

Section

9

# Contract Administration





# Project Management Manual Sections

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# 9 Contract Administration

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The reason for undertaking a project is to achieve the benefits defined in a specific Business Case. The project is delivered by managing the project, administering contracts and completing the product work.

This section outlines Contract Administration processes and procedures for:

- reviewing
- monitoring
- controlling
- communicating
- clarifying
- interpreting
- making decisions
- fulfilling the City's obligations

They apply to contracts with various types of vendors, including consultant assignments and construction contracts.

While the general intent is to comply with the approach defined in the Project Management Manual, contract administration services must be carried out in accordance with the terms of the Contract being administered. In the event of conflicts with the terms of a Contract, the Contract documents generally take precedence over the Project Management Manual.

The type of contract may also impact on the processes and procedures to be applied. These contract administration procedures have been prepared for the Design-Bid-Build (DBB) approach.

Under performance-based contracts, the means and methods may reside with the Contractor, in which case the project management and contract administration roles will be different, and will be appropriately identified in the Business Case or Project Delivery Plan.

All City of Winnipeg contracts incorporate General Conditions (GCs) with boiler plate terms and conditions governing the contracts, and the Supplemental Conditions (SCs) which may alter specific General Condition clauses. These contract administration procedures are based off the City of Winnipeg's General Conditions for DBB Contracts. Current version of the General Conditions can be found at: [winnipeg.ca/matmgt/gen\\_cond.stm](http://winnipeg.ca/matmgt/gen_cond.stm)

The Contract Administrator (CA) is responsible for contract administration and is the City's representative throughout the duration of the Contract as described in *PMM Section 5.6*. The Contract Administrator has the authority to act on behalf of the City to the extent expressly provided for in the Contract. The Contract Administrator role may be assigned to a representative from either the City or a Consultant.

The City Project Manager is responsible for the entire delivery chain and will retain oversight over the contract administration services. All reporting and requests for approval originating from contract administration are to be directed to the Project Manager (PM).

In accordance with the foregoing, the Contract Administrator is to utilize processes, procedures and templates identified within this section to deliver the Design-Bid-Build contract administration services. Application to Consultant contracts will require selection and application of the appropriate procedures.

### 9.1 Records and Reporting

This section identifies the process the Contract Administrator (CA) will follow for records and reporting pertaining to the Contract, which reporting will be conducted throughout the duration of the Contract and how the information will be filed.

The Contract Administrator is responsible for developing or compiling contract information and records, and preparing and issuing reports. The records and reports are to be completed and distributed in accordance with the Project Delivery Plan (PDP) – Communications Plan. It is essential that timely information is produced and distributed within 48 hours of its creation, unless defined otherwise.

#### 9.1.1 Records

Written records in template or report format are required for all correspondence. The records are to be filed electronically. Hard copies are not required unless specifically identified. In many cases this may require conversion of hard copies to electronic format for filing.

Copies of incoming correspondence are to be:

- stamped with the date and time received,
- the initials of the persons reviewing the communication, and
- notations of action taken as a result.

Depending on its complexity, it is advisable to assign unique numbers to all correspondence and to maintain a log of all correspondence.

In addition to two-way, job-related written correspondence, **internal reminders** such as memos to file are important and should be systematically maintained by the Contract Administrator.

Other communications (telephone calls, meeting minutes, conversations, and general ideas on the Contract) that form the basis for a job-related activity should be recorded in memoranda and filed with other correspondence.

##### 9.1.1.1 Contract Records

The Contract Administrator is responsible for maintaining a complete and orderly file of all aspects of a Contract. This is to include complete files on scope, cost, schedule, and quality, as well as level of effort and site issue reports. The entire correspondence file of reports, forms, memos and minutes of meetings is an important part of that record.

At a minimum, the Contract Administrator is responsible for generating the following specific records throughout the course of the Contract:

- **Meeting Minutes:** Minutes of all regular and special Contractor meetings, coordination meetings and conference calls.
- **Scope Change Documents:** Coordination, compiling and preparing Change Management documentation including: Proposed Change Notices (PCN), Proposed Change Notice Log, Change Work Orders (CWO), Change in Scope of Services (CSS), Contract Change Log, Contractor Claims and other applicable documents.
- **Clarification and Directives:** Collection and dissemination of additional Information requested by or provided to the Contractor including: Requests for Information (RFI) and Field Instructions (FI).
- **Quality Assurance:** Collection and filing of inspection documents and remedial works including: Construction Review Records, Test Records and Non Conformance Reports.

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- **Daily Progress Reporting:** Prepare, or cause to be prepared, Daily Construction Reports (DCR) containing weather conditions, communications with the Public, labour resources onsite, equipment onsite, work activity, coordination with outside agencies, problems encountered, activities started, completed and planned, site conditions, work stoppages, unusual events, and verbal instructions given to the Contractor and inspections completed.

Other important records that must also be maintained and filed are:

- **Job Photographs** (which should be filed with the progress reports): Job photographs should be fully documented and include a digital date of when the photograph was taken and assigned a phot number. The photo number should be referred to in a file explaining who took the photograph, the direction the photo was taken, and the activity reported to be shown by the photograph. These records are necessary for a potential legal challenge to accuracy.

- **Design notes**

- **Shop-Drawing Logs**

The log should show at a minimum:

- a number identifying the individual drawing
- drawing titles
- the date the drawing was received
- to whom the drawing was forwarded to for review
- the date the drawing was returned, and
- the current status of the drawing (accepted, additional information or revisions required).

- **Bid Documents and Job Diaries**

These are to be included as part of the permanent Contract record:

- Contract documents - the Bid Opportunity submission
- Bidding Instructions
- Addenda
- General Conditions (GCs)
- Supplemental Conditions (SCs)
- Drawings
- Specifications
- Shop Drawings
- Performance Security, and
- All other exhibits mentioned in the Contract documents as forming part thereof (i.e.: equipment certification, equipment warranties, performance certificates);
- Record drawings (i.e.: "as-built drawings") showing revisions and additions to the original plans must also be maintained as a part of a proper job record.

### 9.1.2 Reporting

Reporting includes compiling records of the contract administration details and responding to the requirements of the Project Delivery Plan (PDP).

The following reporting may have been pre-defined under the PDP, and if not, is required as part of the contract administration procedures, if applicable to the type of Contract.

