responsible for ensuring that he has received all addenda and is advised to check the Materials Management Branch internet site for addenda regularly and shortly before the Submission Deadline, as may be amended by addendum.

B5.3 The Applicant shall acknowledge receipt of each addendum in Paragraph 7 of Form A: Qualification Application. Failure to acknowledge receipt of an addendum may render a Qualification Submission non-responsive.

## **B6. QUALIFICATION SUBMISSION**

B6.1 The Qualification Submission consists of the following components:

- (a) Form A: Qualification Application;
- (b) Form B: Qualification Questionnaire.

B6.2 All components of the Qualification Submission shall be fully completed or provided, and submitted by the Applicant no later than the Submission Deadline, with all required entries made clearly and completely in ink, to constitute a responsive Qualification Submission.

B6.3 The Qualification Submission shall be submitted enclosed and sealed in an envelope clearly marked with the Bid Opportunity number and the Applicant's name and address.

B6.3.1 Samples or other components of the Qualification Submission which cannot reasonably be enclosed in the envelope may be packaged separately, but shall be clearly marked with the Bid Opportunity number, the Applicant's name and address, and an indication that the contents are part of the Applicant's Qualification Submission.

B6.4 Qualification Submissions submitted by facsimile transmission (fax) or internet electronic mail (e-mail) will not be accepted.

B6.5 Qualification Submissions shall be submitted to:

The City of Winnipeg  
Corporate Finance Department  
Materials Management Branch  
185 King Street, Main Floor  
Winnipeg MB R3B 1J1

## **B7. QUALIFICATION APPLICATION**

B7.1 The Applicant shall complete Form A: Qualification Application, making all required entries.

B7.2 Paragraph 2 of Form A: Qualification Application shall be completed in accordance with the following requirements:

- (a) if the Applicant is a sole proprietor carrying on business in his own name, his name shall be inserted;
- (b) if the Applicant is a partnership, the full name of the partnership shall be inserted;
- (c) if the Applicant is a corporation, the full name of the corporation shall be inserted;
- (d) if the Applicant is carrying on business under a name other than his own, the business name and the name of every partner or corporation who is the owner of such business name shall be inserted.

B7.2.1 If a Qualification Submission is submitted jointly by two or more persons, each and all such persons shall identify themselves in accordance with B7.2.

B7.3 In Paragraph 3 of Form A: Qualification Application, the Applicant shall identify a contact person who is authorized to represent the Applicant for purposes of the Qualification Submission.

B7.4 Paragraph 8 of Form A: Qualification Application shall be signed in accordance with the following requirements:

- (a) if the Applicant is a sole proprietor carrying on business in his own name, it shall be signed by the Applicant;
- (b) if the Applicant is a partnership, it shall be signed by the partner or partners who have authority to sign for the partnership;
- (c) if the Applicant is a corporation, it shall be signed by its duly authorized officer or officers and the corporate seal, if the corporation has one, should be affixed;
- (d) if the Applicant is carrying on business under a name other than his own, it shall be signed by the registered owner of the business name, or by the registered owner's authorized officials if the owner is a partnership or a corporation.

B7.4.1 The name and official capacity of all individuals signing Form A: Qualification Application shall be printed below such signatures.

B7.4.2 All signatures shall be original and shall be witnessed except where a corporate seal has been affixed.

B7.5 If a Qualification Submission is submitted jointly by two or more persons, the word "Applicant" shall mean each and all such persons, and the undertakings, covenants and obligations of such joint Applicants in the Qualification Submission and the Contract, when awarded, shall be both joint and several.

#### **B8. CLARIFICATIONS REQUESTED BY THE CITY**

B8.1 The Applicant shall be prepared to submit, within three (3) Business Days of a request by UMA Projects (CM) Ltd., proof satisfactory to UMA Projects (CM) Ltd. of the qualifications of the Applicant and of any proposed Subcontractor.

B8.2 The Applicant shall provide, on the request of UMA Projects (CM) Ltd., full access to any of the Applicant's equipment and facilities to confirm, to UMA Projects (CM) Ltd.'s satisfaction, that the Applicant's equipment and facilities are adequate to perform the Work.

#### **B9. OPENING OF QUALIFICATION SUBMISSIONS AND RELEASE OF INFORMATION**

B9.1 Qualification Submissions will not be opened publicly.

B9.2 All information will become and remain property of the City; none will be returned. If the Qualification Submission contains any proprietary or trade secret information, said information shall be indicated as such.

B9.3 To the extent permitted, the City shall treat all Qualification Submissions as confidential, however the Applicant is advised that any information contained in any Qualification Submission may be released if required by City policy or procedures, by The Freedom of Information and Protection of Privacy Act (Manitoba), by other authorities having jurisdiction, or by law.

#### **B10. QUALIFICATION EVALUATION**

B10.1 The Qualification Submission shall be complete, in the correct format, and in accordance with the requirements contained herein. All applicable portions of the forms shall be completed. If the space provided does not suffice, the Applicant shall provide additional attachments as necessary. Qualification Submissions failing to clearly present all the requested information or failing to be in the format requested shall be considered non-responsive and shall be cause for rejection.

B10.2 The Applicant's Qualification Submission will be evaluated based on the information provided by the Applicant in his Qualification Submission and the Applicant's ability to perform work of a similar size, nature and scope as the Work specified in C2 as supported by his Qualification Submission.

B10.3 Only successful Applicants that have submitted a Qualification Submission in response to this RFQ shall be included as pre-qualified bidders for the Winnipeg Water Treatment Program supply of PLC and HMI hardware and programming services.

**B11. NOTIFICATION OF STATUS**

B11.1 The Applicant will be notified by mail regarding the acceptability of their Qualification Submission.

B11.2 The City will not award any contracts or to defray any costs incurred by the Applicant in the preparation of the Qualification Submission pursuant to this request.

## **PART C - TECHNICAL REQUIREMENTS**

### **C1. INTRODUCTION**

- C1.1 The Work contemplated consists generally of the supply of computer hardware and software, and the design and configuration of PLC'S and HMI's resulting in a complete, validated, highly secure and fully functional Winnipeg Water Treatment Plant Control and Monitoring System. The system will be installed at the City's new Water Treatment Plant.

### **C2. DESCRIPTION OF CONTROL SYSTEM**

- C2.1 The WTP will be controlled by a distributed network of Modicon PLC's. These PLC's in combination with HMI's located both within a central control room and throughout various areas of the WTP will form a plant wide control and monitoring system. The various components of the system will communicate over an Ethernet based fibre optic loop.
- C2.2 The WTP PLC I/O count is approximately 3800. Including I/O derived from "intelligent" instrumentation, the overall I/O count is estimated to be 5300 points. At the top end of the system there will be a control room containing approximately 8 operator workstations and two server rooms (primary and backup). The server rooms will house all the rack mounted computers associated with the system. There will be 26 PLC processors working alongside numerous remote I/O racks and devices connected directly to the Ethernet network such as VFD's, electrical protection relays etc. There will also be other workstations and HMI'S located at various places around the WTP.

### **C3. CRITICAL STAGES**

- C3.1 If the City awards a contract for the supply of HMI hardware and PLC and HMI configuration services for the Winnipeg Water Treatment Program, then the critical stages of the Work are expected to be as follows:
- (a) June 15, 2007: Award of the Contract by the City;
  - (b) August 31, 2007: Contractor to complete HDS, FDS and SDS;
  - (c) April 30, 2008: Contractor to complete all fabrication and factory testing and to begin the delivery of the Goods to the WTP Site;
  - (d) October 31, 2008: Complete Performance Verification;
  - (e) December 31, 2008: End of Commissioning Period and achieve Total Performance.



## **PART D - ATTACHMENTS**

### **D1. ATTACHMENTS**

D1.1 The following are attached for the Applicant's information:

Attachments.

- Sample Form G1: Bid Bond and Agreement to Bond
- Sample Form G2: Irrevocable Standby Letter of Credit and Undertaking
- Sample Form H1: Performance Bond
- Sample Form H2: Irrevocable Standby Letter of Credit
- The City of Winnipeg General Conditions for the Supply and Delivery of Goods

**SAMPLE FORM G1: BID BOND AND AGREEMENT TO BOND**  
(Page 1 of 2)

**BID BOND**

KNOW ALL MEN BY THESE PRESENTS THAT

\_\_\_\_\_

(hereinafter called the "Principal") and

\_\_\_\_\_

(hereinafter called the "Surety"), are held and firmly bound unto **THE CITY OF WINNIPEG** (hereinafter called the "Obligee") in the sum of ten percent (10%) of the Total Bid Price set out in the Proposal Submission hereinafter described, for the payment of which sum the Principal and Surety bind themselves, their heirs, executors, administrators, successors and assigns, jointly and severally, firmly by these presents.

WHEREAS the Principal has submitted a Proposal to the Obligee dated the

\_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_ for

RFP NO. 118-2007

**ERROR! REFERENCE SOURCE NOT FOUND.**

as more fully set out in the Request for Proposal.

NOW THEREFORE the condition of this obligation is such that if the Proposal of the Principal is not accepted, or if said Proposal is accepted and the Principal, in accordance with the terms of the Proposal, enters into a Contract with the said Obligee and furnishes the required performance security for guaranteeing the faithful performance of the Contract, this obligation shall be void, but otherwise shall remain in full force and effect.

IN WITNESS WHEREOF the Principal and Surety have signed and sealed this bond the

\_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_ .

