

GENERAL CONDITIONS

GC1. DEFINITIONS

GC1.1 Where used in these *General Conditions* and in the other documents forming part of the Tender Documents and the Contract Documents:

- .1 “Agreement” means the portion of the Contract Documents by that name.
- .2 “Bidder” means any person submitting a Tender for the Work.
- .3 “Instructions to Bidders” means the portion of the Tender Documents by that name which sets out the terms and conditions governing the tendering process.
- .4 “Business Day” means any day, other than a Saturday, Sunday, or a statutory or civic holiday as observed by the City.
- .5 “Change in Work” means an addition, deletion or modification to the Contract as awarded and includes modifications to the quantity or nature of Work, the manner of performance of any part of the Work, price, time or schedule.
- .6 “Change Order” means a written order issued by the City that sets out a Change in Work.
- .7 “City” means the City of Brandon of the Province of Manitoba as continued under The Brandon Charter, SM 1989-90, c. 71, and any subsequent amendments thereto.
- .8 “City Manager” means the City Manager of the City of Brandon as appointed by the Council of the City of Brandon, or his designate.
- .9 “Contract” means the obligations and rights of the City and the Contractor as set forth in the Contract Documents.
- .10 “Contract Documents” means the combined documents consisting of the executed Agreement between the City and the Contractor, these General Conditions of the Contract, the Supplemental Conditions, the Specifications, the Drawings, all Addenda, the Performance Bond, the Labour and Material Payment Bond, The City of Brandon Construction Vehicle’s & Equipment Rental’s Firm Price Listing, and any other document referred to in, or connected with such formal Agreement as may be authorized by the City. It shall also include all modifications and amendments thereto incorporated in the Contract Documents before the execution of the Agreement, and subsequent amendments thereto made pursuant to the provisions of the Contract and agreed upon between the parties, and all the Contractor's Specifications and Contractor's Drawings, if approved and signed by the Engineer.
- .11 “Contract Price” means the total of the products of the Contract Unit Prices and their respective quantities plus any lump sum items included in the Agreement.
- .12 “Contract Time” means the time stipulated in the Contract Documents for the performance of the Work from commencement to Final Completion.

- .13 “Contract Unit Price” means any amount set forth in the Unit Price Schedule in the Agreement, and as described in the Specifications for the performance of an item of Work.
- .14 “Contractor” means the person who has undertaken the performance of the Work under the terms of the Contract.
- .15 “Contractor's Specifications and Contractor's Drawings” means all drawings, diagrams, illustrations, schedules, performance charts, brochures and other data that are prepared or provided by the Contractor, Subcontractor, or Supplier and that illustrate some portion of the Work.
- .16 “Drawings” means the portion of the Contract Documents by that name which illustrates the physical or functional characteristics of the Work, or any part thereof.
- .17 “Engineer” means the City Engineer of the City of Brandon Engineering Department and includes any person duly authorized by him to perform on his behalf any of his functions under the Contract.
- .18 “Final Completion of the Work” means that the entire Work, except those items arising from the provisions of GC20 Warranty, have been performed in accordance with the Contract.
- .19 “Goods” means any tangible personal property to be supplied as a deliverable under the Contract whether by purchase, hire, hire-purchase or otherwise, but does not include the Contractor’s tools and equipment, or incidental materials or supplies expended in the course of the Work.
- .20 “Materials” means any information, data, research, documents, photographic images, computer programs (and related object and source codes and electronic files) and any other intellectual property whether disclosed to the Contractor by the City or otherwise produced or developed by the Contractor specifically for the Work.
- .21 “Other Contractor” means any person employed by or having a contract directly or indirectly with the City otherwise than through the Contractor, or is employed by or having a contract with a third party having the City's permission to do work on City owned property.
- .22 “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 material, equipment or other things that are to form part of the permanent Work.
- .23 “Prime Contractor” means the prime contractor as defined in The Workplace Safety and Health Act, C.C.S.M. c. W210.
- .24 “Products” means any tangible or intangible personal property to be supplied by the Contractor as a deliverable under the Contract whether by purchase, hire, hire-purchase, licence or otherwise.

- .25 “Purchasing Manager” means the Purchasing Manager of the City of Brandon Treasury Department and includes any person duly authorized by her to perform on her behalf any of her functions under the Contract.
- .26 “Site” means lands, buildings or other places owned, occupied or used by the City and designated by the City for the delivery and/or installation of Products, or the provision of Services.
- .27 “Specifications” means the portion of the Contract Documents by that name which sets out the written description of the physical or functional characteristics of the Work, or any part thereof.
- .28 "Street" means any public highway as defined in The Municipal Act, C.C.S.M. c. M225.
- .29 “Subcontractor” means a person having a contract with the Contractor or another Subcontractor of the Contractor for the execution of a part or parts of the Work or who furnishes material called for in the Contract Documents.
- .30 “Submission Deadline” means the time and date set out in the Tender Documents for final receipt of Tenders.
- .31 “Substantial Performance of the Work” shall have the meaning attributed to it in The Builders' Liens Act, C.C.S.M. c. B91, or if the Act is not applicable, shall mean when the Work is substantially complete and ready for use, or is being used for the purpose intended.
- .32 “Supplemental Conditions” means the portion of the Contract Documents by that name which sets out terms and conditions specific to the Contract, and supplements or modifies the General Conditions.
- .33 “Tender” means the offer contained in the Tender Submission.
- .34 “Tender Documents” means the Instructions to Bidders, the Tender Form, the Contract Documents and all addenda.
- .35 “Tender Form” means the portion of the Tender Documents by that name.
- .36 “Tender Submission” means that portion of the Tender Documents and other things that must be completed or provided by the Bidder and delivered to the City by the Submission Deadline to constitute a compliant Tender.
- .37 “The City of Brandon Construction Vehicle’s & Equipment Rental’s Firm Price Listing” means the document of that name which is available for viewing at the City of Brandon Treasury Department, Main Floor 410 9th Street, Brandon MB, or at the City of Brandon Civic Services Complex, 900 Richmond Avenue East, Brandon MB.
- .38 “Work” means the carrying out and the doing of all things, whether of a temporary or permanent nature, that are to be done by the Contractor pursuant to the Contract and includes the furnishing of all labour, superintendence, services, transportation, materials, Plant, equipment and articles necessary or incidental to the proper performance of the Contract.

- .39 “Working Day” means any calendar day, (one midnight to the following midnight), other than a Sunday or a Statutory or Civic Holiday, on which, in the opinion of the Engineer, atmospheric and/or Site conditions are such that the Contractor is able to work at least four (4) hours during the period between 7:00 a.m. Brandon time or the time the Contractor's operations normally commence, whichever is the earlier, and 7:00 p.m. Brandon time. A Sunday or Statutory Holiday will be considered a Working Day if the Contractor elects to perform any Work that, in the opinion of the Engineer, requires the attendance of the Engineer.

GC1.2 Where used in these General Conditions and in the other documents forming part of the Tender Documents and the Contract Documents:

- .1 “person” includes a natural person, or an artificial person including a partnership, corporation, joint venture, consortium, association, or any combination thereof,
- .2 “shall” and “must” are imperative and “may” is permissive and empowering;
- .3 the commonly understood name of a country, place, person, entity or thing has the same meaning as any formal or extended designation;
- .4 words in the singular include the plural, and words in the plural include the singular;
- .5 gender-specific terms include both genders and the neuter;
- .6 a reference to a statute, by-law or regulation is a reference to the statute, by-law or regulation as amended;
- .7 a reference to a statute, by-law or regulation that has been repealed and replaced is, with respect to a later transaction, matter or thing, a reference to the provisions of the new statute, by-law or regulation that relate to the same subject-matter as the former statute, by-law or regulation.