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### 9.1.2.1 Monthly Construction Status Reports

The Contract Administrator shall compile and submit to the City a Monthly Construction Status Reports containing the following:

- Executive Summary – A written summary of the current and cumulative progress of the Contract identifying:
  - major activities completed during the period,
  - major activities planned for the next period, and
  - any areas of concern.
- Safety and Security
- Provide an overview of Contractor's safety performance including:
- Record of Incidents
- Investigations
- Permits
- Trainings
- Inspections
- Hazard Reviews
- Notifications
- Safety Committee Meetings held
- Cost Reporting - A commitment-based cost report reflecting:
  - costs committed to date
  - invoiced to date
  - percent complete
  - forecast to complete
  - estimate at completion
  - variance
- A Detailed Contract Status Report listing:
  - all approved Change Orders to date
  - all outstanding Proposed Change Notices
  - Detailed Progress Estimate listing reflecting holdbacks retained
  - Manitoba Retail Sales Tax (MRST) included or self-assessed
  - amounts paid to Contractor
  - dates paid
  - holdback releases
- Construction Progress – A construction schedule presenting actual vs. planned progress shall be updated to reflect performance to date. The schedule can take the form of Gantt Charts, S-curves, and histograms to demonstrate the progress of the Contract against the baseline.
- Quality Assurance – This section of the report will provide a listing of Inspections, Reviews and testing completed during the previous period as well as status reports of all Non-Conformance Reports (NCRs).

During the construction phase of a Contract, the Contract Administrator is responsible for maintaining communications between the three parties: the City Project Manager, the Contractor, and the Contract Administrator.

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Communications are divided into two broad categories:

1. Contract Reports; and
2. Records

### 9.1.2.2 Contract Reports

Contract Reports provide comments, advice, recommendations or observations on any aspect of the construction.

There are four categories of Contract reports:

#### 9.1.2.2.1 Cost Control Reports

Costs are divided into two broad categories: payments to the Contractor and payments to others. Payments to the Contractor include regular and final progress payments for the Work of the Contract and for extra work or Change Orders. Payments to others may include the Contract Consultant, their sub consultants, testing laboratories, utility companies, other Civic departments working on the site, property acquisition costs, suppliers, etc.

It is the responsibility of the Contract Administrator to assess and contract costs on a regular basis and to report at least monthly the cost-to-date, the contracted contract cost and any variations from the budgeted contract cost. The Contract Administrator's estimate of cost becomes the basis for preparing progress estimates.

The Contract Administrator is also responsible for monitoring other contract costs, and for verifying and recommending payment. Where predetermined costs have been established, the Contract Administrator shall also indicate cost variations and provide an explanation and justification of any significant variation from the estimates.

The Cost Control Report prepared by the Contract Administrator is to indicate for each of the contract cost components (contract cost, consultant cost, utilities, testing, etc.):

- budget funds for the component
- cost for current period
- cost-to-date including approved changes
- contracted final cost

This information allows the City Project Manager to anticipate funding shortfalls and take appropriate measures (i.e.: report to Chief Administrative Officer for transfer of funds, etc.).

#### 9.1.2.2.2 Quality of Work Reports

Quality of Work Reports cover material testing reports and inspection reports related to workmanship. The testing and inspection is usually done by specialists in their particular field. Their reports are immediately received by the Contract Administrator, who reviews for compliance and disseminates the information.

Acceptance of material quality is usually subject to evaluation of a number of characteristics of the material, whether it be concrete, asphalt, paint, electrical equipment, etc. The specifications in the Contract documents include a quality assurance program against which the materials are tested. The methods used to test the material usually refer to national standards (i.e.: CSA, CGSB, ASTM, etc.) Reports from testing laboratories typically indicate the characteristics being measured, the specified requirements, and the test results.

Workmanship is defined in the Contract specifications, and usually refers to "minimum acceptable standards" (e.g. tightness of bolts, soil compaction, etc.) or to subjective measures (i.e. "no visible overlap in paint"). The inspection firm's report contains measured findings (e.g. compaction) or evaluation of workmanship based on typical industry standards (i.e.: concrete finish).

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### 9.1.2.2.3 Progress and Level of Effort Reports

In order to complete progress and level of effort reports, it is usually necessary for the Contract Administrator to prepare a scheduled Daily Construction Report or combination of reports indicating:

- the precise work and activity descriptions, separated as to physical location
- the labour force, broken down by subcontractor, locations, and major activities
- equipment on the site, and whether it is being used or stored by the Contractor
- the weather conditions and temperatures at key times of each day
- other contractors, utilities, agencies, etc., on the site
- site clarifications, interpretations or instructions issued to the Contractor
- proposed change notices issued to the Contractor
- change order work accomplished, with relevant details
- photographs taken during the day
- visitors to the site
- meetings, discussions, commitments and conversations

Such scheduled reports indicate the exact nature of the construction operation. Several of these scheduled reports can be combined into one format. The information may be on a single form or on several forms. The most important aspect is that all the information is recorded in every time period and filed in logical sequence.

From the daily reports, the Contract Administrator can provide the City Project Manager with a complete current report on the Contract status on a monthly basis.

## 9.2 Meetings

The Contract Administrator shall arrange and chair all Contract Administration site meetings including preparation, distribution and filing of minutes within three business days of the meeting date.

### 9.2.1 Minutes of Meetings



Meeting Minutes  
template

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Planning Office  
website

The Minutes of Meetings represent an invaluable source of evidence to prove or rebut claims of delay. Minutes of job site meetings are of little value unless they indicate why the meeting was held, when and where it was held, who attended, what was discussed and agreed upon, and the resulting action. They are usually prepared at a time when litigation is not yet contemplated and therefore they tend to be more accurate. In a large construction contract, these minutes will be very extensive.

General guidelines for taking minutes of meetings include:

- Number the meetings.
- Use outline format.
  - Keep the minutes in outline form to maintain clear, to-the-point representations
    - Separate "old business" (items from prior meetings) from "new business."
  - Number each successive item in each section.
    - This will make all references to any specific job meeting discussion fast and accurate. (i.e.: "Job Meeting 4, Item 4.4").