SIGNED AND SEALED  
in the presence of:

\_\_\_\_\_  
(Witness)

\_\_\_\_\_  
(Name of Principal)

Per: \_\_\_\_\_ (Seal)

Per: \_\_\_\_\_

\_\_\_\_\_  
(Name of Surety)

By: \_\_\_\_\_ (Seal)  
(Attorney-in-Fact)

**SAMPLE FORM G1: BID BOND AND AGREEMENT TO BOND**

(Page 2 of 2)

**AGREEMENT TO BOND**

(to be attached to and to form part of Bid Bond)

The Surety on the attached Bid Bond hereby undertakes and agrees with **THE CITY OF WINNIPEG** to become bound as Surety for the Principal,

\_\_\_\_\_  
(Name of Bidder)

\_\_\_\_\_  
(Place)

the Bidder to you on \_\_\_\_\_, 20\_\_\_\_ for

RFP NO. 118-2007

**WINNIPEG WATER TREATMENT PROGRAM – REQUEST FOR QUALIFICATIONS FOR THE SUPPLY OF HMI HARDWARE AND PLC AND HMI SOFTWARE CONFIGURATION SERVICES**

in an amount equal to fifty percent (50%) of the Contract Price for the due and proper performance of the Work shown and described in the Request for Proposal, if our Principal's Proposal is accepted by you, such Performance Bond to be maintained and continue in full force and effect until the expiration of the warranty period. The Performance Bond shall be in the form specified in the Request for Proposal.

It is a condition that this Agreement to Bond shall become null and void if the Performance Bond mentioned above is not required from our Principal within Sixty (60) Calendar Days following the Submission Deadline.

AND IT IS HEREBY DECLARED AND AGREED that the Surety shall be liable as Principal, and that nothing of any kind or matter whatsoever that will not discharge the Principal shall operate as a discharge or release of liability of the Surety, any law or usage relating to the liability of Sureties to the contrary notwithstanding.

SIGNED AND SEALED this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_ .

\_\_\_\_\_  
(Name of Surety)

By: \_\_\_\_\_ (Seal)  
(Attorney-in-Fact)

**SAMPLE FORM G2: IRREVOCABLE STANDBY LETTER OF CREDIT AND UNDERTAKING  
(BID SECURITY) (Page 1 of 2)**

\_\_\_\_\_  
(Date)

The City of Winnipeg  
Corporate Finance Department  
Materials Management Branch  
185 King Street, Main Floor  
Winnipeg MB R3B 1J1

RE: BID SECURITY - RFP NO. 118-2007

WINNIPEG WATER TREATMENT PROGRAM – REQUEST FOR QUALIFICATIONS FOR THE SUPPLY OF HMI HARDWARE AND PLC AND HMI SOFTWARE CONFIGURATION SERVICES

Pursuant to the request of and for the account of our customer,

\_\_\_\_\_,  
(Name of Bidder)

\_\_\_\_\_  
(Address of Bidder)

WE HEREBY ESTABLISH in your favour our irrevocable Standby Letter of Credit for a sum not exceeding in the aggregate

\_\_\_\_\_  
\_\_\_\_\_ Canadian dollars.

This Standby Letter of Credit may be drawn on by you at any time and from time to time upon written demand for payment made upon us by you. It is understood that we are obligated under this Standby Letter of Credit for the payment of monies only and we hereby agree that we shall honour your demand for payment without inquiring whether you have a right as between yourself and our customer to make such demand and without recognizing any claim of our customer or objection by the customer to payment by us.

The amount of this Standby Letter of Credit may be reduced from time to time only by amounts drawn upon it by you or by formal notice in writing given to us by you if you desire such reduction or are willing that it be made.

Partial drawings are permitted.

We engage with you that all demands for payment made within the terms and currency of this Standby Letter of Credit will be duly honoured if presented to us at:

\_\_\_\_\_  
(Address)

and we confirm and hereby undertake to ensure that all demands for payment will be duly honoured by us.

**SAMPLE FORM G2: IRREVOCABLE STANDBY LETTER OF CREDIT AND UNDERTAKING  
(BID SECURITY) (Page 2 of 2)**

All demands for payment shall specifically state that they are drawn under this Standby Letter of Credit.

This Standby Letter of Credit will expire on ^

if our customer's Proposal is not accepted, and if accepted, when our customer has entered into a Contract with you and has furnished the required performance security for guaranteeing the faithful performance of the Contract.

This Standby Letter of Credit may not be revoked or amended without your prior written approval.

WE HEREBY UNDERTAKE and agree to provide in your favour an irrevocable Standby Letter of Credit in an amount equal to fifty percent (50%) of the Contract Price for the due and proper performance of the Work shown and described in the Request for Proposal, if our customer's Proposal is accepted by you. Such Standby Letter of Credit shall be maintained and continue in full force and effect until the expiration of the warranty period. The Standby Letter of Credit shall be in the form specified in the Request for Proposal.

This credit is subject to the Uniform Customs and Practice for Documentary Credit (1993 Revision), International Chamber of Commerce Publication Number 500.

\_\_\_\_\_  
(Name of bank or financial institution)

Per: \_\_\_\_\_  
(Authorized Signing Officer)

Per: \_\_\_\_\_  
(Authorized Signing Officer)

**SAMPLE FORM H1: PERFORMANCE BOND**

KNOW ALL MEN BY THESE PRESENTS THAT

\_\_\_\_\_ ,  
(hereinafter called the "Principal"), and

\_\_\_\_\_ ,  
(hereinafter called the "Surety"), are held and firmly bound unto **THE CITY OF WINNIPEG** (hereinafter called the "Obligee"), in the sum of

\_\_\_\_\_ dollars (\$\_\_\_\_\_ )

of lawful money of Canada to be paid to the Obligee, or its successors or assigns, for the payment of which sum the Principal and the Surety bind themselves, their heirs, executors, administrators, successors and assigns, jointly and severally, firmly by these presents.

WHEREAS the Principal has entered into a written contract with the Obligee dated the

\_\_\_\_\_ day of \_\_\_\_\_ , 20\_\_\_\_ , for:

RFP NO. 118-2007

WINNIPEG WATER TREATMENT PROGRAM – REQUEST FOR QUALIFICATIONS FOR THE SUPPLY OF HMI HARDWARE AND PLC AND HMI SOFTWARE CONFIGURATION SERVICES

which is by reference made part hereof and is hereinafter referred to as the "Contract".

NOW THEREFORE the condition of the above obligation is such that if the Principal shall:

- (a) carry out and perform the Contract and every part thereof in the manner and within the times set forth in the Contract and in accordance with the terms and conditions specified in the Contract;
- (b) perform the Work in a good, proper, workmanlike manner;
- (c) make all the payments whether to the Obligee or to others as therein provided;
- (d) in every other respect comply with the conditions and perform the covenants contained in the Contract; and
- (e) indemnify and save harmless the Obligee against and from all loss, costs, damages, claims, and demands of every description as set forth in the Contract, and from all penalties, assessments, claims, actions for loss, damages or compensation whether arising under "The Workers Compensation Act", or any other Act or otherwise arising out of or in any way connected with the performance or non-performance of the Contract or any part thereof during the term of the Contract and the warranty period provided for therein;

THEN THIS OBLIGATION SHALL BE VOID, but otherwise shall remain in full force and effect. The Surety shall not, however, be liable for a greater sum than the sum specified above.

AND IT IS HEREBY DECLARED AND AGREED that the Surety shall be liable as Principal, and that nothing of any kind or matter whatsoever that will not discharge the Principal shall operate as a discharge or release of liability of the Surety, any law or usage relating to the liability of Sureties to the contrary notwithstanding.

IN WITNESS WHEREOF the Principal and Surety have signed and sealed this bond the

\_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_ .

SIGNED AND SEALED  
in the presence of:

\_\_\_\_\_  
(Witness)

\_\_\_\_\_  
(Name of Principal)

Per: \_\_\_\_\_ (Seal)

Per: \_\_\_\_\_

\_\_\_\_\_  
(Name of Surety)

By: \_\_\_\_\_ (Seal)  
(Attorney-in-Fact)

**SAMPLE - FORM H2: IRREVOCABLE STANDBY LETTER OF CREDIT  
(PERFORMANCE SECURITY)**

\_\_\_\_\_  
(Date)

The City of Winnipeg  
Corporate Services Department  
Legal Services Division  
185 King Street, 3rd Floor  
Winnipeg MB R3B 1J1

RE: PERFORMANCE SECURITY – RFP NO. 118-2007

WINNIPEG WATER TREATMENT PROGRAM – REQUEST FOR QUALIFICATIONS FOR THE  
SUPPLY OF HMI HARDWARE AND PLC AND HMI SOFTWARE CONFIGURATION SERVICES

Pursuant to the request of and for the account of our customer,

\_\_\_\_\_  
(Name of Contractor)

\_\_\_\_\_  
(Address of Contractor)

WE HEREBY ESTABLISH in your favour our irrevocable Standby Letter of Credit for a sum not exceeding in the aggregate

\_\_\_\_\_ Canadian dollars.

This Standby Letter of Credit may be drawn on by you at any time and from time to time upon written demand for payment made upon us by you. It is understood that we are obligated under this Standby Letter of Credit for the payment of monies only and we hereby agree that we shall honour your demand for payment without inquiring whether you have a right as between yourself and our customer to make such demand and without recognizing any claim of our customer or objection by the customer to payment by us.

The amount of this Standby Letter of Credit may be reduced from time to time only by amounts drawn upon it by you or by formal notice in writing given to us by you if you desire such reduction or are willing that it be made.

Partial drawings are permitted.