GC2. INTERPRETATION

- GC2.1 The Contract has been entered into in the Province of Manitoba and shall be governed by and construed and enforced in accordance with the laws of the Province of Manitoba.
- GC2.2 If any of the provisions of the Contract are found by a court of competent jurisdiction to be null or void, the remainder of the Contract shall continue in full force and effect provided that the substantive intent of the Contract is not thereby compromised.
- GC2.3 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.

GC2.4 If the Contractor as defined herein consists of more than one person, their liability to perform the covenants herein contained to be performed by the Contractor shall be joint and several.

GC2.5 No acceptance of Work, payment of money, or failure on the part of the City to enforce compliance by the Contractor with any term of this Contract, nor any act or omission of the City or of any officer or employee 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 of this Contract shall impliedly waive any other provision of this Contract.

GC2.6 It is intended in all matters herein that both the City and the Contractor shall act promptly.

GC3. SUCCESSORS AND ASSIGNS

GC3.1 The Contract shall inure to the benefit of and be binding on the respective heirs, executors, administrators, and successors and permitted assigns of the City and the Contractor.

GC3.2 The Contractor shall not assign the Contract, either in whole or in part, without the written consent of the City. The Contractor shall not assign any monies due to him hereunder, except to a bank or financial institution acceptable to the City.

GC3.3 The Contractor shall not be relieved of any liabilities or obligations relating to the Contract because of the consent of the City to any assignment. The Contractor shall have the same responsibilities as though no assignment had been made.

GC4. NOTICES

GC4.1 All notices, requests, orders, decisions, consents, approvals, statements, authorizations, documents or other communications required or permitted to be given under the Contract shall be in writing and shall be delivered by hand, by mail or by facsimile transmission (fax).

GC4.1.1 In the event of a postal dispute or threat of a postal dispute, all notices required to be given hereunder shall be personally delivered or forwarded by facsimile

GC4.2 All notices, requests, orders, decisions, consents, approvals, statements, authorizations, documents or other communications to the City, except as expressly otherwise required elsewhere in the Contract Documents, shall be delivered or sent to the attention of the Engineer at the address or facsimile number identified in the Agreement.

GC4.3 All notices, requests, orders, decisions, consents, approvals, statements, authorizations, documents or other communications to the Contractor, except as expressly otherwise required elsewhere in the Contract Documents, shall be delivered

- or sent to the address or facsimile number identified in the Agreement or delivered by hand to the Contractor's superintendent at the Site.
- GC4.4 Either party may, by giving notice, designate another address or addresses at which it will accept delivery of notices, requests, orders, decisions, consents, approvals, statements, authorizations, documents or other communications.
- GC4.5 Any notices, requests, orders, decisions, consents, approvals, statements, authorizations, documents or other communications given as provided herein shall:
- .1 if delivered by hand, be deemed to have been received on the day of receipt;
 - .2 if forwarded by mail, be deemed to have been received on the earlier of the day it was received or the second Business Day on which mail is delivered by Canada Post following the date of mailing;
 - .3 if forwarded by facsimile transmission, be deemed to have been received on the day of transmission, if a Business Day, or if not a Business Day, on the first Business Day following the day of transmission.

GC5. CONTRACTOR DECLARATION

- GC5.1 The Contractor declares that in bidding for the Work and in entering into the Contract, he has investigated for himself the Site, the character of the Work to be done and all conditions including the location of any utility that can be determined from the records or other information available at the offices of any public authority or person, including a municipal corporation and any board or commission thereof, having jurisdiction or control over the utility, that might affect his Tender or his performance of the Work, or that, not having so investigated, he willingly assumes all risk for conditions now existing or arising in the course of the Work that could have been determined through such investigation.
- GC5.2 The Contractor declares that in bidding for the Work and in entering into the Contract, he did not and does not rely upon information furnished by the City or any of its servants or agents respecting the character or nature of the surface and subsurface conditions at the Site, or the location, character, quality or quantity of the materials to be removed, or to be employed in the construction of the Work, or the character of the Plant needed to perform the Work or the general and local conditions and shall verify all matters concerning access to the Site, power supplied, location of existing services, utilities, materials necessary for the completion of the Work and all other matters that could in any way affect the performance of the Work under the Contract other than information furnished in writing for or in connection with the Tender or the Contract by the Purchasing Manager or by the Engineer.
- GC5.3 The Contractor declares that in bidding for the Work and in entering into the Contract, he does so in good faith and:
- .1 that to the best of his knowledge, there are no potential conflicts of interest pursuant to:
 - .1 The Municipal Act, C.C.S.M. c. M225;

- .2 The Municipal Council Conflict of Interest Act, C.C.S.M. c. M255; or
- .3 the City of Brandon City Council Code of Conduct;

.2 that to the best of his knowledge, no officer or employee of the City has any direct or indirect pecuniary interest in the Contract that has not been disclosed to and approved by the authority having jurisdiction;

.3 he has not participated in any collusive scheme or combine;

and shall forfeit all claims under the Contract as well as refund to the City any monies paid to him, beyond his actual proven expenses for Work done, if GC5.3.1 or GC5.3.2 are shown to be false.

GC5.4 The Contractor declares that, in submitting a Tender for the Work and in entering into the Contract, he has been given an opportunity to obtain independent legal and other professional advice in connection with the Tender and the Contract.

GC6. CONTRACT DOCUMENTS

GC6.1 The Contract Documents shall constitute the entire agreement between the City and the Contractor. There are no representations, warranties, covenants or agreements other than those contained in the Contract Documents.

GC6.2 The Contract Documents are complementary and what is called for by any one shall be binding as if called for by all.

GC6.3 Headings and titles in the Contract Documents are inserted for convenience only and shall not be considered in any construction or interpretation of the Contract.

GC6.4 The City will provide the Contractor, without charge, sufficient copies of the Contract Documents to perform the Work.

GC6.5 The Contract Documents are the property of the City, and shall not be copied, reproduced or revised in any manner, or used in any other work without the written authorization of the City. Any copies of the Contract Documents and any information media furnished by the City shall not be reused and, with the exception of the one set of executed Contract Documents, shall be returned to the City upon Final Completion of the Work.

GC7. INCONSISTENCIES

GC7.1 The City 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 to further detail or explain the Work, all without in any way affecting or vitiating the Contract.

GC7.2 If there is a conflict within the Contract Documents:

- .1 the order of priority of documents, from highest to lowest, shall be:
 - .1 the Agreement between the City and the Contractor;
 - .2 the Supplemental Conditions;
 - .3 the General Conditions;

- .4 Division 01 of the Specifications;
 - .5 the remainder of the Specifications;
 - .6 the Drawings.
- .2 Drawings of larger scale shall govern over those of smaller scale of the same date.
 - .3 dimensions shown on Drawings shall govern over dimensions scaled from Drawings.
 - .4 later dated documents shall govern over earlier documents of the same type.
- GC7.3 In the case of an obvious clerical error, the interpretation most consistent with the Contract as a whole will be accepted.
- GC7.4 The Contractor shall not be responsible for verifying that the Contract Documents are in compliance with the applicable laws, ordinances, rules, regulations, codes and orders relating to the Work. If the Contractor has knowledge that the Contract Documents are at variance therewith, or if the Contract Documents or any part thereof appear indefinite, not clear, contradictory, contain errors or omissions the Contractor shall, prior to proceeding with the Work, promptly refer such part or parts to the Engineer for interpretation and/or clarification.