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- Where items are being carried over to other meetings, maintain the reference number from the initial meeting in which the item was discussed.  
(i.e.: "Job Meeting 7, Item 4.4" – initially discussed in Meeting 4 and discussed again in Meeting 7).
- Where an item is discussed over a number of meetings, it is also helpful to recopy in the minutes the statements made about the item from the previous meetings, added in chronological order. This allows for quick reference of the action taken to date without "digging" through the previous minutes, and is easily accomplished with word processing software used today.
- Use a title for each item.
  - A summary description clarifies a paragraph's subject. They make research fast and correlation of topics easy.
  - Use exactly the same wording in each meeting that the item is discussed.
  - Issues that continue through numerous meetings can be clearly tied together through their consistent title.
- Include all appropriate references in an item title.
  - If it involves a change order, include the change order number in the description.
  - If it involves a change in the schedule, a direction from the Contract Administrator, or whomever, note it as such.
  - The inclusion of related numbers will relate the discussion to all the affected files.
- Name names.
  - Avoid using titles; use the person's name instead.
- Use short and specific statements. Be concise.
- Read back the exact language at the meeting.
  - Get agreement that the representation is entirely accurate and that everyone understands the implications, as well as the obvious.
- Require defined action on items.
  - Include the names and the precise dates that action is required by.
  - Ask frank questions at the meeting.
  - Narrow complex or difficult issues down to the next step required in the resolution process.
  - Confirm "whose court the ball is in" and write it down.
- Notify all recipients of the meeting minutes to advise the writer of any errors or omissions in the minutes.
  - Include such a request on the meeting minute form itself.
  - Request acknowledgement of the accuracy of the "old business" before proceeding to the "new business" at each meeting.
  - Include any resulting acknowledgement or corrections as the first item of the "new business".

### 9.2.2 Pre-Award Meeting



Pre-Award Meeting  
template

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Pre-Award Meetings have been established to consider the responsiveness of the bid submitted by the apparent low bidder and considering the bidders understanding of the overall project scope, estimated cost, and utilization of proposed subcontractors, expertise, and review of the mandatory pre-award requirements. The Pre-Award Meeting is to be held in accordance with the *PMM Section 6.4.14 Evaluate Bids and Award Contracts*.

The Contract Administrator is the Chair of the meeting.

### 9.2.3 Pre-Construction Meeting



Pre-Construction  
Agenda and Meeting  
Minutes  
template

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website

The Contract Administrator shall convene a Pre-Construction Meeting and include representatives of management from the various parties who have the authority to make decisions, so as to resolve any problems that may arise. The Pre-Construction Meeting should be held in conjunction with a site inspection to verify site conditions and the need for preparatory works.

The meeting is conducted to address a number of purposes:

- The introduction of contract personnel from the City, the Contract Administrator, and the Contractor. Often persons representing utilities, other City departments, key subcontractors and other contractors who have a major impact on the Work may be in attendance.
- Establish lines of authority and lines of communication.
- Review the status of the Contract.
- Review the Contract schedule, including existing site activities and any constraints to the Work.
- Identify start-up requirements.
- Other items pertaining to the Contract.
- Advise the City's Insurance Branch of the confirmed effective date that construction will begin, in order to place the Course of Construction and Wrap up Insurance. Insurers require the insurance be placed on the day the construction begins.

The following persons should be represented at the Pre-Construction Meeting:

- City employee responsible for on-site administration of the Work, and for office administration.
- Representatives of the Contract Administrator (if not City employee) responsible for on-site and office administration and inspection of the Work.
- Contractor's Contract Manager and Site Superintendent.
- Representatives of principal subcontractors.
- Representatives of other contractors (other than subcontractors), utilities or other City departments who are currently working on the site and whose work will impact on the Work of the Contractor.

#### **Meeting Minutes of a Pre-Construction Meeting**

Templates should be used for the Agenda and for recording of Meeting Minutes.

The Contract Administrator is responsible for preparing and distributing detailed Minutes. The Minutes are to be distributed to all attendees and to other persons having key input into the Contract. Minutes of the Pre-Construction Meeting are to be kept by the Contract Administrator.

To be effective, these Minutes must be distributed in a timely manner to all parties for confirmation of the accuracy of the Minutes and to allow sufficient time for required actions to be taken prior to the next site meeting. Following a discussion of the various items, the decisions reached should be included in the Minutes.

The following should be included in a Pre-Construction Meeting Minutes:

- The date, time and location are to be recorded.
- The Contract description and reference number (File No.)
- Contractor and Contract Administrator information are to be recorded.
- From the list of persons invited to the meeting, record the attendees and regrets.
- State the purpose of the meeting.

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- Notes on the following agenda items are to be recorded:
  - Introductions - Identify Contract personnel from the City, the Contract Administrator and the Contractor, and specify the respective role and responsibilities of each individual (lines of communication) relative to the Contract.
  - Communications.
    - Review Confidentiality and Non-Disclosure clauses.
    - Review lines of communication and flow of communication.
    - Review media procedures.
  - Review the Award of Contract.
    - State who the Contract was awarded to (successful bidder).
    - Report the date the Letter of Intent was issued, and indicate that this date is to be used on all relevant documents.
    - Review Contractor insurance and bond requirements.
    - Review the status of any City insurance.
    - Report on the status of Submissions by the Contractor and, where required in the Contract, their subcontractor(s).
    - Verify Business Registration and WCB standing.
    - Verify COR/SECOR or equivalent Certification.
    - Verify security clearances.
  - Scope of Work
    - Review Project scope.
    - Review Contract documents and schedule and answer any questions.
    - Review submittals required in accordance with the specifications.
  - Subcontractors
    - Obtain list of Contractors.
    - Obtain list of construction equipment to be used onsite.
    - Obtain material orders and delivery schedules. Identify any delivery issues.
    - Obtain subcontractor schedules.
    - Review Contracts between major subcontractor(s) and the Contractor in terms of these Contracts meeting the terms and conditions of the City's Contract with the Contractor, particularly in the area of scheduling. This is a follow-up to the Pre-Award Meeting, where this requirement for subcontractor Contracts is to be emphasized.
    - Review Communications/Submission procedures regarding changes to subcontractor list.
    - Review labour resources and equipment proposed to maintain the Schedule. Discuss need for any changes to the Schedule. Request updates to the Schedule.
    - Review procedures for issuing and revising design information and authorizing changes.
  - Commencement
    - Confirm Contractor's receipt of LOI or Purchase Order as in Part D Supplemental Conditions under Commencement clause, first paragraph.
    - Confirm receipt/evidence of the following requirements as specified in Part D Supplemental Conditions under Commencement clause, second paragraph.
    - Verify list of required security clearances.