We engage with you that all demands for payment made within the terms and currency of this Standby Letter of Credit will be duly honoured if presented to us at:

\_\_\_\_\_  
(Address)

and we confirm and hereby undertake to ensure that all demands for payment will be duly honoured by us.



All demands for payment shall specifically state that they are drawn under this Standby Letter of Credit.

Subject to the condition hereinafter set forth, this Standby Letter of Credit will expire on

\_\_\_\_\_  
(Date)

It is a condition of this Standby Letter of Credit that it shall be deemed to be automatically extended from year to year without amendment from the present or any future expiry date, unless at least 30 days prior to the present or any future expiry date, we notify you in writing that we elect not to consider this Standby Letter of Credit to be renewable for any additional period.

This Standby Letter of Credit may not be revoked or amended without your prior written approval.

This credit is subject to the Uniform Customs and Practice for Documentary Credit (1993 Revision), International Chamber of Commerce Publication Number 500.

\_\_\_\_\_  
(Name of bank or financial institution)

Per: \_\_\_\_\_  
(Authorized Signing Officer)

Per: \_\_\_\_\_  
(Authorized Signing Officer)

# GENERAL CONDITIONS FOR THE SUPPLY AND DELIVERY OF GOODS

## INDEX TO GENERAL CONDITIONS

	PAGE		PAGE
<b>ARTICLE I – Interpretation</b> .....	1	<b>ARTICLE VI – Risk and Responsibility</b> .....	7
GC.1.01 – Definitions .....	1	GC.6.01 – Risk and Responsibility .....	7
GC.1.02 – Interpretation .....	2	GC.6.02 – Contractor to Keep Records .....	7
GC.1.03 – Headings for Convenience Only .....	2		
GC.1.04 – Inconsistencies .....	2	<b>ARTICLE VII – Legal Relations</b> .....	7
<b>ARTICLE II – Declarations by Contractor</b> .....	2	GC.7.01 – Laws, Notices, Permits and Fees .....	7
GC.2.01 – Investigating the Site .....	2	GC.7.02 – Patents and Royalties .....	7
GC.2.02 – Good Faith .....	2	GC.7.03 – Indemnity .....	7
<b>ARTICLE III – Award and Execution of the Contract</b> ...	2	GC.7.04 – Rights and Remedies .....	7
GC.3.01 – Execution of Contract .....	2	GC.7.05 – Notices .....	8
GC.3.02 – Failure to Sign Contract .....	2	GC.7.06 – Independent Contractor .....	8
GC.3.03 – Commencement of Work .....	2		
GC.3.04 – Bar to Payment .....	3	<b>ARTICLE VIII – Prosecution and Progress</b> .....	8
<b>ARTICLE IV – Scope of Work</b> .....	3	GC.8.01 – Schedule .....	8
GC.4.01 – Work to be Done According to .....	3	GC.8.02 – Forfeiture of Contract .....	8
Contract		GC.8.03 – Effect of Taking the Work out of .....	9
GC.4.02 – Contractor To Furnish Labour .....	3	the Contractor's Control	
and Materials		GC.8.04 – Delay in Completing Contract .....	9
GC.4.03 – Documents Supplement Each Other .....	3		
GC.4.04 – Shop Drawings .....	3	<b>ARTICLE IX – Measurement and Payment</b> .....	9
GC.4.05 – Changes in the Work: City .....	3	GC.9.01 – Contract Prices .....	9
GC.4.06 – Changes in the Work: Contractor .....	4	GC.9.02 – Increased or Decreased Costs .....	9
GC.4.07 – Valuation and Certification of .....	4	GC.9.03 – Measurement and Payment .....	10
Extra Work		GC.9.04 – Waiver of Claims .....	10
GC.4.08 – Diminution of Work .....	5	GC.9.05 – Payment .....	10
<b>ARTICLE V – Control of Work</b> .....	5		
GC.5.01 – Authority of Contract Administrator .....	5	<b>ARTICLE X – WARRANTY</b> .....	10
GC.5.02 – Responsibilities of Contractor .....	6	GC.10.01 – Warranty .....	10
GC.5.03 – Inspection .....	6	GC.10.02 – Acceptance of the Work .....	11
GC.5.04 – Defective Work .....	6		
		<b>ARTICLE XI – DISPUTES</b> .....	11
		GC.11.01 – Arbitration .....	11

THE CITY OF WINNIPEG

# GENERAL CONDITIONS FOR THE SUPPLY AND DELIVERY OF GOODS

## ARTICLE I – INTERPRETATION

### GC.1.01 Definitions:

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

- (1) **"Bid" or "Tender"** means the offer as proposed by the Bidder submitted on the Tender Submission. The terms "Bid" or "Tender" are used interchangeably herein.
- (2) **"Bidder"** means any person submitting a Bid for the Work.
- (3) **"Board of Commissioners"** means the Board of Commissioners as that term is defined under The City of Winnipeg Act and any By-Law relative to the organization of the City.
- (4) **"Calendar Day"** means the period from one midnight to the following midnight.
- (5) **"City"** means The City of Winnipeg as incorporated under The City of Winnipeg Act, Chapter 105, Statutes of Manitoba 1971, and any subsequent amendments thereto.
- (6) **"Commissioner"** means that member of the Board of Commissioners or his designate having jurisdiction over the Department of the City responsible for the administration of the Contract.
- (7) **"Contract" or "Contract Documents"** means the combined documents consisting of the Agreement; Addenda; the Bidding Instructions; these General Conditions; the Supplemental Conditions; the Drawings; the Specifications; the Tender Submission; Shop Drawings; Performance Security and all other exhibits mentioned in the Contract Documents as forming part thereof.
- (8) **"Contract Administrator"** means a person duly authorized by the Commissioner in writing to represent the City in the Work pertaining to this Contract.
- (9) **"Contract Time"** means the time stipulated in the Contract Documents for Substantial Performance of the Work.
- (10) **"Contractor"** means the person undertaking the execution of the Work under the terms of the Contract.
- (11) **"Council"** means the Council of The City of Winnipeg.
- (12) **"Drawings" or "Plans"** means drawings or plans which show the character 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. The terms "Drawings" or "Plans" are used interchangeably herein.
- (13) **"Extra Work"** means the furnishing of labour, services, materials and/or equipment and/or the performance of any Work not directly or by implication called for by the Contract.
- (14) **"Goods"** means chattels personal other than choses in action or money, and includes, food products, emblements, industrial growing crops and things attached to or forming part of the land which are agreed to be severed before sale or under the contract of sale, and chattels which are to be affixed to land upon or after delivery thereof.
- (15) **"Other Contractor"** means any person employed by or having a contract directly or indirectly with the City otherwise than through the Contractor.
- (16) **"Person"** means an individual, firm, partnership, association or corporation, or any combination thereof, and includes heirs, administrators, executors or legal representatives of a person.
- (17) **"Plant"** means all material and/or equipment and/or things brought to or constructed upon the Site by the Contractor for the performance of the Work, but does not include materials, equipment or other things which are to form part of the permanent Work.
- (18) **"Shop Drawings"** means all drawings, diagrams, illustrations, schedules, performance charts, brochures and other data which are prepared by the Contractor, and Sub-contractor, manufacturer, supplier or distributor and which illustrates the equipment, material or some portion of the Work.
- (19) **"Site"** means the lands and other places authorized by the Commissioner for the purposes of the Contract.
- (20) **"Solicitor"** means the City Solicitor of The City of Winnipeg or the person from time to time duly authorized by the City Solicitor to act in such capacity in his stead.
- (21) **"Specification"** means the written description of the physical or functional characteristics of the supplies, services and construction, or any part thereof, including without limitation any requirement for testing or inspection.
- (22) **"Sub-contractor"** means a Person contracting with the Contractor or another Sub-contractor of the Contractor for the execution of a part or parts of the Work or for the furnishing of material.
- (23) **"Surety"** means the Person who executes the Bond, guaranteeing the fulfillment of the Contract, all as required by the Contract Documents to be furnished by the Contractor.
- (24) **"Tender Submission"** means the portion of the Tender Package that must be returned to constitute a formal Bid.
- (25) **"Tender Package"** means the Bidding Instructions; these General Conditions; the Supplemental Conditions; the Drawings; the Specifications; the Tender Submission; Performance Security and all Addenda.
- (26) **"Total Performance"** of the Work means when the entire Work, except those items arising from the provisions of Article X-WARRANTY, have been performed to the requirements of the Contract Documents and is so certified, in writing, by the Contract Administrator.
- (27) **"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 terms and conditions of the Contract and in particular, but without limiting the generality

of the foregoing, includes the furnishing of all labour, services materials and/or equipment necessary or incidental to the performance of the Contract, including all Extra Work or Changes in the Work which may be ordered as herein provided.

- (28) "Working Day" means any Calendar Day, other than a Saturday, Sunday or a Statutory or Civic Holiday, on which, in the opinion of the Contract Administrator, atmospheric and/or 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.

**GC.1.02 Interpretation:**

- (1) This Contract shall inure to the benefit of and be binding on the respective executors, administrators, successors and assigns of the City and the Contractor.
- (2) Where the "Contractor" as defined herein consists of more than one person or corporation, their liability to perform the covenants herein contained to be performed by the Contractor shall be joint and several.
- (3) Wherever the singular or masculine are used, the same shall be construed as meaning the plural or the feminine or the neuter as the context may reasonably require.
- (4) This Contract has been entered into and shall be governed by and construed and enforced in accordance with the laws of the Province of Manitoba.

**1.03 Headings for Convenience Only:**

Headings, titles and marginal notes in the Contract are inserted for convenience only and are not explanatory of the Articles or Clauses with which they appear.