GC8. SITE

Site Conditions

- GC8.1 Although the Drawings may indicate the location of existing surface and underground works and services, the City does not warrant the completeness or accuracy of the information or assume responsibility for discrepancies between the Drawings and the actual locations of the works and services.
- GC8.2 The Contractor shall promptly refer any substantial difference in the character or nature of the surface or subsurface conditions at the Site, or the location, character, quality or quantity of the materials to be removed than the conditions set out in the Contract Documents or other information furnished in writing for or in connection with the Contract by the Engineer for resolution in the manner prescribed in GC16 Change in Work.

Use of the Site

- GC8.3 The Contractor shall not be entitled to exclusive possession of the Site. The City shall have the right, for itself, its agents, representatives and Other Contractors, to occupy any portion of the Site or the Work, at any time and for so long a time as the Engineer may by notice to the Contractor require, provided such entry, occupation and use does not prevent or otherwise interfere with the Contractor's performance of the Work. Such entry, occupation and use shall not be considered to be an acceptance of the Work by the City nor shall it relieve the Contractor of his duty to complete the Work.

GC9. INDEMNIFICATION

- GC9.1 The Contractor shall indemnify and save harmless the City , its officers, agents, servants and employees, from and against all costs, damages, losses or expenses arising from actions, suits, claims, demands and proceedings, by whomsoever brought, made or taken as a result of an act or omission of the Contractor, his Subcontractor(s), and their employees or agents in the performance or purported performance of the Work, and more particularly from:
- .1 accidental injury to or death of any person whether retained by or in the employ of the Contractor or not, arising directly or indirectly by reason of the performance of the Work, or by reason of any trespass on or damage to property;
 - .2 damage to any property owned in whole or in part by the City, or that the City by duty or custom is obliged, directly or indirectly, in any way or to any degree, to construct, repair or maintain;
 - .3 damage to, or trespass or encroachment upon, property owned by persons other than the City;
 - .4 failure to promptly secure a discharge of a claim for lien served upon the City pursuant to The Builders' Liens Act;
 - .5 failure to pay a Workers Compensation assessment, or federal or provincial taxes;
 - .6 unauthorized use of any design, device, material or process covered by letters patent, copyright, trademark or trade name in connection with the Work;
 - .7 inaccuracies in any information provided to the City by the Contractor.
- GC9.2 The Contractor shall be responsible for all such claims except such claims in which the injury or damage are solely a result of an act or omission of the City.
- GC9.3 If the City or the Contractor is served with a claim or notice, the party so served shall immediately inform the other party with notice in the manner provided herein.
- GC9.4 The City shall have 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.
- GC9.5 The Contractor shall pay to the City the value of all legal fees and disbursements required to settle any such claim or to defend the City against any such claim, action, proceeding, claim or demand.
- GC9.6 If the Contractor fails to make any payment required to be made to the City pursuant to GC9.4 and GC9.5, the City shall be entitled to deduct the amount of such payment from any payment required to be made by the City to the Contractor under the Contract or take whatever other remedies against the Contractor that the City may have at law.

GC10. BONDING

- GC10.1 Prior to the execution of the Contract, the Contractor shall, at his own expense, provide and deliver to the City:
- GC10.1.1 A Performance Bond written on Canadian Construction Documents Committee Form CCDC 221 or similar form acceptable to the City, conditioned on the faithful performance of the terms of the Contract, including corrections after final payment provided for in GC20 hereof, and the payment of all obligations arising under the Contract, in the amount of fifty percent (50%) of the Contract Price. The Performance Bond shall remain in full force and effect for at least twelve (12) months after the date of the Certificate of Final Completion of the Work.
- GC10.1.2 A Labour and Material Payment Bond on Canadian Construction Documents Committee Form CCDC 222 or similar form acceptable to the City, covering payment for all labour and materials used or reasonably required in the performance of the Contract, conditioned on the faithful performance of the terms of the Contract for the amount of fifty percent (50%) of the Contract Price.
- GC10.2 All bonds shall be issued by the same surety or bonding company licensed to conduct the business of a surety in the Province of Manitoba. Each bond shall incorporate by reference the Contract and be signed by both the Contractor and the Surety, and the signature of the authorized agent of the Surety shall be notarized.

GC11. INSURANCE

- GC11.1 Without in any way limiting the liability of the Contractor under the Contract, the Contractor shall provide, maintain and pay the premiums for any insurance it is required by law to provide, and the minimum insurance coverages listed in the Supplemental Conditions.
- GC11.2 Unless specified otherwise, the duration of each policy shall be from the date of commencement of the Work until ten (10) calendar days following the date of the Certificate of Final Completion of the Work.
- GC11.3 If the Contractor returns to the Site of the work for the purpose of GC20 Warranty, he shall provide and maintain insurance policies in such amounts as the Engineer may require.
- GC11.4 All insurance policies shall be issued by an insurance company authorized to transact a business of insurance underwriting in the Province of Manitoba.
- GC11.5 All deductibles shall be borne by the Contractor and shall be in amounts acceptable to the City.
- GC11.6 The Contractor shall provide to the City at least thirty (30) calendar days written notice of any non renewal, cancellation, material change or amendment restricting coverage of any of the insurance policies.

GC11.7 The Contractor shall provide the City with a certified certificate of insurance for each insurance policy no later than the date of the execution of the Contract. If requested by the Engineer, the Contractor shall provide the originals or certified true copies of all contracts of insurance maintained by the Contractor.

GC11.8 If the Contractor fails to provide or maintain insurance as required by the Contract Documents, then the City shall have the right to provide and maintain such insurance. The Contractor shall pay the cost thereof to the City on demand or the City may deduct the cost from any amount which is due or may become due to the Contractor.

GC12. THE CONTRACTOR

Contractor's Responsibilities

GC12.1 The Contractor shall execute, maintain, and complete the Work, make good all damage thereto and imperfections therein and deliver the completed Work to the City in strict accordance with the provisions of the Contract Documents. The Contractor shall be responsible for any Work not explicitly set out in the Contract Documents but that may be reasonably implied as necessary for the proper completion of the Work. Except as otherwise provided for in the Contract Documents the Contractor shall be solely responsible for construction means, methods, techniques, sequences and procedures and shall coordinate, direct and supervise the Work so as to ensure conformance with the Contract Documents.

GC12.2 Until the issue of the Certificate of Final Completion of the Work, the Work shall be under the charge and care of the Contractor and he shall, at his own expense, do whatever is necessary to ensure that:

- .1 no person, property, livestock, right, easement or privilege is injured, damaged or infringed by reason of the Contractor's or any Subcontractor's activities in performing the Work;
- .2 pedestrian and other traffic on any public or private road or waterway is not unduly impeded, interrupted or endangered by the performance or existence of the Work or Plant. If any of the Contractor's Work causes interference with any existing public road, the Contractor shall provide and maintain the necessary detour roads and shall post such signs, warnings and protection as may be required for public convenience and safety;
- .3 fire hazards in or about the Work or the Site are eliminated;
- .4 the health and safety of all personnel employed in the performance of the Work or otherwise is not endangered by the method or means of its performance, and the Work is in compliance with all laws, rules, regulations and practices required by the applicable construction and safety legislation;
- .5 adequate medical services are available to all personnel employed on the Work or its Site at all times during the performance of the Work;
- .6 adequate sanitation measures are taken and facilities provided with respect to the Work and the Site;

- .7 all survey posts, monuments or bars are protected and are not removed, defaced, altered or destroyed;
- .8 all stakes, buoys and marks placed on the Work or its Site by or under the authority of the Engineer are protected and are not removed, defaced, altered or destroyed;
- .9 good order and discipline is maintained at the Site at all times;
- .10 the Site, any existing facility thereon and the Work already performed are all secure and protected from the action of the elements. The Contractor shall provide and maintain all necessary watchmen, barriers, detour routes, fences, warnings flares or lights;
- .11 City owned Plant, material or equipment is not removed from the Site without the prior written consent of the Engineer.