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- Schedule
  - Obtain detailed Contract schedule. Discuss need for any changes or any potential scheduling delays.
  - Review labor resources and equipment proposed to maintain schedule.
  - Review material orders and identify any delivery problems.
  - Obtain commencement date.
  - Review Substantial and Total Performance dates, Warranty Period.
  - Discuss Liquidated Damages and the intent to apply them as per the Contract.
  - Discuss Crew phone numbers.
  - Discuss working hours and restricted hours.
  - Determine date for delivery of construction notices.
  - Obtain emergency contact names and phone numbers.
  - Review breakdown of Contract price and procedures for progress billings and associated certifications.
  - Review layout of the Work, control points and Contractors layout responsibilities. Identify layout requirements and identify responsibilities for various stages of layout (i.e.: control survey; construction survey) of the Contractor and Contract Administrator.
  - Review testing and inspection and responsibilities for same.
  - Review site coordination and the work of others relative to the Contract. Review the activities of other Contractors, utilities, other City departments and other agencies (i.e.: Heritage resources) on the site. Review their respective schedules, clearances required and resulting impact on the Contract.
  - Review temporary service provisions, power, trailers, waste removal, internet/phone, snow removal, fencing, water service and disposal. Discuss site facilities - Contractor's field office, Contract Administrator's field office. Is Contract Administrator's field office adequate as per Specification? Determine location of field offices (if not previously specified). Review site access constraints and special requirements.
  - Review permits required, building, occupancy, special permits.
  - Discuss approvals to be obtained by Contractor prior to commencing work (i.e. Navigable Waters approval from Transport Canada to construct temporary structures in rivers - work bridges, etc.).
  - Review Commissioning and Turn-over requirements, Operations and Maintenance Manuals, Red Line Markups, Warranties and Training.
- Construction Sequence
  - Discuss project phases.
  - Discuss sequencing of Work.
- Utilities
  - Coordinate utilities (i.e.: Hydro, MTS, etc.)
  - Discuss work required by others prior to Contract Work.

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- Stakeholders
  - Review Communication Strategy (i.e.: Notices, etc.)
  - Discuss site requirements.
  - Discuss noise issues.
  - Review access permissions.
  - Discuss shut downs.
  - Review permits.
- Traffic Management
  - Review site access constraints and special requirements.
  - Discuss traffic, pedestrian accommodations and controls.
  - Discuss building access.
  - Site Security, site requirements for site storage of materials.
- Project Issues
  - Review Change Management procedure.
  - Review procedures for RFIs, PCNs, CWOs, CSSs, and FIs.
  - Review submissions, shop drawings, material approvals, etc. required in accordance with the specifications. Identify a schedule for each submission and the processes (i.e.: "who gets what").
  - Discuss expectations for site clean-up.
  - Discuss importance of communicating any project / site issues as soon as they arise.
  - Discuss project specific risks (i.e.: Constructability issues, lead time concerns, construction methodology, work by others)
- Site Meetings
  - Establish frequency for site progress meetings.
  - Set time and date for next site progress meeting.
- Status Meetings
  - Establish frequency for status meetings.
  - Set time and date for next status meeting.
- Safety
  - Obtain Safe Work Plan
  - Review Safety, Health and Environment procedures and constraints.
  - Identify site and plant orientation requirements.
  - Discuss protection equipment for the Public and occupants.
  - Inform that safety is a standing item on the Site Meetings whereby Contractor must reports any safety incidences for that period.
- Security
- Environmental, review environmental procedures/constraints.
- Regulatory
- Identify a list of persons who are to receive minutes for all meetings.
- Identify a list of persons who are to receive a copy of any correspondence relative to the Contract.

### 9.2.4 Site Meetings



Site Meeting Minutes  
template

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website

Depending on the scope and nature of the Contract, the Contract Administrator shall convene weekly or bi-weekly meetings with the Contractor and record minutes of such meetings.

On Projects or Programs where multiple Contracts are awarded, the Contract Administrator shall arrange regular site coordination meetings to facilitate logical sequencing of the Work. Minutes of the meetings shall be prepared by the Contract Administrator. The minutes shall record agreed-upon-dates, timeframes, and actions by respective parties.

Regular site meetings should be held at the site and include representatives of management from the various parties with the authority to make decisions, so as to resolve any problems that may arise. Site meetings should be held in conjunction with a site inspection to observe progress and quality of work. The meetings should focus on immediate Contract needs and allow for resolution of conflicts.

Special meetings or conference calls shall be convened by the Contract Administrator as may be required to resolve issues with a smaller focused group or to disseminate special materials pertinent to the progress of the Work. The Contract Administrator shall chair and record minutes of such meetings and conference calls.

A **meeting agenda** is to be prepared for each type of meeting. Regular Contractor site meetings shall address the following:

- Review progress to date.
- Discuss expected progress
- Review Contract schedule.
- Identify coordination needs of Contract Administrator.
- Identify and resolve any problems occurring during construction, and
- Other items pertaining to the Contract.

At regular site meetings, the following persons should be represented:

- City employee responsible for on-site administration of the Work, and for office administration.
- Representatives of the Contract Administrator (if not City employee) responsible for on-site and office administration and inspection of the Work.
- Contractor's Contract Manager and site superintendent.
- Principal subcontractors, when requested.
- Representatives of other Contractors (other than subcontractors), utilities or other City departments who are currently working on the site and whose work will impact on the Work of the Contractor.

The minutes of job site meetings are essential to the Contract, as they become an official part of the Contract record, and are a valuable history of the Contract in the event of disputes. Accurate minutes are to be kept by the Contract Administrator.

The following is an example of the type of content to be included:

- The date, time and location are to be recorded.
- The Contract description and reference number (File. No.)
- Contractor and Contract Administrator information are to be recorded.
- From the list of persons invited to the meeting, record the attendees and regrets.
- State the purpose of the meeting.