**1.04 Inconsistencies:**

In the event of conflicts between Contract Documents the following shall apply:

- (a) figured dimensions shown on a Drawing shall govern over scaled or implied dimensions on the same Drawing;
- (b) Drawings of larger scale shall govern over those of smaller scale of the same date;
- (c) Specifications shall govern over Drawings of the same date;
- (d) the General Conditions shall govern over Specifications;
- (e) the Supplemental Conditions shall govern over the General Conditions;
- (f) the executed Agreement between the City and Contractor shall govern over all documents; and
- (g) notwithstanding the foregoing, documents of a later date shall always govern over documents of the same category of an earlier date.

**ARTICLE II — DECLARATIONS BY CONTRACTOR**

**GC.2.01 Investigating the Site:**

The Contractor declares that in bidding for the Work and in entering into the Contract, he has investigated the Site, the character of the Work to be done and all local conditions.

**GC.2.02 Good Faith:**

The Contractor declares that he has submitted his Bid and entered into this Contract with the City in good faith and that to the best of his knowledge no member of Council, the Board of Commissioners, or any officer or employee of the City has any pecuniary interest, direct or indirect, in the said Contract, and further that the said Contractor shall forfeit all claims under this Contract for Work done, beyond the actual proven expenses of the Contractor, if any member of Council, the Board of Commissioners, or any officer or employee of the City is at any time interested therein or if any interest therein is given or agreed to be given to him and as well shall refund to the City any monies paid to the Contractor by the City under this Contract beyond the actual expenses of the Contractor. The Contractor declares that he has not participated in any collusive scheme or combine in connection with his Bid or Contract.

**ARTICLE III — AWARD AND EXECUTION OF THE CONTRACT**

**GC.3.01 Execution of Contract:**

The successful Bidder shall, upon notification of award of the Contract by the City:

- 1) execute and return the Contract Documents in the manner stipulated by the Solicitor within Seven (7) Calendar Days of receipt of the Contract Documents together with written Notice signed by the Solicitor to the Contractor in the manner provided in GC.7.06 hereof;
- 2) provide the Performance Security specified in the Bidding Instructions to the Solicitor prior to the commencement of Work but in no event later than the time specified in GC.3.01(1) above for the return of the executed Contract Documents;
- 3) provide evidence of the Insurance Coverage specified in the Supplemental Conditions in a form satisfactory to the Solicitor prior to the commencement of Work but in no event later than the time specified in GC.3.01(1) above for the return of the executed Contract Documents.

**GC.3.02 Failure to Sign Contract:**

In the event that the Bidder does not meet all the requirements of GC.3.01 hereof, the City shall consider that the Bidder has abandoned the Contract, whereupon the acceptance of the Bid by the City shall be null and void and the City shall be entitled to retain the Bid Security accompanying the Bid as liquidated damages.

**GC.3.03 Commencement of Work:**

The Contractor shall not procure material or commence Work until he is in receipt of a Letter of Intent from the Commissioner authorizing the commencement of Work and has provided the Solicitor with the required Performance Security and Insurance Coverage.

**GC.3.04 Bar to Payment:**

No payments will be made by the City to the Contractor until the Contractor has met all the requirements of GC.3.01 hereof.

**ARTICLE IV — SCOPE OF WORK**

**GC.4.01 Work to be Done According to Contract:**

The Contractor shall execute, complete and maintain the Work in strict accordance with the Contract Documents.

**GC.4.02 Contractor to Furnish Labour and Materials:**

- (1) The Contractor shall provide and pay for all materials, equipment, labour, transportation and machinery, tools, appliances, water and all other facilities and incidentals necessary for the execution, testing, operation, completion and maintenance of the Work.
- (2) All materials and equipment to be incorporated in the Work shall be new, fit for the purpose intended and shall meet or exceed the kind, quality and quantity of same specified in the Contract Documents. If required, the Contractor shall provide at his own expense evidence satisfactory to the Contract Administrator that the foregoing requirements have been met.

**GC.4.03 Documents Supplement Each Other:**

- (1) The Contract Documents are complementary and what is called for by any one shall be binding as if called for by all.
- (2) If the Contract Documents or any part thereof appear indefinite, not clear or contradictory to the Contractor, he shall refer such feature or features to the Contract Administrator, for interpretation or clarification.
- (3) The Contract Administrator shall have the right at any time to correct errors or omissions in the Contract Documents or to issue additional Drawings and Specifications at any time further detailing, explaining or modifying the Work. Such Drawings and Specifications shall either supplement or supersede those signed at the time the Contract is executed.
- (4) The Contractor shall be responsible for conveying the interpretation or clarification of the Contract Documents, as given by the Contract Administrator, to Sub-contractors.
- (5) The Contractor shall be responsible for any Work not explicitly set out in the Contract Documents but which may be reasonably implied for the proper completion of the Work.

**GC.4.04 Shop Drawings:**

- (1) The Contractor shall arrange for the preparation of Shop Drawings required by the Contract Documents or as may reasonably be required by the Contract Administrator.
- (2) The Contractor shall review all Shop Drawings prior to submitting same to the Contract Administrator. By this review, the Contractor represents that he has determined and verified all measurements, field construction criteria, materials, catalogue numbers and similar data and that he has checked and coordinated each Shop Drawing with the requirements for the Work and of the Contract. The Contractor's review of each Shop Drawing shall be certified by stamp, date and signature in the manner stipulated by the Contract Administrator.
- (3) The Contractor shall promptly submit to the Contract Administrator the required number of copies of the Shop Drawings and in an orderly sequence to prevent delay in the Work or in the Work of Other Contractors. Shop Drawings shall be submitted in the form specified by the Contract Administrator. At the time of submission the Contractor shall notify the Contract Administrator of any deviations in the Shop Drawings from the requirements of the Contract.
- (4) The Contract Administrator shall review the Shop Drawings promptly or in accordance with any schedule agreed upon in writing. The Contract Administrator, upon completion of the review, shall communicate either his acceptance or rejection of same to the Contractor. The Contract Administrator's review and approval shall be for conformity to the design concept of the Work and for compliance with the Contract Documents. The acceptance of a component or a sub-assembly shall not constitute acceptance of the assembly of which it is a part. The review shall not relieve the Contractor of responsibility for errors and omissions in the Shop Drawings or of responsibility for meeting all requirements of the Contract unless a deviation on the Shop Drawings has been approved by the Contract Administrator in writing. No Work called for by Shop Drawings shall be undertaken by the Contractor until the Contract Administrator's review is completed and acceptance of same has been communicated to the Contractor.
- (5) The Contractor shall promptly make any changes in the Shop Drawings which the Contract Administrator may require and which are consistent with the Contract Documents and shall promptly resubmit same to the Contract Administrator for review and acceptance unless otherwise directed by the Contract Administrator. When resubmitting the Shop Drawings, the Contractor shall notify the Contract Administrator in writing of any revisions other than those requested by the Contract Administrator.

**GC.4.05 Changes in the Work: City**

- (1) The City shall have the right, at any time before or after the execution of the Contract or after the commencement of the Work or during the prosecution of the Work, to alter, deduct from, add to or omit (referred to collectively herein as a "Change in Work") any part of the Work, all without in any way affecting or vitiating the Contract, and the Contractor shall carry out all such alterations or additions upon receipt of written Notice from the Contract Administrator.
- (2) The Contract Administrator shall make a determination at the time of issuing the written Notice referred to in GC.4.05 (1) above and shall set out his determination in the said Notice as to whether:
  - (a) the Change in Work so ordered falls within the scope of the Work required to be performed under the Contract with no adjustment to the Contract Time and/or Contract Price, or
  - (b) the Change in Work so ordered amounts to Extra Work with a corresponding adjustment to the Contract Time and/or Contract Price, or
  - (c) the Change in Work so ordered amounts to a diminution in the scope of the Work required to be performed under the Contract with a corresponding adjustment to the Contract Time and/or Contract Price.

- (3) In the event that the Contractor disputes a determination made by the Contract Administrator, the Contractor shall act in accordance with the Contract Administrator's determination provided however that the Contractor shall have the right to appeal the determination of the Contract Administrator to the Commissioner as provided in GC.4.05(4) below.
- (4) If the Contractor disagrees with the determination of the Contract Administrator he must within Seven (7) Calendar Days after receiving Notice of the Contract Administrator's determination, notify the Commissioner in writing of his contention with respect thereto and request a determination thereon from the Commissioner.
- (5) If the Contractor fails to so appeal to the Commissioner for a determination within Seven (7) Calendar Days after receiving Notice of the Contract Administrator's determination, the Contractor shall be deemed to have waived any said claim. Oral appeals or oral protests shall not amount to substantial compliance with the provisions of this Clause.
- (6) If the Contractor disagrees with the determination of the Commissioner he must within Seven (7) Calendar Days after receiving Notice of the Commissioner's determination, notify the Board of Commissioners in writing of his contention with respect thereto and request that the dispute be referred to Arbitration in accordance with GC.11.01.
- (7) In the case of the Contractor's neglect or failure to observe fully and faithfully the above conditions, he shall forfeit all right to payment therefor which he otherwise might have had, and shall not make any claim in respect thereof, and if made, the City may reject the same as invalid and he shall not have any right of recovery in respect thereof, at law or otherwise.
- (8) It is intended in all matters referred to above that both the Contract Administrator and the Contractor shall act promptly.