GC12.3 The Contractor shall provide and pay for competent, suitably qualified personnel to execute the Work and unless stated otherwise in the Supplemental Conditions, the Contractor shall provide and pay for all Plant, labour, payroll, overhead, materials, supplies, equipment, machinery, transportation, tools, appliances, fuel, power, light, heat, telephone, water and all other facilities and incidentals necessary for the execution, testing, operation, completion and maintenance of the Work.

GC12.4 Unless stated otherwise in the Supplemental Conditions, all materials, products and equipment to be incorporated in the Work shall be new, undamaged, 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 Engineer that the foregoing requirement has been met.

GC12.5 If the Contractor fails to notify the Engineer in writing to obtain direction and performs any Work knowing it contains errors or omissions, is contrary to any laws, ordinances, rules, regulations, codes and orders of any authority having jurisdiction, the Contractor shall be responsible for and shall correct any variation thereof and shall bear all costs, expenses and damages attributable to his failure to comply with the provisions of such laws, ordinances, rules, regulations, codes and orders.

Prime Contractor

GC12.6 Unless expressly specified otherwise in the Supplemental Conditions, the Contractor shall be the Prime Contractor and shall serve as, and have the duties of the Prime Contractor in accordance with The Workplace Safety and Health Act, C.C.S.M. c. W210.

Superintendence

GC12.7 The Contractor shall employ a competent and responsible superintendent well skilled in the type of Work being undertaken, who shall direct and supervise the Work and be in attendance on the Site at all times while Work is being performed. The superintendent shall be the executive representative of the Contractor in his absence

and directions on matters given to him verbally or in writing shall be deemed to be given to the Contractor. The presence of a superintendent on the Site shall not relieve the Contractor from his duty to personally supervise the Work. The Contractor shall inform the Engineer in writing of the name, address and telephone number of such superintendent prior to the commencement of the Work.

- GC12.8 If at any time the Engineer requires such superintendent to be replaced then the Contractor shall arrange for him to vacate his position and be removed from the Site within forty-eight (48) hours after receiving notice in writing from the Engineer to replace the superintendent with another superintendent. Any person so removed shall not be re-employed on the Work by the Contractor or by any Subcontractor. The Contractor shall not replace the superintendent without the prior written consent of the Engineer unless the superintendent proves to be unsatisfactory to the Contractor and ceases to be in his employ.

Subcontractor

- GC12.9 The Contractor shall notify the Engineer in writing of his intention to subcontract. Such notification shall identify the part of the Work, and the name and location of the place of business of each Subcontractor with whom it is intended to subcontract. The Contractor shall not employ any Subcontractor to whom the City may reasonably object, such objection being made by the Engineer notifying the Contractor in writing within six (6) calendar days of receipt by the Engineer of the above notification. The Contractor shall not, without the written consent of the Engineer, change a Subcontractor who has been engaged by him. The City reserves the right to order the Contractor to dispense with the services of a Subcontractor if such services are not satisfactory to the Engineer.
- GC12.10 The Contractor with respect to Work to be performed under subcontract, shall:
- .1 enter into contracts or written agreements with his Subcontractors to bind and require them to incorporate the terms and conditions of the Contract Documents into all agreements and to perform their work in complete conformance with and subject to the terms and conditions of the Contract Documents; and
 - .2 be as fully responsible to the City for acts and omissions of his Subcontractors and of persons directly or indirectly employed by them, as for the acts and omissions of persons directly employed by him; and
 - .3 be responsible for conveying the interpretation or clarification of the Contract Documents, as given by the Engineer, to his Subcontractors.
- GC12.11 Nothing contained in the Contract Documents shall create any contractual relation between any Subcontractor and the City. Neither the subcontracting nor shall the Engineer's consent to a subcontracting by the Contractor shall be construed to relieve the Contractor from any obligation under the Contract or to impose any liability upon the City.
- GC12.12 The organization of the Specifications and Drawings into sections according to the type of work shall not control the Contractor in dividing the work among

Subcontractors. The Contractor shall be solely responsible for determining the division of the Work amongst his Subcontractors.

Other Contractors

- GC12.13 The City reserves the right to let other contracts in connection with the Work. The Contractor shall arrange and carry on his Work so as not to conflict with the work being carried on or to be carried on for the City by Other Contractors or by the City's employees. The Contractor shall allow them access to the Site and cooperate with them in the carrying out of their duties and obligation in the best manner possible. If any part of the Work depends for its proper execution or result upon the work of Other Contractors, the Contractor shall connect properly and co-ordinate his work with that of such Other Contractors.
- GC12.14 The Contractor shall, in writing, notify the Engineer of any defects in the work of such Other Contractors that may interfere with the proper execution of the Work. If the Contractor fails to so inspect the work and report any such defects he shall have no claim against the City by reason of the defective or unfinished work of Other Contractors except for latent defects not reasonably noticeable at the time of commencement of the Work.
- GC12.15 If the sending onto the Work or its Site of Other Contractors could not have been reasonably foreseen or anticipated by the Contractor when entering into the Contract and the Contractor incurs additional expense or delay in completing the Work he shall notify the Engineer who will deal with the matter as stated in GC18 Time.

Permits and Fees

- GC12.16 The Contractor shall, at his own expense, procure and maintain all permits, licences, and certificates required by law, ordinances, rules, regulations, codes and orders of the authorities having jurisdiction for the execution of the Work, but this shall not include the obtaining of permanent easements or rights of servitude. The Contractor shall give the required notices, pay for all required inspections and comply with the laws, ordinances, rules, regulations, codes and orders of the authorities having jurisdiction that are or become in force during the performance of the Work and that relate to the Work. If there is a discrepancy between any laws, ordinances, rules, regulations, codes and orders the most stringent shall apply.
- GC12.17 If the Contract requires or the Contractor desires the use of any design, device, material or process covered by letters of patent or copyright, trademark or trade name, the Contractor shall provide for, at his own expense, such use by suitable legal agreement with the patentee or owner and a copy of said agreement shall be filed with the City upon request. 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 Engineer.

GC13. THE ENGINEER

Authority of the Engineer

- GC13.1 The Engineer will be the City's representative throughout the duration of the Work and shall have authority to act on behalf of the City to the extent expressly provided for in the Contract Documents. The Engineer will be solely responsible for the interpretation or clarification of the Contract Documents or any part thereof that appears indefinite, not clear or contradictory to the Contractor. The Contractor shall obey, perform and comply with the Engineer's orders or instructions with respect to the Work, or concerning the conduct thereof, promptly, efficiently and to the satisfaction of the Engineer, and he will assist Other Contractors, their employees and agents, and those of the City, to do the same.
- GC13.2 If the Engineer does not give any direction, instruction or order with respect to the Work, or any part thereof, the Contractor shall not thereby be relieved on any responsibility under the Contract. It is understood and agreed that the Engineer owes no duty either of superintendence or of supervision of the Work to the Contractor; and that each of the provisions of the Contract Documents shall be construed accordingly.
- GC13.3 The Contractor shall permit the Engineer to have access to the Work and the Site at all times and the Contractor shall give the Engineer, free of cost to the City, any and all possible assistance and any such information respecting the performance of the Work, whether at the Site of the Work, or at the premises of the Contractor or any Subcontractor, to enable the Engineer to carry out his duty to see that the Work is performed in accordance with the Contract Documents.
- GC13.4 The Engineer shall have the authority to object to any person employed or retained by the Contractor in the execution of the Work who is in the opinion of the Engineer incompetent, negligent, disrespectful, disorderly or conducting himself improperly. The Contractor shall forthwith remove the person so objected to. The Engineer may refuse to issue any progress estimate and/or certificate to the Contractor while such person remains engaged upon the Work.