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- Notes on the following agenda items are to be recorded:
  - Review of Last Meeting Minutes and Action Items.
  - Review the Contract Schedule.
    - On "Working Day" Contracts, identify the number of working days used since the last meeting and in total. Identify "lost" working days and the reasons for same.
    - On "Completion Date" Contracts, identify whether interim or stage completion dates have been achieved.
    - Discuss any necessary revisions to the Schedule.
    - Track construction and material delivery activities which are behind schedule.
  - Review Progress Status
    - Review progress to the end of the previous day.
    - Review progress to date against the Contract Schedule.
    - Review expected progress until the next regularly scheduled site meeting.
  - Construction Issues
    - Discuss defects in the Work and remedial measures to be taken.
  - Utilities
    - Review utility requirements/issues.
    - Discuss work required by others.
  - Project Risks
  - Environment
    - Regulatory Status.
    - Environmental incidents.
  - Safety
    - Report any incident/near misses, regardless of severity of action required by any party.
    - Review the Site and Plant Orientation requirements.
  - Submittals
    - Identify any problems.
  - Work By Others
    - Report on Work by others.
    - Review extra work orders issued since the last meeting.
    - Receive requests for extra work from the Contractor.
  - Change Control
    - Discuss any contract changes to date and the impact on the Contract Schedule and Contract price.
  - Request for Information (RFI) & Response Log
    - Discuss any changes identified in the RFI & Reponse3 log to date and the impact on the Contract Schedule and Contract price.
  - Traffic Management
    - Review site access constraints and special requirements.
    - Review adequacy of traffic and pedestrian accommodation and controls.
    - Discuss building access.

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- Site Security
  - Review protection requirements for the Public.
  - Review security requirements for site storage of materials which are to be used/incorporated into the Work.
- Resident Business Concerns
  - Identify resident/business concerns and any appropriate action required.
  - Discuss complaints, inquiries, claims, etc., received since the last meeting and any required actions.
- Quality Control and Quality Assurance
  - Report on quality control and quality assurance.
  - Review tests performed and results, if applicable or notable.
  - Schedule inspections/final inspection by City employee as appropriate.
- Stakeholders
- Other Business
- Identify a list of persons who are to receive minutes for all meetings.
- Identify a list of persons who are to receive a copy of any correspondence relative to the Contract.
- Schedule special meetings to deal with specific problems affecting the Work of the Contract.
- Determine a date for the next meeting, and identify whether said meeting is a special meeting or a regularly scheduled site meeting.
- Site meeting minutes need to be distributed in a timely manner to allow sufficient time for review and action prior to the next site meeting.

### 9.3 Contractor Submittals

This section describes the responsibilities of the Contract Administrator with regard to Contractor submittals throughout the duration of the Contract. The Contract Administrator shall obtain a listing of submittals and submittal schedule from Contractor.

The Contract Administrator shall notify the Project Manager of any requested substitutions, alternates or equivalents proposed by the Contractor during the course of the Work.

#### 9.3.1 Shop Drawings and Product Data



Submittal Log  
template

To be developed.

The Contract Administrator will receive Contractor shop drawings, log drawings into the Submittal Log template and transmit the shop drawings to respective design disciplines for review. Unless stipulated in the Contract or agreed otherwise, the shop drawing review period shall be no longer than 10 working days.

The respective design disciplines shall return the reviewed shop drawings to the Contract Administrator for recording the review status in the shop drawing log and transmission of the shop drawings to the Contractor:

- “Reviewed”,
- “Reviewed as Noted”, or
- “Revise and Resubmit”

Only “Reviewed” or “Reviewed as Noted” shop drawings shall be used for the Work.

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Shop drawings stamped “Revise and Resubmit” are to be acted upon accordingly by the Contractor. The Contract Administrator shall place copies of the “Reviewed” or “Reviewed as Noted” shop drawings in the Contract file.

For instances where multiple Contracts have been awarded on the Contract, the Contract Administrator shall review the shop drawings with respect to work of other Contracts and transmit copies of the reviewed shop drawings to the other Contractors for coordination with their Works.(i.e.: anchor bolt layouts from an equipment vendor to the concrete contractor for embedment).

### 9.3.2 Samples

All samples submitted by the Contractor will be logged by the Contract Administrator in the Submittal Log template, identifying:

- Date of Submission,
- Origin,
- Intended use in the Work, and
- Any deviation from the requirements set out in the Contract documents.

The samples shall be reviewed by the appropriate reviewer and comments recorded on the Submittal Log template. The Contract Administrator shall advise the Contractor regarding “Acceptance” or “Rejection” of the sample and record same in the Submittal Log template.

### 9.3.3 Operations and Maintenance Manuals

Upon receipt of Operation and Maintenance (O&M) Manuals from the Contractor, the Contract Administrator shall review the manuals for compliance with the Contract documents. The Contract Administrator will send the O&M manuals to the respective design disciplines and the City Project Manager for their review and approval. The Contract Administrator will compile the review comments from the reviewers and return the compiled comments to the Contractor for incorporation into the final O&M manual submission.

The Contract Administrator shall ensure the O&M manuals (first draft) are submitted and available for Pre-commissioning prior to issuance of Certificate of Substantial Performance.

### 9.3.4 Training Materials

The Contract Administrator shall receive, track and review lesson plans and other training materials. The Contract Administrator shall forward training materials to the City Project Manager for review and comment. All submittals shall be recorded in the Submittal Log template with their status identified.

### 9.3.5 Spare Parts

The Contract Administrator shall coordinate receipt of, inspection, tracking and storage of all spare parts in a location designated by the City Project Manager. The Contract Administrator shall create a listing of spare parts including description, specification reference and relative equipment tag.

### 9.4 Health, Safety, Security and Environment

The following section outlines the Contract Administrator's duties in relation to Health, Safety, Security and Environment (HSSE).

The minimum standard for all City of Winnipeg construction sites is:

- the Safe Work Plan,
- Workplace Safety and Health Act (WSHA) W210 and Regulation MR 217/2006, and
- Contractor Safety Management Plan.

In the event of a conflict of standards the most stringent standard shall apply.

#### 9.4.1 Health and Safety

The Contract Administrator and the Contractor must ensure effective ongoing exchange of safety information as well as notification in the event of an incident or emergency situation. It is strongly recommended that Contract contacts are posted at the job site for contract work taking place at City of Winnipeg facilities to ensure this information is available to City Supervisors and employees working in the area.