**GC.4.06 Changes in the Work: Contractor**

- (1) If the Contractor is of the opinion that it is necessary at any time before or after the execution of the Contract or after the commencement of the Work or during the prosecution of the Work, to alter, deduct from, add to or omit any part of the Work to accomplish the result intended by this Contract, he shall provide written Notice of this requirement and details of same to the Contract Administrator for a determination as set out in GC.4.05(2) above prior to undertaking the proposed change in Work.
- (2) GC.4.05(3) through (8) shall apply mutatis mutandis herein.

**GC.4.07 Valuation and Certification of Extra Work:**

- (1) The value of Extra Work shall be determined by one or more of the following methods:
  - (a) by estimate in a lump sum;
  - (b) by the unit prices set out in the Contract or subsequently agreed upon;
  - (c) by the actual cost of the Extra Work to the Contractor plus a fixed fee;
  - (d) by the actual cost of the Extra Work to the Contractor plus 15% on any portion of the Work undertaken by the Contractor's own forces and 10% on any portion of the Work undertaken by a Sub-contractor.
- (2) Where the value of Extra Work is proposed or required to be determined by either method (a) or (b) of GC.4.07(1), the Contractor shall present his proposed change in the Contract Time and/or Contract Price to the Contract Administrator supported by appropriate documentation in a form acceptable to the Contract Administrator prior to the commencement of the proposed Extra Work. The Contract Administrator shall evaluate and verify the acceptability of such claim and, if approved by the Commissioner, a change order shall be issued to the Contractor by the Contract Administrator amending the Contract Time and/or Contract Price.
- (3) Where the value of the Extra Work is determined by either method (c) or (d) of GC.4.07(1) the actual cost permitted to be claimed by the Contractor shall be restricted to the actual cost of the Extra Work or part thereof and any other payments made by the Contractor with the prior written approval of the Contract Administrator that are necessary for the performance of the Extra Work.
- (4) In the case of Extra Work to be paid for under methods (b), (c) and (d) of GC.4.07(1), the form of presentation of costs and methods of measurement shall be stipulated in writing by the Contract Administrator prior to the Contractor undertaking the Extra Work.
- (5) If the method of valuation, measurement, change in Contract Time and/or Contract Price cannot be promptly agreed upon prior to the commencement of the Extra Work and the Contract Administrator requires the Extra Work to proceed, then the Contract Administrator in the first instance will determine the method of valuation, measurement and the change in Contract Time and/or Contract Price in accordance with GC.4.07(1). The Contract Administrator shall issue a written authorization for the Extra Work setting out the method of valuation, measurement, and any approved change in the Contract Time and/or Contract Price.
- (6) In the case of a dispute in the method of valuation, measurement, change in Contract Time and/or Contract Price for the Extra Work authorized in writing by the Contract Administrator and pending final determination thereof in accordance with GC.4.07(7) or GC.4.07(9) hereof, the Contract Administrator shall certify the value of the Extra Work performed in accordance with the Contract Administrator's own valuation and measurement of the Extra Work and shall also certify any change in Contract Time and/or Contract Price.
- (7) If the Contractor disagrees with the Contract Administrator's method of valuation, measurement, change in Contract Time and/or Contract Price, he must within Seven (7) Calendar Days after receiving Notice of the Contract Administrator's determination, notify the Commissioner in writing of his contention with respect thereto and request a determination thereon from the Commissioner.
- (8) If the Contractor fails to so appeal to the Commissioner for a determination within Seven (7) Calendar Days after receiving Notice of the Contract Administrator's determination, the Contractor shall be deemed to have waived any said claim. Oral appeals or oral protests shall not amount to substantial compliance with the provisions of this Clause.
- (9) If the Contractor disagrees with the determination of the Commissioner he must within Seven (7) Calendar Days after receiving Notice of the Commissioner's determination, notify the Board of Commissioners in writing of his contention with respect thereto and request that the dispute be referred to Arbitration in accordance with GC.11.01.

- (10) In the case of the Contractor's neglect or failure to observe fully and faithfully the above conditions, he shall forfeit all right to any claim for additional payment therefor over and above that approved by the Contract Administrator, which he otherwise might have had, and shall not make any claim in respect thereof, and if made, the City may reject the same as invalid and he shall not have any right of recovery in respect thereof, at law or otherwise.
- (11) It is intended in all matters referred to above that both the Contract Administrator and Contractor shall act promptly.

#### **GC.4.08 Diminution of Work**

- (1) Should the amount of the Work originally intended to be done under the Contract be diminished, no claim shall be made for damages on the ground of loss of anticipated profit on Work so diminished or on any other ground, provided however that the value of the diminution shall not exceed Twenty (20%) Percent of the Contract Price.  
In the case of a Unit Price Contract where a change is made involving diminution of the Work, only the Work actually done shall be paid for and such payment shall be based on the prices in the Tender Submission.  
In the case of a Lump Sum Contract where a change is made involving diminution of Work and the parties cannot agree on the reduction in Contract Price which should properly be made as a result thereof the matter in dispute shall be decided by the Contract Administrator. If the Contractor disagrees with the Contract Administrator's determination, he must within Seven (7) Calendar Days after receiving Notice of the Contract Administrator's determination, notify the Commissioner in writing of his contention with respect thereto and request a determination thereon from the Commissioner.
- (2) If the Contractor fails to so appeal to the Commissioner for a determination within Seven (7) Calendar Days after receiving Notice of the Contract Administrator's determination, the Contractor shall be deemed to have waived any said claim. Oral appeals or oral protests shall not amount to substantial compliance with the provisions of this Clause.
- (3) If the Contractor disagrees with the determination of the Commissioner he must within Seven (7) Calendar Days after receiving Notice of the Commissioner's determination, notify the Board of Commissioners in writing of his contention with respect thereto and request that the dispute be referred to Arbitration in accordance with GC.11.01.
- (4) Where a change results in a diminution of Work after commencement of Work or any part thereof resulting in extra cost to the Contractor, for which he would not be entitled to payment on a unit price basis, or in loss of Work already completed but not paid for, or loss to the Contractor in respect of material or equipment purchased by him for the Work but not used thereon as required by the City, compensation shall be made to the Contractor by the City in the sum or sums to be fixed by the Contract Administrator in accordance with GC.4.07(1). If the Contractor disagrees with the Contract Administrator's decision, he must within Seven (7) Calendar Days after receiving Notice of the Contract Administrator's determination notify the Commissioner in writing of his contention with respect thereto and request a determination thereon from the Commissioner.
- (5) If the Contractor fails to so appeal to the Commissioner for a determination within Seven (7) Calendar Days after receiving Notice of the Contract Administrator's determination, the Contractor shall be deemed to have waived any said claim. Oral appeals or oral protests shall not amount to substantial compliance with the provisions of this Clause.
- (6) If the Contractor disagrees with the determination of the Commissioner he must within Seven (7) Calendar Days after receiving Notice of the Commissioner's determination, notify the Board of Commissioners in writing of his contention with respect thereto and request that the dispute be referred to Arbitration in accordance with GC.11.01.
- (7) In the case of the Contractor's neglect or failure to observe fully and faithfully the above conditions, he shall forfeit all right to any claim for additional payment therefor over and above that approved by the Contract Administrator, which he otherwise might have had, and shall not make any claim in respect thereof, and if made, the City may reject the same as invalid and he shall not have any right of recovery in respect thereof, at law or otherwise.
- (8) It is intended in all matters referred to above that both the Contract Administrator and Contractor shall act promptly.

### **ARTICLE V — CONTROL OF WORK**

#### **GC.5.01 Authority of Contract Administrator:**

- (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 in the Contract Documents or otherwise in writing.
- (2) The Contract Administrator shall be responsible for the interpretation or clarification of the Contract Documents or any part thereof which appear indefinite, not clear or contradictory to the Contractor.
- (3) The Contract Administrator shall have full authority to examine, inspect, approve or reject materials, methods of procedure and workmanship without in any way relieving the Contractor from his responsibilities under GC.5.02. The Contract Administrator shall be the sole judge of determining whether the kind, quantity and quality of materials, methods of procedure and workmanship meet or exceed the requirements of the Contract Documents.
- (4) The Contract Administrator shall have the authority to object to any person employed or retained by the Contractor in the execution of the Work with or without reason. The Contractor shall forthwith replace the person so objected to. The Contract Administrator may recommend to the Commissioner that the Commissioner refuse to pay any invoice submitted by the Contractor or to issue any Progress Estimate and/or Certificate to the Contractor while such person remains engaged upon the Work.
- (5) The Contract Administrator shall have the authority to order the Contractor to stop the Work whenever such stoppage may be necessary, in the Contract Administrator's reasonable opinion, to ensure the proper execution of the Work in accordance with the requirements of the Contract Documents. The Contractor shall comply with such orders immediately. Neither the giving or carrying out of such orders shall thereby entitle the Contractor to any extra payment, nor shall the Contractor be relieved of his responsibilities under GC.5.02.
- (6) In the event that the Contractor disputes a determination made by the Contract Administrator on any of the foregoing matters, the Contractor shall act in accordance with the Contract Administrator's decision. If the Contractor disagrees with the Contract Administrator's decision, he must within Seven (7) Calendar Days after receiving Notice of the Contract Administrator's decision notify the Commissioner in writing of his contention with respect thereto and request a determination from the Commissioner. Neither the giving or carrying out of such orders shall thereby entitle the Contractor to any extra payment, nor relieve the Contractor of his responsibilities under GC.5.02.