GC14. INSPECTION

- GC14.1 The Engineer shall have full authority to examine, inspect, test, approve or reject all Plant, materials, equipment, methods or procedure and workmanship without in any way relieving the Contractor from his responsibilities under the Contract. The Engineer shall be the sole judge of determining whether the kind, quantity and quality of the Plant, materials, equipment, methods or procedure and workmanship meet or exceed the requirements of the Contract Documents.
- GC14.2 The Contractor shall before beginning or resuming operations upon any portion of the Work, give the Engineer at least three (3) calendar days notice of his intention to commence work at a certain time and date. It will be the responsibility of the Engineer to ensure that he or his representative is available to inspect the Work, providing that the Contractor has given the required notice.

- GC14.3 If the Contractor covers or permits to be covered any of the Work that is subject to inspection or testing without the prior approval of the Engineer, the Contractor shall, at his sole expense, forthwith take down, expose and rebuild any portion of the Work in order that the Engineer can inspect the Work.
- GC14.4 If, at any time after the commencement of the Work but prior to the expiry of the warranty period, the Engineer has reason to believe that the Work or any part thereof has not been performed in accordance with the Contract Documents, the Engineer may have that Work examined by a qualified person of his choice. If, as a result of an examination of the Work referred to above, it is established that the Work was not performed in accordance with the Contract Documents, then, in addition to and without limiting or otherwise affecting any of the City's rights and remedies under the Contract or at law, the Contractor shall pay the City, on demand, all reasonable costs and expenses that were incurred by the City in having that examination performed.

GC15. CORRECTION OF DEFICIENCIES

- GC15.1 The City shall have the right to any one of and all of the following options in addition to those provided elsewhere in the Contract Documents and to its ordinary remedies at law if, in the opinion of the Engineer, the Work or any part thereof attributable to the Contractor is determined to be defective or deficient:
- .1 If the Engineer shall direct the Contractor to repair, reconstruct, or replace the Work determined to be defective or deficient, the Contractor shall, at his sole expense, and in the manner and within the time period specified, carry out the orders of the Engineer in that respect.
 - .2 If the Contractor fails or neglects to act as set out above the City may correct or replace the Work determined to be defective or deficient either by the City's own forces or by an Other Contractor. The cost of correcting or replacing same shall be paid to the City immediately by the Contractor upon receipt of written notice from the City setting out the amount to be so paid. If the Contractor fails to make payment to the City as required hereby, the City may 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 City, 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 City stating the amount to be so paid.
 - .3 If, in the opinion of the Engineer, it is not expedient to correct the Work determined to be defective or deficient, the City may deduct from the Contract Price the difference in value between the Work as done and that called for by the Contract Documents, the amount of which will be determined by the Engineer.
 - .4 Pending action under the above, the City shall have the right to use the Work or any portion thereof, without in any way affecting its right of rejection of any Work determined to be defective or deficient or relieving the Contractor of responsibility to complete the Work.

GC15.2 If the Contractor disagrees with any decision or direction of the Engineer on any of the foregoing matters, the Contractor shall comply with the decision or direction of the Engineer but may appeal the decision in accordance with GC23 Dispute Resolution.

GC16. CHANGE IN WORK

City's Right to Change Work

GC16.1 The City shall have the right, at any time before or after the execution of the Contract or at any time during the prosecution of the Work prior to the issuing of the Certificate of Final Completion of the Work to order a Change in Work without in any way affecting or vitiating the Contract, and the Contractor shall carry out such Change in Work upon receipt of a Change Order issued by the Engineer.

Change of Costs

GC16.2 The Contract Price will not be increased or decreased by reason of any increase or decrease in the cost of the Work to the Contractor that arises as a result of an increase or decrease in the cost of labour, Plant, material or otherwise unless the increase or decrease is a result of a change in a tax imposed under:

- .1 the Excise Act, R.S.C., 1985, c. E-14;
- .2 the Excise Tax Act, R.S.C., 1985, c. E-15;
- .3 the Customs Act, R.S.C., 1985, c. 1;
- .4 the Customs Tariff S.C. 1997, c. 36; or
- .5 The Retail Sales Tax Act, C.C.S.M. c. R130;

that occurs after the Submission Deadline and directly affects the cost to the Contractor of that commodity or service.

GC16.2.1 If a change in tax takes effect after the Submission Deadline but public notice of the change has been given by either the Federal or Provincial Minister of Finance before that date, the change shall be deemed to have occurred before the Submission Deadline.

GC16.3 If a change in tax occurs, the Contract Price will 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.

Change of Quantity

GC16.4 If the amount of the Work originally intended to be done under the Contract is increased by more than 20% of the Estimated Quantity, any negotiated revision to the Contract Price will only apply to the quantities that are in excess of 120% of the Estimated Quantity in the Unit Price Schedule.

- GC16.5 If the amount of the Work originally intended to be done under the Contract is diminished by more than 20% of the Estimated Quantity, any negotiated revision to the Contract Price will only apply to the quantities of the actual Work performed but under no circumstances will the amount payable exceed that amount that would have been payable to the Contractor had the estimated total quantity actually been performed, used or supplied. No claim shall be made for damages on the grounds of loss of anticipated profit on Work so diminished or on any other grounds provided however that the value of the diminution shall not exceed 20% percent of the Contract Price.
- GC16.6 If a change results in a diminution of Work after commencement of the 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 Engineer.

Change of Contract Price

- GC16.7 The Engineer shall determine the value of any Change in Work by one or more of the following methods:
- .1 at the Contract Unit Price(s) for similar work; or
 - .2 at the rate or rates per unit or a lump sum amount subsequently agreed upon; or
 - .3 by the actual cost of the Work to the Contractor plus 15% on any portion of the Work undertaken by the Contractor's own forces or 10% on any portion of the Work undertaken by a Subcontractor. Equipment costs will be paid for at the rental rates set forth in the written order, or otherwise in accordance with The City of Brandon Construction Vehicle's & Equipment Rental's Firm Price Listing.
- GC16.8 If the value of the Change in Work is to be determined by either method .1 Unit Price or .2 Lump Sum above, the Contractor shall present his proposed change in the Contract Time and/or Contract Price to the Engineer, supported by appropriate documentation in a form acceptable to the Engineer prior to the commencement of the proposed Work. The Engineer will evaluate and verify the acceptability of such proposal and, if approved by the Engineer, a Change Order will be issued to the Contractor amending the Contract Time and/or Contract Price. The Change Order will stipulate the form of presentation of costs and methods of measurement.
- GC16.9 If the value of the Change in Work is to be determined by method .3 Cost Plus above, the cost of performing the work attributable to the Change in Work shall be limited to the actual net change in the cost of the following:
- .1 salaries, wages and benefits paid to the Contractor's employees under a salary or wage schedule agreed upon by the City and the Contractor, or in the absence of such a schedule, actual salaries, wages and benefits paid by the Contractor, for employees engaged in:

- .1 performing the work on the Site attributable to the Change in Work;
 - .2 in the production or transportation of Products, at shops or on the road;
 - .3 engaged in the preparation or review of Contractor's Specifications and Contractor's Drawings.
- .2 contributions, assessments or taxes incurred for such items as employment insurance, provincial or territorial health insurance, workers' compensation, and Canada or Quebec Pension Plan, that are based on wages, salaries or other remuneration paid to employees of the Contractor and included in the cost of the Work as provided in GC16.9.1;
 - .3 travel and subsistence expenses of the Contractor's personnel described in GC16.9.1;
 - .4 all Products including cost of transportation thereof;
 - .5 Plant, including transportation and maintenance thereof, and , materials, supplies which are consumed in the performance of the Work; and cost less salvage value on such items used but not consumed, which remain the property of the Contractor;
 - .6 equipment and services required for the Contractor's field office;
 - .7 removal and disposal of waste products and debris;
 - .8 safety measures and requirements;
 - .9 the amounts of all subcontracts;
 - .10 quality assurance such as independent inspection and testing services;
 - .11 charges levied by authorities having jurisdiction;
 - .12 royalties and patent licence fees;
 - .13 premiums for bonds and insurance which the Contractor is required, by the Contract Documents, to purchase and maintain;
 - .14 forfeited deposits; and
 - .15 taxes and duties for which the Contractor is liable.