#### 9.4.2 Site Health and Safety Orientation

Before Contract work begins, site-specific safe work and emergency procedures must be communicated to Contractors by the Contract Administrator in consultation with City's safety resources as needed.

Contractors are also to be briefed on roles and responsibilities as well as the consequences of not following the Safe Work Plan or any site-specific safe work procedures. This includes the corrective action that will be taken to stop unsafe work and the subsequent remedial measures.

This is consistent with the duty to provide information that may affect the safety and health of a person at the workplace as per the Manitoba WSHA.

#### 9.4.3 Hazard Communication

Effective ongoing communication between the Contract Administrator, the Contractor, and any subcontractor is essential to identify situations that may arise during the course of work not originally discussed or identified. It is also important that any changes to Safe Work Plans be made and communicated on an on-going basis. Safety is to be an integral part of pre-work discussions and contract meetings.

#### 9.4.4 Monitoring Contractor Safety

Safety monitoring is performed along with other aspects of contract work during site visits by the Contract Administrator. This is done to ensure that Contractors follow the City's safety requirements as well as the Safe Work Plans for the work being done.

The Contract Administrator should consult with the City's Project Manager and safety resource if they have questions or need assistance with the monitoring process.

How often a site is monitored can be determined by:

- The nature of work and the risks involved.
- The Contractor's familiarity with the work being done and whether the work was done previously by the Contractor for the City and without incident.
- The level of knowledge and experience the Contractor has with respect to safe work and emergency procedures.

## SECTION 9 – CONTRACT ADMINISTRATION

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- Whether or not the Contractor has obtained a recognized safety certification. (i.e.: COR™ or SECORTM)

Safety monitoring can be random or announced, narrow in focus or more encompassing depending on the type and complexity of the work being performed. If unsafe work is observed, corrective action is taken by the Contract Administrator or others. Corrective action can range from immediate work stoppage until appropriate control measures are implemented up to and including termination of the Contract in extreme situations.

### 9.4.5 Responding to Safety Concerns and Follow-up

If a City employee becomes aware of a safety concern involving Contract work, the first step is always to notify their direct Supervisor. It is the Supervisor's responsibility to evaluate and respond to the concern in a timely manner in consultation with safety resources and the Contract Administrator.

Contractors have the same obligations to their employees as any other employer in Manitoba. Where safety issues arise regarding Contractor employees, the concern will always be taken to the Supervisor of the employees involved.

The City has the right to require the Contractor to resolve any safety issue raised to the City's satisfaction before work continues. This decision belongs to the Contract Administrator responsible for the Contract with support from any safety resource needed.

In circumstances where contract work could result in serious and imminent harm to a person, all employees are encouraged to take immediate corrective action to address the situation in a way that does not endanger themselves or others. This may mean stopping the work in progress and contacting their Supervisor to address the situation with all stakeholders.

### 9.4.6 Health and Safety Reporting

The Contract Administrator shall include in the Monthly Status Report a listing of all recordable incidents that occurred during the reporting period.

### 9.4.7 Investigations

The scene of an incident shall not be disturbed until permission is given by the Contract Administrator, the City, and by Manitoba Workplace Health and Safety. Investigation of the incident will be performed by the Contractor and the City. The Contract Administrator shall obtain the resultant investigation documentation. The Contract Administrator shall file the generated safety documentation in the Contract file for record purposes.

### 9.4.8 Security

The Contract Administrator shall review the prime Contractor's access control plan. The prime Contractor shall conduct site orientations for all personnel requiring access to the construction site.

#### 9.4.8.1 Visitors

For major job sites, the Contract Administrator shall obtain prior approval from the City Project Manager, for visits of non-resident personnel to the site. The Contract Administrator shall provide the City Project Manager with a list of non-resident personnel with the intended date of visit, reason for their visit and the expected duration of the visit. Non-resident inspectors do not require pre-approval however must complete an Inspection Report supporting the visit and provide the Contract Administrator with a copy for the Contract file.



Inspection Report  
template

Download from the  
City's Infrastructure  
Planning Office  
website

## SECTION 9 – CONTRACT ADMINISTRATION

Unscheduled media representatives, journalists and others shall not have access to the site. The Contract Administrator shall refer them to City Project Manager and City of Winnipeg Media Relations.

### 9.4.8.2 Plant Access



Plant Entry Permit  
template

To be developed.

For projects on an operating plant, the Contract Administrator shall coordinate access for work undertaken within the plant. A Plant Entry Permit shall be completed listing all workers, description of work to be performed and expected duration of work activity.

The Plant Entry Permit shall be signed by the plant operator in charge, Contractor and Contract Administrator.

A signed Plant Entry Permit will be required each day in-plant work is required. Contractor shall request from the Contract Administrator a Plant Entry Permit no later than 3:00 pm the previous day.

### 9.4.8.3 Criminal Record Search

For projects where security is of concern, the Contract Administrator shall review the Contractor's security plan for the site. The Contractor shall provide the Contract Administrator with a Criminal Record Search Certificate for each individual proposed to perform work on the site prior to their engagement in the Work.

## 9.4.9 Permitting

The following permit process applies to major work on operational facilities only. In other cases the Contract Administrator shall review work requirements with the City Project Manager and establish safety protocols accordingly.

Permits Required for Work WITHIN an Operating Plant	Permits Required for Work ADJACENT to an Operating Plant
<p>The Contract Administrator shall ensure the following permits are completed by the Contractor for Work to occur within an operating plant and are signed by the plant operator in charge.</p> <p>Some of the key permits that need to be obtained:</p> <ul style="list-style-type: none"><li><input type="checkbox"/> Plant Entry Permit</li><li><input type="checkbox"/> Process Interruption Permit</li><li><input type="checkbox"/> Lockout Tag Out Permit</li><li><input type="checkbox"/> Hot Work Permit</li><li><input type="checkbox"/> Confined Space Permit</li></ul>	<p>The Contract Administrator shall ensure the following permits are produced by the Contractor for Work adjacent to an operating plant.</p> <p>Permits for this work do not require plant operator in charge sign off.</p> <ul style="list-style-type: none"><li><input type="checkbox"/> Confined Space Permit</li><li><input type="checkbox"/> Critical Lift Permit</li><li><input type="checkbox"/> Lockout Tag Out Permit</li><li><input type="checkbox"/> Pressure Test Permit</li></ul>

### 9.4.10 Environmental

Safe handling and storage of fuel, oils, and chemicals shall be of the highest priority and care. Any mishap shall be immediately reported to the Contract Administrator.