- (7) If the Contractor fails to so appeal to the Commissioner for a decision within Seven (7) Calendar Days after receiving Notice of the Contract Administrator's decision, the Contractor shall be deemed to have waived any said claim. Oral appeals or oral protests shall not amount to substantial compliance with the provisions of this Clause.
- (8) If the Contractor disagrees with the determination of the Commissioner he must within Seven (7) Calendar Days after receiving Notice of the Commissioner's determination, notify the Board of Commissioners in writing of his contention with respect thereto and request that the dispute be referred to Arbitration in accordance with GC.11.01.
- (9) It is intended in all matters referred to above that both the Contract Administrator and Contractor shall act promptly.

**GC.5.02 Responsibilities of Contractor:**

- (1) The Contractor shall be responsible for ensuring that all Work is carried out in accordance with and within the time limits set out in the Schedule of Work which is required to be provided by the Contractor and approved by the Contract Administrator under GC.8.01 and any approved amendments thereto. Further, the Contractor shall be responsible for obtaining the prior written consent of the Contract Administrator for any changes in the approved Schedule of Work or any approved amendments thereto in a timely fashion.
- (2) The Contractor shall have complete control over the methods of prosecuting the Work except as otherwise provided in the Contract Documents and shall direct and supervise the Work so as to ensure conformance with the Contract Documents. The Contractor shall be solely responsible for the means, methods, techniques, sequences and procedures and for coordinating the various parts of the Work under the Contract.
- (3) The Contractor shall obey, perform and comply with the Contract Administrator's orders or instructions with respect to the Work or concerning the conduct thereof, promptly, efficiently and to the satisfaction of the Contract Administrator.
- (4) The Contractor agrees that the list of names of Sub-contractors supplied in his Tender Submission is the list of Sub-contractors proposed to be used to carry out those parts of the Work noted thereon, and he shall not employ any to whom the City may reasonably object. The Contractor shall not make any change to the Sub-contractor list unless prior written approval is received from the Contract Administrator.  
The Contractor, with respect to Work to be performed under subcontract, shall:
  - (a) enter into contracts or written agreements with his Sub-contractors to require them to perform their work in complete conformance with and subject to the terms and conditions of the Contract Documents, and,
  - (b) be as fully responsible to the City for acts and omissions of his Sub-contractors and of persons directly or indirectly employed by them as for acts and omissions of persons directly employed by him.

The Contractor shall incorporate the terms and conditions of the Contract Documents into all subcontract agreements he enters into with his Sub-contractors.

**GC.5.03 Inspection:**

- (1) All Work to be performed, materials, equipment or machinery to be supplied or to be installed under this Contract shall be subject to inspection by the Contract Administrator. The Contractor shall afford to the Contract Administrator every facility, whether at the Site of the Work, or at the premises of the Contractor or any Sub-contractor, for the observation of the methods and progress of the Work.
- (2) The Contractor shall before beginning or resuming operations upon any portion of the Work, formally notify the Contract Administrator in writing so as to enable him to arrange for proper inspection.
- (3) In case the Contract Administrator observes improper workmanship or the use of defective materials in the course of manufacture, or the undertaking of the Work, he will call the same to the attention of the Contractor and the Contractor shall promptly remedy the defect so observed.
- (4) The inspection herein provided for shall in no way relieve the Contractor of full responsibility for the quality, character, proper operation and performance of the completed Work.

**GC.5.04 Defective Work:**

The City shall have the right to any one or all of the following options in addition to those provided elsewhere in these Contract Documents and to its ordinary remedies at law if, in the opinion of the Contract Administrator, there is any defect in the Work or in any part thereof attributable to the Contractor or if same fails to meet the requirements of the Contract:

- (1) The Contract Administrator shall direct the Contractor to remedy the defect or to correct, repair, or replace the faulty Work, or Work which fails to meet the requirements of the Contract, and the Contractor shall without delay and at the Contractor's own expense carry out the orders of the Contract Administrator in that respect, all according to the terms and requirements of the Contract. In addition, the Contractor shall be required to reimburse the City and the City shall be entitled to deduct its cost of any additional inspections necessitated thereby from the Contract Price.
- (2) If the Contractor fails or neglects to act as set out in GC.5.04(1), the City may correct or replace the defective or faulty Work, or Work which fails to meet the requirements of the Contract, either by the City's own forces or by an Other Contractor or Contractors. The cost of correcting or replacing same shall be paid to the City immediately by the Contractor upon receipt of written Notice from the Commissioner setting out the amount to be so paid. In the event that the Contractor fails to make payment to the City as required hereby the City shall deduct the amount of such payment from any payment required to be made to the Contractor under this Contract. If, in the opinion of the Commissioner, the Contractor has received all payments due to him under the Contract, the Surety shall make such payment immediately upon receipt of written Notice from the Commissioner setting out the amount to be so paid.
- (3) If, in the opinion of the Contract Administrator, it is not expedient to correct, repair or replace defective or faulty Work, or Work not done in accordance with the Contract, the City may deduct from the Contract Price the difference in value between the Work as done and that called for by the Contract, the amount of which shall be determined by the Commissioner.
- (4) Pending action under GC.5.04(1) and (2) above, the City shall have the right to use the Work or any portion thereof, without thereby in any way affecting its right of rejection of any such faulty or defective Work or relieving the Contractor of responsibility to complete the Work.



## ARTICLE VI -- RISK AND RESPONSIBILITY

### GC.6.01 Risk and Responsibility:

- (1) The Contractor shall assume the full risk and responsibility for the Work until Total Performance of the Work unless otherwise specified in the Supplemental Conditions.
- (2) Title to or the property in the Work shall not pass to the City until Total Performance of the Work as provided in the Supplemental Conditions.
- (3) Delivery to the Site shall not constitute Total Performance of the Work.
- (4) The Contractor is liable to the City for any loss of or damage to material, equipment or Plant that is supplied or placed in the care, custody and control of the Contractor by the City for use in connection with the Contract, whether or not that loss or damage is attributable to causes beyond the Contractor's control, from the date of delivery of the material, equipment or Plant by the City to the Contractor and until the Total Performance thereof has been certified by the Contract Administrator as provided in the Supplemental Conditions.

### GC.6.02 Contractor to Keep Records:

The Contractor shall keep such records of all material, equipment and Plant 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 material, equipment and Plant are at the place and in the condition required by the City.

## ARTICLE VII -- LEGAL RELATIONS

### GC.7.01 Laws, Notices, Permits and Fees:

- (1) The Contractor shall, at his own expense, procure permits, licences and certificates required by law, any ordinances, rules, regulations, codes and orders of the authorities having jurisdiction for the execution of the Work. The Contractor shall give the required Notices and comply with the laws, ordinances, rules, regulations, codes and orders of the authorities having jurisdiction which are or become in force during the performance of the Work and which relate to the Work and to the preservation of the public health. Where there are two or more laws, ordinances, rules, regulations or codes applicable to the Work, the most restrictive shall apply.

### GC.7.02 Patents and Royalties:

- (1) If the Contract requires or the Contractor desires the use of any design, device, material or process covered by letters patent or copyright, trade mark or trade name, the Contractor shall provide for such use by suitable legal agreement with the patentee or owner and a copy of the said agreement shall be filed with the City upon request.
- (2) The Contractor shall indemnify and save harmless the City from any and all claims for infringement by reason of the use of any such patent, design, device, material or process, or any trade mark or trade name or copyright in connection with the Work agreed to be performed under the Contract, and shall indemnify the City in respect of any costs, expenses and damages which it may be obliged to pay, including solicitor's fees and other legal expenses incidental to litigation by reason of a claim for any such infringement at any time during the prosecution or after the Total Performance of the Work.
- (3) If the City or the Contractor is served with a claim or Notice of an infringement or alleged infringement of any patent, design, device, material or process, or any trade mark, trade name or copyright, the party so served shall immediately inform the other party with Notice in the manner provided herein.
- (4) If the City or the Contractor is prevented by injunction from using any patent, design, device, material or process, or any trade mark, trade name or copyright, the Contractor shall, at his own cost, substitute an equally suitable product, part or method of carrying out the Work, all subject to the prior written approval of the Contract Administrator.

### GC.7.03 Indemnity

- (1) The Contractor covenants to save harmless and effectually indemnify the City against all actions and proceedings, costs, damages, expenses, claims and demands whatsoever committed by the Contractor, his Sub-contractor, employees or agents and by whomsoever brought by reason of the performance of the Work.
- (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 or which may be adjudged due to the City by the Commissioner.
- (3) The Contractor shall pay to the City the value of all legal fees and disbursements required to defend the City against any such action, proceeding, claim or demand arising out of the Contract notwithstanding that the defense of the said action, proceeding, claim or demand was undertaken on behalf of the City by a salaried employee of the City.
- (4) The Contractor shall pay to the City all costs taxed against the Contractor in any litigation between the Contractor and the City arising out of this Contract.
- (5) If the Contractor fails to make any payment required to be made to the City hereunder, 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 this Contract or take whatever other remedies against the Contractor that the City may have at law.

### GC.7.04 Rights and Remedies:

- (1) The duties and obligations imposed by the Contract Documents and the rights and remedies available to the City thereunder 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 by law.
- (2) No acceptance of Work or payment of money and no failure on the part of the City to enforce compliance by the Contractor with any term of this Contract and no other act or omission whatever on the part of the City, and no act or omission of the Commissioner or Commissioners or of any officer, servant or agent of the City shall be taken as a waiver of any of the provisions of this Contract, it being understood that any provision hereof may only be waived by express waiver in writing authorized by the proper officers of the City. No express waiver of any provision shall impliedly waive any other provision.