GC16.9.1 The Contractor shall maintain and keep detailed daily records of each piece of work covered by the Change Order, showing the names of the workers engaged thereon, the number of hours each worker was employed, the number of hours Plant and equipment was employed thereon and the quantities of material necessary for and consumed in the performance of the Change in Work. These daily records shall be made in duplicate each day and submitted to the Engineer for verification. If requested by the Engineer, the Contractor shall submit receipted invoices for all materials and services utilized in the performance of the Change in Work. The Contractor shall provide the Engineer with every facility for the compilation of cost records, and when requested shall supply all data necessary for such purpose from payrolls, time books, invoices, and all other sources from which the City may find it necessary to obtain information.

GC16.10 If the method of valuation, measurement or change in Contract Time and/or Contract Price cannot be promptly agreed upon prior to the commencement of the proposed Work and the Engineer requires the same to proceed, then the Engineer in the first instance will determine the method of valuation, measurement and the change in Contract Time and/or Contract Price. The Engineer will issue a Change Order setting out the method of valuation, measurement and any change in the Contract Time and/or Contract Price. The Contractor shall proceed with the Work and the matter shall be subject to final determination in the manner set out in GC23 Dispute Resolution. The Engineer shall certify the value of the Work performed in accordance with his own valuation and measurement of the Work and shall also certify any change in Contract Time and/or Contract Price.

GC17. PAYMENT

Engineer's Progress Estimate

GC17.1 The Contract Price to be paid by the City to the Contractor will be the sums certified by the Engineer in the interim and final progress estimates; such sums to be ascertained and determined by the Engineer as follows:

- .1 For Unit Price Contracts, upon the basis of the Contract Unit Prices for the various classes of the Work included in the Unit Price Schedule or Change Order(s). These Contract Unit Prices are gross prices including duty, freight, cartage, Provincial and Federal taxes (GST excluded) and all charges governmental or otherwise paid and including profit and all compensation that shall be due to the Contractor for supplying labour, materials, Plant, supervision and all details necessarily connected with the completion of the Work and all risks and contingencies connected therewith. The total amount to be paid to the Contractor for the Work described in the Contract will be the amount arrived at by measuring the net amount of each class of the Work listed in the Unit Price Schedule, and pricing the same, in accordance with the Contract Unit Prices therein.
- .2 For Lump Sum Contracts, upon the basis of the lump sum price included in the Agreement or Change Order(s). The lump sum price shall be a gross price including duty, freight, cartage, Provincial and Federal taxes (GST excluded) and all charges governmental or otherwise paid and including profit and all compensation that shall be due to the Contractor for supplying labour, materials, Plant, supervision, and all details necessarily connected with the completion of the Work and all risks and contingencies connected therewith. Payments will be made in proportion to the progress of the Work, as determined by the Engineer, during the term of the Contract.

GC17.2 By the fifth (5th) calendar day after the end of any month during which any Work has been completed, the Contractor shall deliver to the Engineer an application for payment signed by the Contractor which accurately sets forth all such Work completed during the month and the amount claimed therefor in accordance with the valuation method set out in the Contract Documents.

- GC17.3 Subject to the timely receipt of the Contractor's application for payment pursuant to GC17.2, by the fifteenth (15th) calendar day after the end of any month, or as soon thereafter as possible, the Engineer will prepare a monthly progress estimate setting out the quantity and value of the Work performed during the preceding month that in the opinion of the Engineer is in accordance with the Contract Documents and was not included in any previous progress estimate relating to the Contract.
- GC17.4 The City will make payment to the Contractor on account of the progress estimate by the later of:
- .1 the twenty-fifth (25th) calendar day after the end of the month for which the Contractor's application for payment was made; or
 - .2 twenty (20) calendar days after receipt by the Engineer of the Contractor's application for payment pursuant to GC17.2.
- GC17.5 Payments shall be subject to holdbacks pursuant to the provisions of the Contract Documents, The Builders' Liens Act or any other applicable statute, regulation or by-law.

Payment Withheld

- GC17.6 The City may withhold or on account of subsequently discovered evidence, nullify the whole or part of any progress estimate to the extent necessary to protect the City from loss on account of any one or more of the following if the Contractor:
- .1 abandons the Work; or
 - .2 is adjudged bankrupt or insolvent; or
 - .3 makes a general assignment for the benefit of his creditors; or
 - .4 has a receiver or liquidator appointed in respect of his assets; or
 - .5 is in the judgment of the Engineer not executing or has not been executing 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
 - .6 in the judgment of the Engineer, is not progressing continuously with the Work or any part thereof, and in such a manner as to ensure the proper completion of the Work or any part thereof, within the time stipulated; or
 - .7 refuses or neglects forthwith, when so ordered, to conduct the Work so as to ensure its completion, in the opinion of the City, within the time stipulated; or
 - .8 fails to submit a schedule or revised schedule of work activities for the Work to the Engineer for approval when such schedule has been requested by the Engineer; or
 - .9 has not completed the work within the time required; or
 - .10 refuses or neglects to take down, rebuild, repair, alter or amend any defective or unsatisfactory Work, or to remove any condemned material or workmanship, or to comply with any reasonable order in connection therewith that he may receive from the Engineer; or

- .11 fails to make prompt payment to his Subcontractors, his employees or on account of the purchase or rental of material or Plant; or
- .12 fails to promptly secure a discharge of a claim for lien or trust claim served upon the City pursuant to The Builders' Liens Act or The Workers Compensation Act, C.C.S.M. c. W200; or
- .13 persistently disregards any laws, bylaws and statutory regulations; or
- .14 fails to sign a Certificate of Final Completion of the Work as required; or
- .15 fails to employ or keep a competent Superintendent on the Work or to replace the Superintendent as required by the Engineer; or
- .16 fails to comply with the provisions of the Schedule of Work; or
- .17 commits any other material breach of this Contact that in the opinion of the City indicates an unwillingness or inability upon the part of the Contractor to carry out the terms thereof; or
- .18 fails to make good any loss or damage for which he is liable under GC11 Insurance within a reasonable time after being required to do so by the Engineer.

GC17.7 The failure of the City to deduct or withhold an amount referred to above shall not constitute a waiver of the right of the City to do so, or an admission of lack of entitlement to do so in any subsequent payment to the Contractor.

GC17.8 The City may make payment to such persons (including the City) as shall be entitled thereto for any or all amounts for which the Contractor or any Subcontractor is shown to be indebted or liable to pay in respect of wages, labour, services, the purchase of material, or rental of Plant furnished for the Work. Payment of such amounts shall discharge the City's liability to the Contractor to the same extent as payment directly to him.

GC18. TIME

Contract Time

GC18.1 The Contractor shall complete the Work in accordance with the Contract Documents and to the satisfaction of the Engineer within the specified Contract Time.

GC18.2 Except as provided for in the definition and application of Working Days, the Contractor shall assume all risk for reasonably foreseeable conditions such as weather within seasonal norms and shall not be entitled to extension of Contract Time or costs due to delay therefor.