The Contract Administrator shall immediately notify the City of such spills in accordance with established City of Winnipeg protocols and monitor the Contractor's containment and remediation actions. The Contract Administrator shall obtain copies of Contractor's Incident Report and investigation and file in the Contract file.

### 9.5 Schedule of Work

All construction contracts require schedules for completion. The time element may involve specified commencement and completion dates, or specified working days. Large or more complex Contracts may involve more detailed performance schedules for individual critical work activities.

This schedule is a tool that the Contract Administrator uses to monitor and control the Contract Work. The Contractor shall submit a Detailed Construction Schedule, incorporating the planned schedule as set out in the Supplemental Conditions of the Contract, for the Contract Administrator's review. The Contract Administrator shall forward the schedule along with their recommendation to the City Project Manager for review and approval. This schedule then forms the Contract time baseline to which actual progress is tracked. It is an enforceable obligation of the Contract, like every other aspect of the Contract, and thus, a party-causing delay which results in increased costs, is likely to be liable for additional costs resulting from the delay.

The Contract schedule to be provided by the Contractor is dependent on the complexity of the Contract. It may vary in format from a reproduction of the Schedule of Work contained in the Bid Opportunity submission, to more detailed Gantt Charts or a detailed Critical Path Method (CPM) Chart for individual critical activities.

Progress reviews shall be carried out on a regular basis, typically at the regularly scheduled site meetings. Activities which are behind schedule are to be identified, and corrective actions identified to bring those activities back on schedule. Progress reviews may be augmented by special or additional meetings to discuss critical activities which are behind schedule.

The onus is on the Contractor to bring the Work back on schedule. Depending on the circumstances behind the delay, the Contractor will have to consider whether to:

- deploy more resources by bringing additional labour and/or equipment onto the site
- shift Contract resources to address the activity behind schedule
- increase working hours
- bring in a subcontractor to complete the late activity
- change subcontractors who are not performing in accordance with the schedule
- review remaining activities to see if there is opportunity to recover lost time on future activities
- substitute existing equipment onsite with higher productivity equipment
- change suppliers (if they are dealing with a supply problem), as approved by the Contract Administrator
- substitute materials, as approved by the Contract Administrator.

#### 9.5.1 Revisions to the Schedule

Where the schedule must change, it may only be revised with the prior written consent of the Contract Administrator, and only to reflect valid changes in the Work or delays beyond the control of the Contractor.

Should the Contractor fail to meet the schedule, liquidated damages are to be assessed in the manner indicated in the General Conditions and the Supplemental Conditions of the Contract.

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### 9.5.2 Delays in Completing Work

Construction delays fall into three different categories:

Category Type	Explanation / Description
Compensable Delays	<p>Are typically delays caused by the City.</p> <p>These types of delays are compensable in that they may be corrected by extending the Contract time or by providing additional compensation for damages.</p> <p>Examples of these types of delays not caused by the Contractor include:</p> <ul style="list-style-type: none"><li>-late award of the Contract</li><li>-failure to make available or to provide unimpeded access to the site</li><li>-late delivery of City-supplied equipment or materials</li><li>-failure by others to complete preliminary work or undertakings</li><li>-delays that result from another Contractor's work</li><li>-late provision of plans, drawings, and other information or instructions from others</li><li>-failure by the City to make interim payments as required</li><li>-City financing problems</li><li>-failure to receive time extensions as provided for in the Contract, and</li><li>-legitimate extras</li></ul> <p>The consequence of a compensable delay is that the City must give the Contractor an extension of the time(s) specified for the phase or phases of the Work and/or for the dates specified for Substantial or Total Performance of the Work.</p>
Non-Excusable Delays	<p>Are delays caused by the Contractor, such as their own inability to complete the Work on schedule or delays caused by their subcontractors?</p>
Excusable Delays	<p>Involve delays beyond the control of the City or Contractor (Force Majeure).</p> <p>These may include 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 Contract Administrator to be totally beyond his control or any cause within the Contractor's control which the Contract Administrator has determined is an excusable delay. In these cases, the Contract time shall be extended for a period of time equal to the time lost due to such delays.</p> <p>Extensions in Contract time shall be recorded via a change order.</p>

## 9.6 Owner Supplied Equipment

The City may pre-purchase equipment with long delivery times or for cases where detailed equipment information is required to complete the detailed design works. The following outlines the Contract Administrator's responsibilities.

### 9.6.1 Vendor Submittals

The Contract Administrator shall receive, review and process, and log submittals from City Supplied Equipment Vendors. Typical submittals include Manufacturer Shop drawings, Inspection and Test Plans and Operations and Maintenance (O&M) Manuals. The Contract Administrator shall forward copies of the shop drawings to the installation contractors.

## **SECTION 9 – CONTRACT ADMINISTRATION**

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### **9.6.2 Factory Acceptance Testing**

The Contract Administrator shall review Inspection and Test Plans and coordinate factory inspection and tests whether they are performed by third party agencies or by the design consultant. The Contract Administrator shall estimate the costs associated with all factory inspections and submit to the City for approval prior to arranging the inspections and tests. The Contract Administrator shall obtain and review all Factory Acceptance Testing results and incorporate into the Contract file.

### **9.6.3 Delivery and Receipt of Goods**

The Contract Administrator shall coordinate the shipping and receipt of City Supplied Equipment with the Contractor. Once the Goods have arrived to site, the Contract Administrator, Contractor and Manufacturer shall inspect the goods and complete the Certificate of Equipment Delivery form which transfers the care and custody of the Goods to the installing Contractor. Any deficiencies noted during the inspection shall be listed on the form. The completed form shall be provided to the Contract Administrator prior to the Manufacturer leaving the site.