**GC.7.05 Notices:**

- (1) All notices, consents, approvals, statements, authorizations, documents or other communications required or permitted to be given under this Contract shall be in writing and shall be delivered personally or mailed by registered mail, postage prepaid, to the City at the address set out in the Supplemental Conditions; and to the Contractor at the address set out in the Form of Tender; or at such other address or addresses as the party to whom such Notice, consent, approval, statement, authorization, document or other communication is to be given may designate by Notice in writing so given to the other party hereto as provided herein.
- (2) Any Notice, consent, approval, statement, authorization, document or other communication given as provided herein shall:
  - a) in the case of personal delivery, be deemed to have been received on the day of delivery, if a business day, or if not a business day, on the business day next following the day of delivery; and
  - b) in the case of delivery by registered 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.

In the event of a postal dispute or threat of a postal dispute, all Notices required to be given hereunder shall be personally delivered.

**GC.7.06 Independent Contractor:**

The City and the Contractor acknowledge and agree that the Contractor is an independent contractor and neither the Contractor, nor any officer, servant or agent of the Contractor, shall be deemed to be an employee, agent, representative or servant of the City.

**ARTICLE VIII – PROSECUTION AND PROGRESS**

**GC.8.01 Schedule:**

- (1) The Contractor shall, immediately after the award of the Contract, prepare and submit for the Contract Administrator's approval, a Schedule of activities for the Work confirming the commencement date or the completion dates required to complete the various phases or parts of the Work, in relation to both the Contract Time stated in the Contract Document and the Schedule of Work submitted by the Contractor in his Tender Submission, unless otherwise specified in the Supplemental Conditions. In no event shall the said completion dates be later than the completion dates specified in the Tender Submission without the prior written consent of the Contract Administrator. The Contractor shall provide any additional details required by the Contract Administrator. After approval has been given by the Contract Administrator, the Schedule shall not be changed by the Contractor, without the prior written consent of the Contract Administrator.
- (2) The City reserves the right to withhold payment from the Contractor if:
  - (a) such Schedule has not been submitted or has not received the approval of the Contract Administrator prior to or with the first application for payment, or
  - (b) a revised Schedule has not been submitted or has not received the approval of the Contract Administrator prior to the first application for payment or any subsequent application for payment in the event of a change in the aforementioned Schedule, or
  - (c) a revised Schedule has not been submitted or has not received the approval of the Contract Administrator after an extension of time has been granted.
- (3) The Contractor shall comply with the approved Schedule and shall bear all costs to meet the Schedule.
- (4) If at any time the Contractor has been granted additional time under the provisions of GC.8.04 – Delay in Completing Contract or GC.4.05 – Changes in the Work: City, he shall forthwith submit a revised Schedule for the Contract Administrator's approval.
- (5) More detailed requirements for these Schedules may be described in the Supplemental Conditions.

**GC.8.02 Forfeiture of Contract:**

- (1) The Commissioner shall have the full right and power to take the whole of the Work, or any part or parts thereof, out of the hands of the Contractor, without process or action at law, upon giving the Contractor written Notice, a copy of which Notice shall be given to the Surety, or the Winnipeg agent of the latter, in the event that the Contractor:
  - (a) abandons the Work; or
  - (b) is adjudged bankrupt or insolvent; or
  - (c) makes a general assignment for the benefit of his creditors; or
  - (d) should have a receiver or liquidator appointed in respect of his assets; or
  - (e) is in the judgement of the Commissioner not executing or has not executed the Work, or any part thereof, in a sound and workmanlike manner and to his satisfaction and in all respects in strict conformity with the Contract; or
  - (f) in the judgement of the Commissioner, is not progressing with the Work or any part thereof continuously and in such a manner as to ensure the entire completion of the Work or any part thereof within the time stipulated; or
  - (g) refuses or neglects forthwith, when so ordered, to conduct the Work so as to ensure its completion, in the opinion of the Commissioner, within the time stipulated; or
  - (h) has not completed the Work within the time required; or
  - (i) persistently disregards any laws, by-laws and statutory regulations; or
  - (j) commits any other breach of this Contract which in the opinion of the Commissioner indicates an unwillingness or inability upon the part of the Contractor to carry out the terms thereof.
- (2) Upon such Notice being given to the Contractor, he shall immediately discontinue the Work or any part or parts thereof specified in the said Notice.

- (3) The Surety may, at its option, assume this Contract in respect of the whole of the Work, or the portion thereof specified in the Notice on which the Commissioner has ordered the Contractor to discontinue the Work, as the case may be, and proceed to perform same, and may with the written consent of the Commissioner sublet the Work or portion of the Work so taken over; provided however that the Surety shall exercise its option, if at all, within Fourteen (14) Calendar Days after written Notice to discontinue the Work has been served upon the Contractor and a copy of same upon the Surety or the Winnipeg agent of the latter.
- (4) The Surety in such event shall take the Contractor's place in all respects, shall be bound by all terms and conditions of the Contract Documents and shall be paid by the City in accordance with the terms of the Contract for all Work performed by it.
- (5) In case the Surety does not within Fourteen (14) Calendar Days exercise its right and option to assume the Contract as aforesaid, or in the event that there is no Surety, then the City shall have the power to complete by contract or otherwise as it may determine, the Work hereinbefore referred to or such portion of it as the City may deem necessary, and the Contractor agrees that the City shall have the right to take possession of and use any of the materials, Plant, equipment and supplies of every kind provided by the Contractor for the purpose of the Work.
- (6) The City shall not be required to obtain the lowest price for the Work taken over from the Contractor.
- (7) In case the cost to the City, as certified by the Commissioner, of completing the Work or portion thereof as aforesaid, be 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, but if such certified 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, then the City shall have a claim against the Contractor for all additional costs of the Work which have been incurred by the City, in addition to the amount of any liquidated damages that the City is entitled to hereunder from the date fixed for the Total Performance of the Work in the Contract Documents, and the Contractor shall pay the amount of such additional cost of the Work to the City upon Notice from the Commissioner setting out the amount so due. When any particular part of the Work is being carried on by the City, by contract or otherwise, under the provisions of this Clause, the Contractor shall continue the remainder of the Work in conformity with the terms and conditions of this Contract, and in such manner as in no way to hinder or interfere with the persons, Other Contractor, Contractors, or workmen employed by the City.

**GC.8.03 Effect of Taking the Work out of the Contractor's Control:**

The taking of the Work or any part thereof out of the Contractor's control pursuant to GC.8.04 shall not relieve or discharge the Contractor from any obligation under the Contract or imposed upon him by law except the obligation to complete the performance of that part of the Work that was taken out of the Contractor's control.

**GC.8.04 Delay in Completing Contract:**

- (1) Time shall be deemed to be of the essence for this Contract.
- (2) The Contractor shall be required to complete the Work in accordance with the Contract Documents and to the satisfaction of the Contract Administrator by the day fixed for the Total Performance of the Work specified in the Contract Documents.
- (3) Unless otherwise specified in the Supplemental Conditions, should the Contractor fail to complete the Work in accordance with the Contract Documents and to the satisfaction of the Contract Administrator by the day fixed for the Substantial Performance of the Work in the Contract Documents, the Contractor, subject to GC.8.03 hereof, shall pay the City the sum stipulated in the Supplemental Conditions as liquidated damages for each and every Working Day following that day fixed for the Substantial Performance of the Work in the Contract Documents and ending on the day immediately preceding the day that Substantial Performance of the Work has been achieved and is so certified by the Contract Administrator.
- (4) Should the Contractor be delayed in completion of the Work by reason of strikes, lock-outs (including lock-outs decreed by a recognized contractor's association for its members of which the Contractor is a member), an act of God, or any other cause which the Contractor satisfies the Commissioner to be totally beyond his control or any cause within the Contractor's control which the Commissioner has determined justified the delay, then the time for completion shall be extended for a period of time equal to the time lost due to such delays.
- (5) No extension for delay shall be approved unless a written 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.
- (6) Any Notice or claim for extension must state the cause of delay and the length of extension requested.
- (7) In the case of a continuing cause of delay only one claim for an extension shall be necessary.

**ARTICLE IX — MEASUREMENT AND PAYMENT**

**GC.9.01 Contract Prices:**

The Contract Price shall be paid to the Contractor by the City in the manner and on the terms and conditions set out in the Supplemental Conditions. Such payment shall not be transferable or assignable in any way as a debt or liability of the City to the Contractor.

**GC.9.02 Increased or Decreased Costs:**

- (1) 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 which arises as a result of an increase or decrease in the cost of labour, Plant, material or otherwise unless expressly provided for herein.
- (2) Notwithstanding GC.9.02(1) and subject to GC.9.02(4), the Contract Price shall be adjusted in the manner provided in Article IV — Scope of Work, if any change in a tax imposed under the Excise Act, the Excise Tax Act, the Customs Act, the Customs Tariff or The Retail Sales Tax Act:
  - a) occurs after the Time and Date Set for Final Receipt of Bids;
  - b) applies to material; and
  - c) affects the cost to the Contractor of that material.

- (3) If a change referred to in GC.9.02(2) above 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.
- (4) For the purpose of GC.9.02(2) above, where a tax is changed after the Time and Date Set for Final Receipt of Bids 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 Time and Date Set for Final Receipt of Bids and the Contractor shall not be entitled to an increase in the Contract Price.