Working Days

GC18.3 If the Contract Time is specified as a number of Working Days, counting of Working Days shall commence on the earlier of fourteen (14) calendar days after the award of Contract or the day the Contractor commences Work, and will continue to be assessed until the Certificate of Final Completion of the Work is issued. The Engineer will at

the end of each day certify on a inspection report as to whether or not the day is to be considered as a Working Day.

Schedule of Work

- GC18.4 The Contractor shall, prior to commencement of the Work, prepare and submit for the Engineer's approval, a Schedule of Work listing the order in which the Contractor proposes to carry on the Work, including the dates at which major or critical portions of the Work will commence and be completed, and confirming the construction start date and the completion date, the latter date being no later than the date specified in the Agreement for Final Completion of the Work. Once accepted by the Engineer, the Schedule of Work shall not be changed by the Contractor without the Engineer's approval. 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.
- GC18.5 If the progress of the Work falls behind the most recent approved Schedule of Work or is delayed for any reason other than one for which an extension of Contract Time is provided for under GC18 Time, the Contractor shall, at his sole cost work such additional time, including weekends and holidays, employ additional workers, or both as may be required to bring the work back on schedule.

Delays

- GC18.6 If the Contractor is delayed in the performance of the Work by:
- .1 a stop work order issued by a court or other public authority having jurisdiction and providing that such order was not issued as the result of an act or fault of the Contractor or anyone employed or engaged by him directly or indirectly;
 - .2 labour disputes, legitimate or legal strikes, lock-outs (including lock-outs decreed by a recognized contractors' association for its members of which the Contractor is a member);
 - .3 acts of God;
 - .4 unavoidable casualties;
 - .5 any other cause that is totally beyond his control, fault or negligence; or
 - .6 any other cause within the Contractor's control that the Engineer has determined is justified;
 - .7 any unduly prolonged delay upon the part of the City;
- then the Contract Time will be extended for a period of time equal to the time lost due to such delay.
- GC18.7 No extension of Contract Time or claim for costs due to delay will be granted by the Engineer unless a written notice, clearly stating the cause of delay and the length of extension requested, is received by the Engineer from the Contractor within seven (7) calendar days of the date on which the cause of the delay arose. In the case of a continuing cause of delay, only one notice shall be necessary. Failure to provide such notice shall constitute a waiver by the Contractor of any claim. The Engineer may

require that any request for an extension of Contract Time be accompanied by a written consent of the Surety whose bonds form part of the Contract Documents.

Liquidated Damages

GC18.8 Subject to the extensions of Contract Time as provided for herein, if the Contractor fails to achieve Final Completion of the Work in accordance with the Contract Documents and to the satisfaction of the City by the day fixed in the Agreement for Final Completion of the Work, the Contractor shall pay the City the sum stipulated in the Agreement as liquidated damages (and not as penalty) for each and every calendar day following that day fixed for Final Completion of the Work and ending on the day immediately preceding the date of the Certificate of Final Completion of the Work.

GC19. CERTIFICATE OF FINAL COMPLETION OF THE WORK

GC19.1 On the day that Final Completion of the Work is achieved, and the Contractor has complied with the Contract Documents and all orders and directions made pursuant thereto, to the satisfaction of the Engineer, the Engineer will issue a Certificate of Final Completion of the Work to the Contractor.

GC19.2 No payment made to the Contractor and no partial or entire use or occupancy of the Work by the City shall be taken as an accurate setting forth of the state of the Work or as an acceptance of any Work or material not in accordance with the Contract Documents. Neither the issue of a Certificate of Final Completion of the Work nor payment of the final progress estimate shall relieve the Contractor from his responsibility either under GC20 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 Final Completion of the Work, 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 Engineer or the City.

GC19.3 Subject to his right to appeal pursuant to GC23, acceptance by the Contractor of payment of the final progress estimate and the Certificate of Final Completion of the Work 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, except those previously made and still unsettled, if any.

GC20. WARRANTY

GC20.1 The Contractor shall, unless specifically stated otherwise in the Contract Documents, at his sole cost and expense, maintain the Work against any and all defects or deficiencies that may arise for a period of twelve (12) months from the date of the Certificate of Final Completion of the Work.

GC20.1.1 If because of conditions reasonably beyond the control of the Contractor, a portion of the Work cannot be completed but that portion does not prevent the balance of the Work from being put to its intended use, the City may at its sole discretion

permit the warranty period for all or part of the completed portion of the Work to commence prior to the issuance of the Certificate of Final Completion of the Work.

- GC20.2 Upon receipt of written notice from the City, the Contractor or his Surety shall, at his sole cost and expense, remedy any defect or deficiency, and remedy any and all damage that may arise or result from the defect, deficiency or the correction of same, or otherwise identified by the Engineer within the twelve (12) month period as aforementioned, in the manner and within the time periods specified in the said notice.
- GC20.3 If the Contractor fails or neglects to act 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 City may take all steps necessary to have the defects, deficiencies or otherwise remedied either by the City's own forces or by another contractor acceptable to the City and the Surety. 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 City to the Contractor setting out the amount to be paid. If 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.
- GC20.4 If 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 City setting out the amount to be so paid.
- GC20.5 Notwithstanding the generality of the foregoing:
- .1 If 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 or his Surety, except that the City shall immediately notify the Contractor or his Surety and shall withdraw its forces as soon as the Contractor's or the Surety's forces assume performance of the repair.
 - .2 All costs resulting from the need to undertake remedial work during the warranty period as aforesaid, whether by the Contractor, his Subcontractor or by the City, as provided herein, shall be borne by the Contractor or his Surety. 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, inspection and testing.
- GC20.6 If 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 Subcontractor, 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 herein, the Contractor shall not be entitled to repayment of any monies that he is required to pay the City as outlined in the above.

GC20.7 If a defect or deficiency prevents the full and normal use or operation of the Work or any portion thereof, for purposes of calculating the warranty period, time shall be deemed to cease to elapse for the defective or deficient portion, and for any portion of the Work whose use or operation is prevented by such defect or deficiency, as of the date on which the defect or deficiency is observed or the use or operation is prevented and shall begin to run again when the defect or deficiency has been corrected or the Work may be used or operated to the satisfaction of the Engineer.

GC20.8 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 the Contract Documents, then the provisions of such statute or manufacturer's warranty shall apply.

GC21. SUSPENSION OF WORK

City's Right to Stop Work

GC21.1 The City has the right and may, by an order in writing, at any time stop or suspend all or any part of the Work, or direct any portion to be commenced or completed in priority to any other part or portion, or may cancel the order to proceed with the Work, or with any part thereof, and the Contractor shall not thereby be entitled to any claim of or loss of profit, or anticipated profit, or for damages or for any additional payment by reason of such order. The Contractor shall comply with such orders immediately and suspend all operations in respect of the Work except those that, in the opinion of the Engineer are necessary to secure the Site and any existing facilities thereon in a proper and satisfactory condition for the safe accommodation of the public, and for the effectual protection of the Work, Site, Plant and material from the weather, vandalism or other causes, and shall so maintain it.

GC21.2 The Contractor shall not, during a period of suspension, remove any part of the Work, Plant or material from the Site without the consent of the Engineer. No such suspension shall vitiate this Contract or any part thereof, and at any time after such Work has been suspended, such Work may again be resumed in whole or in part at the option of the Engineer. Upon the Contractor receiving written notice from the City that such Work or any part thereof is to be resumed he shall at once resume Work and diligently carry on the same.

GC21.3 The Contractor shall not proceed to prosecute any portion of the Work, against the orders of the Engineer. In the case of any portion of the Work prosecuted contrary to the orders of the Engineer the cost of such taking known or exposure, and re-building if any shall fall upon the Contractor.

Contractor's Right to Suspend Work or Terminate Contract

GC21.4 If the work is stopped or otherwise delayed for a period of sixty (60) calendar days or more under an order of any court, or other public authority, and providing that such order was not issued as the result of an act or fault of the Contractor, or anyone directly or indirectly employed by him, or if the City fails to pay the Contractor within sixty (60) calendar days of its maturing and presentation, any sum certified by the Engineer or awarded by arbitrators, then the Contractor may, upon seven (7) calendar days written notice to the City, stop work or terminate this Contract and recover from the City payment for all Work done and any loss sustained upon any Plant or material with reasonable profit and damages.

GC22. FORFEITURE OF CONTRACT

GC22.1 The City 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, and may employ such means as the City sees fit to have the Work completed, 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 local agent of the latter, if the Contractor:

- .1 abandons the Work; or
- .2 is adjudged bankrupt or insolvent; or
- .3 makes a general assignment for the benefit of his creditor without the City's consent; or
- .4 has a receiver or liquidator appointed in respect of his assets; or
- .5 is in the judgment of the Engineer 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 Documents; or
- .6 in the judgment of the Engineer, is not progressing with the Work or any part thereof continuously and in such a manner as to ensure the proper completion of the Work or any part thereof, within the time stipulated in the Contract Documents; or
- .7 refuses, neglects or fails forthwith, when so ordered, to conduct the Work so as to ensure its completion, in the opinion of the Engineer, within the time stipulated; or
- .8 has not completed the Work within the time required; or
- .9 refuses, neglects or fails to take down, rebuild, repair, alter or amend any defective or unsatisfactory Work, or to remove any condemned material or workmanship, or to comply with any reasonable order in connection therewith that he may receive from the City; or
- .10 fails to make prompt payment of wages to his, employees, Subcontractor or accounts for the purchase or rental of material or Plant; or

- .11 fails to promptly secure a discharge of a lien or trust claim, served upon the City, pursuant to The Builders' Liens Act, within thirty (30) calendar days after receipt of written notice of the claim from the City; or
 - .12 persistently disregards any laws, by-laws or regulations; or
 - .13 commits any other material breach of this Contract that in the opinion of the City indicates an unwillingness or inability upon the part of the Contractor to carry out the terms thereof.
- GC22.2 Upon such notice being given to the Contractor, he shall subject to any conditions stipulated in the notice, immediately discontinue the Work or any part or parts thereof specified in the notice.
- GC22.3 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 City 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 City 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 local agent of the latter.
- GC22.4 The Surety in such event shall take the Contractor's place in all respects, shall be bound by all terms and conditions of Contract Documents and shall be paid by the City in accordance with the terms of the Contract for all Work performed by it.
- GC22.5 If the Surety does not within fourteen (14) calendar days exercise its right and option to assume the Contract as aforesaid or if 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, supplies and property of every kind provided by the Contractor for the purpose of the Work and to procure other Plant and materials for the completion of the same. The City shall not be required to obtain the lowest price for the Work taken over from the Contractor.
- GC22.6 If the Work or any part hereof is taken out of the Contractor's control, all Plant and material and the interest of the Contractor in all licences, powers and privileges acquired, used or provided by the Contractor under the Contract shall be assigned by the Contractor to the City without compensation to the Contractor. When the Engineer certifies that any Plant, material, or any interest of the Contractor referred to above is no longer required for the purpose of the Work, or that it is not in the best interest of the City to retain that Plant, material, or interest, it shall revert to the Contractor.
- GC22.7 If the cost to the City, as certified by the Engineer, 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. 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 that 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 Final Completion of the Work in the Contract Documents and the Contractor shall pay the amount of such cost of the Work together with liquidated damages as provided for herein to the City upon notice from the City 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 the Contract, and in such manner as in no way to hinder or interfere with the Other Contractor, or workers employed by the City.
- GC22.8 If the whole or any part of the Work is taken out of the Contractor's hands, the Contractor's right to any further payment that is due or accruing due under the Contract is extinguished, and the Contractor is liable to pay the City, upon demand, and amount that is equal to the amount of all loss and damage incurred or sustained by the City in respect of the Contractor's failure to complete the Work.
- GC22.9 The taking of the work or any part thereof out of the Contractor's control pursuant to the above does 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.
- GC22.10 If the Contractor disagrees with any decision or direction of the Engineer on any of the foregoing matters, the Contractor shall comply with the decision or direction of the Engineer but may appeal the decision in accordance with GC23 Dispute Resolution..

GC23. DISPUTE RESOLUTION

Compliance with Engineer's Decision

- GC23.1 If the Contractor disagrees with any decision or direction of the Engineer, the Contractor shall nonetheless comply with the decision or direction of the Engineer.
- GC23.2 Such compliance by the Contractor shall not be construed as an admission by the Contractor of the correctness of that decision or direction, or prevent the Contractor from appealing the decision or direction that is the subject of the protest.

Appeals

- GC23.3 If the Contractor disagrees with any decision or direction of the Engineer, the Contractor must, within seven (7) calendar days after receiving the notice of the Engineer's decision or direction, notify the City in writing of his contention with respect thereto and request a determination thereon from the City Manager.

- GC23.3.1 Such notice shall set forth particulars of the matters in dispute, and if applicable, state the probable extent and value of the damages and the relevant provisions of the Contract Documents.
- GC23.3.2 If the Contractor fails to so notify the City for a determination within seven (7) calendar days after receiving the notice of the Engineer's decision or direction, 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 Clause.
- GC23.4 If the Contractor disagrees with the determination of the City Manager, the Contractor must within seven (7) calendar days after receiving notice of the City Manager's determination, notify the City in writing of his contention with respect thereto.
- GC23.4.1 If the Contractor fails to so notify the City within seven (7) calendar days after receiving the notice of the City Manager'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 any of the provisions of this Clause.
- GC23.5 If the Contractor neglects or fails 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 Engineer, or any other remedy that the Contractor 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.

Arbitration

- GC23.6 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 regarding 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 shall be referred to arbitration.
- GC23.7 The Arbitration Act, C.C.S.M. c. A120 shall apply to the arbitration in all respects except as expressly otherwise provided in these General Conditions.
- GC23.8 No arbitration shall proceed before the date of Substantial Performance of the Work unless both the City and the Contractor agree that the matter in dispute requires immediate consideration while evidence is available, or in the case of legal proceedings, or where the action may become proscribed by reason of delay.
- GC23.9 Except as hereinafter provided otherwise, the arbitral tribunal shall be composed of three arbitrators, one to be appointed by each party to the reference and the third to be appointed by the first named two arbitrators in writing before they enter upon the business of the reference.

- GC23.10 Either party may notify the other party in writing of his desire to submit the difference, dispute or question to arbitration. Said notice shall name the arbitrator appointed by the party giving notice.
- GC23.11 The party receiving the notice shall, within ten (10) calendar days, reply to the party giving the notice . and name the arbitrator appointed by the party receiving the notice.
- GC23.12 The two arbitrators appointed shall within ten (10) calendar days of the date on which the last of them was appointed, appoint a third arbitrator who shall be the chairperson of the arbitral tribunal.
- GC23.13 If the party receiving the notice refuses or neglects to appoint an arbitrator within ten (10) calendar days, then the arbitrator first appointed shall 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 shall be made by the said arbitrator.
- GC23.14 The chairperson of the arbitral tribunal, or the single arbitrator pursuant to GC23.13, shall determine the procedure to be followed in the arbitration.
- GC23.15 Except as hereinafter provide otherwise, the City and the Contractor shall each 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.
- GC23.15.1 If, pursuant to GC23.13, the arbitral tribunal is composed of one arbitrator, the City and the Contractor shall bear all costs and expenses associated with the appointment of the arbitrator equally.