**GC.9.03 Measurement and Payment:**

- (1) By the Fourteenth (14th) Calendar Day following the Total Performance of the Work, or as soon thereafter as possible, the Contract Administrator shall, subject to receiving all necessary information from the Contractor, including an accurate statement of all of the authorized Extra Work completed and the amount claimed therefor in accordance with the valuation method set out in GC.4.07, make and deliver to the Commissioner, the Contractor's Invoice approved for payment. The signature of the Commissioner thereon will make such Invoice valid for payment.
- (2) Subject to the Contractor's right to appeal in GC.9.03(3) or GC.9.03(5), every such Invoice so approved for payment by the Contract Administrator shall be final and binding upon the Contractor.
- (3) Should the Contractor have reason to claim that an error has been made in the measurement and payment for Extra Work by the Contract Administrator, the Contractor shall notify the Commissioner in writing of his contention with respect thereto within Seven (7) Calendar Days of receiving the Contract Administrator's approval of the Contractor's Invoice for payment, and request a determination thereon from the Commissioner. The Contractor shall be paid the amount certified by the Contract Administrator until a determination has been made hereunder by the Commissioner or in accordance with GC.9.03(5) hereof.
- (4) If the Contractor fails to so appeal to the Commissioner for a determination within Seven (7) Calendar Days of receiving the Contract Administrator's approval of the Contractor's Invoice for payment, the Contractor shall be deemed to have waived any said claim. Oral appeals or oral protests shall not amount to substantial compliance with any of the provisions of this Article.
- (5) If the Contractor disagrees with the determination of the Commissioner he must within Seven (7) Calendar Days after receiving Notice of the Commissioner's determination, notify the Board of Commissioners in writing of his contention with respect thereto and request that the dispute be referred to Arbitration in accordance with GC.11.01.
- (6) In the case of the Contractor's neglect or failure to observe fully and faithfully the above conditions, he shall forfeit all right to payment therefor which he otherwise might have had, and shall not make any claim in respect thereof, and if made, the City may reject the same as invalid and he shall not have any right of recovery in respect thereof, at law or otherwise.
- (7) All the foregoing information shall be furnished by the Contractor on behalf of himself and all Sub-contractors before payment shall be made by the City.
- (8) It is intended in all matters referred to above that both the Contract Administrator and Contractor shall act promptly.
- (9) Payment of the Contractor's Invoice shall not be transferable or assignable in any way as a debt or liability of the City to the Contractor.

**GC.9.04 Waiver of Claims:**

Subject to the Contractor's right of appeal in GC.9.03, acceptance by the Contractor of payment of his Invoice shall constitute a waiver and release by him of all claims against the City whether for payment for Work done, damages or otherwise arising out of the Contract.

**GC.9.05 Payment:**

Neither the issue of a Certificate of Total Performance or payment of the Contractor's Invoice shall relieve the Contractor from his responsibility either under Article X-WARRANTY hereof or as a result of any breach of this Contract by the Contractor including but not limited to faulty or defective Work appearing after Total Performance, failure of the Work to comply with the Contract Documents or the requirement to comply with the terms of any special guarantees set out in the Supplemental Conditions, nor shall it conclude or prejudice any of the powers of the Contract Administrator or the Commissioner hereunder.

**ARTICLE X — WARRANTY**

**GC.10.01 Warranty:**

- (1) The Contractor, unless specifically stated otherwise in the Contract Documents, shall, at his sole cost and expense, maintain the Work against any and all defects or deficiencies or otherwise which may arise for a period of one (1) year from the date of the Certificate of Total Performance.
- (2) Upon receipt of written Notice from the Commissioner, the Contractor shall, at his sole cost and expense, remedy any defect or deficiency or otherwise identified by the Commissioner within the one (1) year period as aforementioned, in the manner and within the time periods specified in the said Notice. A copy of the said Notice shall be given to the Surety or its Winnipeg Agent.
- (3) The Contractor shall also, at his sole cost and expense, remedy any and all damage that may arise or result from the defect, deficiency or otherwise referred to in the said Notice or as a result of the correction of same.
- (4) If the Contractor fails for any reason whatsoever to remedy the defects or deficiencies or otherwise in the manner and within the time periods specified in the said Notice, the Commissioner may take all steps necessary to have the defects, deficiencies or otherwise remedied either by the City's own forces or by another contractor or contractors. The cost of such remedial work shall be paid to the City by the Contractor within Seven (7) Calendar Days of receipt of written Notice from the Commissioner to the Contractor setting out the amount to be paid. In the event that the Contractor fails to make payment to the City as required hereunder, the Surety shall make such payment to the City within Seven (7) Calendar Days of receipt of written Notice from the Commissioner setting out the amount to be paid.

- (5) Notwithstanding the generality of the foregoing,
- (a) in any case where repairs must be made immediately by reason of an emergency existing or otherwise, the City shall have the right to undertake such repairs and charge the cost of making such repairs to the Contractor, except that the Commissioner shall immediately notify the Contractor and shall withdraw its forces as soon as the Contractor's forces assume performance of the repair.
  - (b) all costs resulting from the need to undertake remedial work during the one (1) year warranty period as aforesaid, whether by the Contractor, his Sub-contractor or by the City, as provided herein, shall be borne by the Contractor. In addition, the Contractor shall be liable to the City for all expenses, losses or damages incurred by the City as a result of such defects, deficiencies or otherwise referred to herein or as a result of the Contractor's failure to meet the warranty requirements specified herein, including, but without limiting the generality hereof, all costs of engineering, inspecting and testing.
- (6) Notwithstanding the provisions of this Article, if any statute in force in the Province of Manitoba or in the jurisdiction where the material was manufactured or if a manufacturer's warranty extends beyond the warranty period specified in these Contract Documents, then the provisions of such statute or manufacturer's warranty shall apply.
- (7) In the event that the Contractor can prove, following completion and payment for the remedial work, that the defect, deficiency or otherwise was attributable to a design defect, deficiency or otherwise or resulted from third party damage not attributable to the Contractor or his Sub-contractors, the City shall promptly reimburse the Contractor for the cost of undertaking such remedial work. If the Contractor fails for any reason whatsoever to remedy the defect, deficiency or otherwise in the manner and within the time limit specified in GC.10.01(2), the Contractor shall not be entitled to repayment of the monies that he is required to pay to the City under GC.10.01(4) if the Contractor is later able to establish that the defect, deficiency or otherwise was due to a design defect, deficiency or otherwise or resulted from third party damage not attributable to the Contractor or his Sub-contractors.
- (8) Where due to conditions reasonably beyond the control of the Contractor a component of the Work cannot be completed but that component does not prevent the balance of the Work from being put to its intended use, the Commissioner may permit the warranty period to commence prior to Total Performance of the Contract in the manner set out in the Supplemental Conditions.

**GC.10.02 Acceptance of the Work:**

- (1) The Contract Administrator shall issue a Certificate of Acceptance of the Work following the expiration of the warranty period upon:
- (a) the satisfactory performance of the Work during the warranty period;
  - (b) the Contractor remedying all defects, deficiencies or otherwise identified by the Commissioner during the warranty period in the manner prescribed herein and to the satisfaction of the Commissioner;
  - (c) the successful conclusion of tests required by the City immediately preceding the warranty period.
- (2) No certificate other than the Certificate of Acceptance shall:
- (a) be deemed to constitute acceptance of the Work or any part or parts thereof; or
  - (b) be taken as an acceptance of:
    - i) the due performance of any or all of the Contract; or
    - ii) the accuracy of any claim or demand by the Contractor; or
    - iii) additional or varied work having been ordered by the City.
- (3) The Certificate of Acceptance shall not however relieve the Contractor from his responsibilities as a result of any breach of this Contract by the Contractor, including but not limited to faulty or defective Work appearing after the Certificate of Acceptance has been issued, failure of the Work to comply with the Contract Documents or the requirement to comply with the terms of any special guarantees set out in the Supplemental Conditions.

**ARTICLE XI – DISPUTES**

**GC.11.01 Arbitration:**

- (1) If, at any time during the period that this Contract is in force or after the dissolution or determination thereof, any dispute, difference or question shall arise between the City and the Contractor touching on this Contract or the accounts or transaction thereof, or the construction, meaning or effect of these presents or otherwise in relation to the premises, then every such dispute, difference or question may, with the consent of both the Board of Commissioners and the Contractor, be referred to three arbitrators, one to be appointed by each party to the reference, and the other to be appointed by the first named two arbitrators in writing before they enter upon the business of the reference. Either party may notify the other party in writing of its desire to submit the difference, dispute or question to arbitration; and the Notice by the first party shall contain the name of the arbitrator appointed by the party giving Notice. The party receiving the Notice shall, within 10 days, notify the party giving the Notice whether or not the receiving party agrees to submit the matter to arbitration. If the party receiving the original Notice agrees to arbitration, then that party shall include, in his acceptance, the name of the arbitrator appointed by him. If the party receiving the Notice refuses or neglects to appoint an arbitrator within Ten (10) days after the other party shall have appointed an arbitrator, then the arbitrator first appointed shall, at the request of the party appointing him, proceed to hear and determine the matters in difference as if he were an arbitrator appointed by both parties for that purpose, and the award or determination which shall be made by the said arbitrator or arbitrators, or the majority of them if there are three arbitrators, shall be final and binding upon the parties hereto, their successors and assigns.
- (2) The arbitrator appointed by the two arbitrators selected by the City, and by the Contractor, shall establish the procedures under which the arbitration shall proceed, including but not limited to the calling and number of witnesses, submissions in writing or by hearings, whether either party may be interviewed separately by the panel; and other relevant matters; all within the requirements of The Arbitration Act of Manitoba; and shall render a decision, and announce awards within the time limits of the Act.

- (3) The City and the Contractor agree that the Arbitration shall not proceed until Substantial Performance of the Work.
- (4) The City shall bear all costs and expenses associated with the appointment of its arbitrator. The Contractor shall bear all costs and expenses associated with the appointment of its arbitrator. The City and the Contractor shall bear all other costs and expenses associated with the Arbitration equally.