### **9.6.4 Installation**

Prior to the installation of the equipment, the Manufacturer and Contractor shall complete the Certificate of Readiness to Install Form signifying the Contractor has received adequate instruction relative to Installation of the Goods. The Manufacturer shall provide the Contract Administrator with a fully signed copy of the Form prior to leaving the site. The Contract Administrator shall incorporate the signed Forms into the Contract file.

Once the Contractor has completed Installation of the equipment, the Contractor shall notify the Contract Administrator that the Installation is ready for inspection by the Manufacturer. The Contract Administrator shall coordinate the Manufacturer's inspection and have the Certificate of Satisfactory Installation Form completed and signed. Any deficiencies in the installation shall be noted on the Form. The fully signed Form shall be delivered to the Contract Administrator prior to the Manufacturer's representative leaving the site. The Contract Administrator shall incorporate the signed Forms into the Contract file.

### **9.6.5 Pre-Commissioning**

The Contract Administrator shall coordinate with the Manufacturer and Contractor to undertake Pre-Commissioning of the equipment. No Pre-commissioning activity shall take place on the Goods prior to receipt and review of the Operations and Maintenance Manuals. Once all pre-commissioning checks, run tests, and operating checks have been successfully completed, the Contractor and Manufacturer shall complete the Certificate of Equipment Satisfactory Performance form and submit to the Contract Administrator. The Contract Administrator shall file the Form in the Contract file.

Once the form has been signed-off, the Contract Administrator will prepare a Certificate of Substantial Performance for the City Supplied Equipment Contract, initiating the Lien Holdback release period.

### **9.6.6 Commissioning**

The Contract Administrator shall coordinate the Manufacturer's representative attendance during Process Commissioning. Once Process Commissioning of the equipment has been completed and accepted, the Manufacturer shall complete the Certificate of Equipment Satisfactory Process Performance Form. Receipt by the Contract Administrator shall signify Total Performance of the City Supplied Equipment Contract and initiate the start of the warranty period. The Contract Administrator shall complete a Certificate of Total Performance and file the signed Forms in the Contract file.

### 9.7 Construction Inspection and Testing

The Contract Administrator is responsible for ensuring that the Works are constructed in compliance with the Contract documents. Inspection is the most common way to monitor Contract performance.

Inspection is carried out by trained inspectors employed by or working for the Contract Administrator, and may include independent testing and inspection organizations.

Where part-time inspection is employed, the inspector should carry out both scheduled and unscheduled inspections:

- **Scheduled inspections** are required to ensure that defects in the Work can be communicated to the Contractor's supervisory personnel who would be in attendance at these inspections. These inspections are typically associated with regular site meetings.
- **Non-scheduled inspections**, carried out at random or critical times during the course of the Work, are necessary to ensure that the Work is being carried out to the standards stated in the specifications.

On-site Inspectors are responsible for ensuring that the Contract is being carried out in accordance with the Contract documents. The Inspector's duties and responsibilities are usually included in the Contract documents. In addition to ensuring that Contract-specific conditions (i.e.: site facilities and services, safety, security, clean-up, etc.) are met, the Inspector's main role is to check conformance with specifications and the quantity of construction and notify the Contractor of unacceptable work or materials.

The Inspector must have unrestricted access to the site. The Inspector must have the right to reject materials or equipment delivered to the site which does not meet the quality requirements of the Contract documents. This is particularly important where materials such as concrete or other products which have a non-reversible chemical process are incorporated into the Works. Preventing or stopping delivery of these types of materials before it leaves the delivery vehicle will avoid costly removal by the Contractor at a later date. It will also allow the Contractor to return to the supplier and correct the condition. To ensure timely communication of the quality and quantity of work, the Inspector must have immediate access to the Contractor's senior supervisor on the Contract at all times.

#### 9.7.1 Inspection and Test Plans

The Contract Administrator shall obtain or prepare a detailed Inspection and Test Plan based on the construction work.

Inspection and Test Plans identify the items of materials and work to be inspected or tested, by whom and at what stage or frequency, as well as “hold and witness points”, references to relevant standards, acceptance criteria, and the records to be maintained. Inspection and Test Plans, when properly implemented, help ensure that, and verify whether, work has been undertaken to the required standard and requirements, and that records are kept.

The Contract Administrator shall expedite and receive Inspection and Test Plans from City Supplied Equipment Vendors. The Contract Administrator shall identify the need for Factory Acceptance Tests, witnessing and inspections. The Contract Administrator shall coordinate and arrange for appropriate inspectors to visit the manufacturing facilities at the appropriate hold points identified in the vendors' Inspection and Test Plan.

The Contract Administrator shall place Inspection and Test Plans and associated inspection reports in the Contract file and copies of the inspection reports shall be forwarded to the responsible design discipline for their review and acceptance.

### 9.7.2 Inspection



The Contract Administrator shall perform, or cause to be performed, construction reviews throughout the duration of the Contract. The Contract Administrator shall coordinate inspections performed by discipline specific individuals as required to ensure the Work conforms to the drawings, specifications and relevant codes. The Contract Administrator shall also notify the Project Manager of the planned Construction Review, facilitating the option for other City representatives to attend the Construction Review.

A Construction Review Record (CRR) form shall be completed by the reviewer. Copies of the Constructive Review Record shall be filed in the appropriate Contract file and a copy forwarded to the Contractor. Should any non-conformances be identified during the Construction Review, the Contract Administrator shall record the items on a Non Conformance Report (NCR) form and transmit the NCR to the Contractor for action. The Contract Administrator shall log the NCR in the NCR Log for tracking, monitoring and disposition. The NCR Log shall be reviewed and updated at regular Contractor Site Meetings.

### 9.7.3 Preconstruction Inspections

Claims by the Contractor may occur for many reasons. For example, on-street renewal contracts, the drainage facilities (i.e.: curb inlets, catch basins, etc.) are usually cleaned prior to the commencement of the Work. Upon completion of the Work, the City will require that these facilities be returned to like-condition if they are found to be otherwise. Refer to *PMM Appendix F: Claims Management Process* for additional information on claim prevention, mitigation, identification and quantification, and resolution.

On other major City Contracts, property owners may make claims for damages they attribute to the construction activity. Such claims are best addressed by carrying out a thorough preconstruction inspection of the Works.

The Contract Administrator is responsible for ensuring that the preconstruction condition of existing facilities and properties adjoining the right-of-way or City-owned property are sufficiently documented to allow proper evaluation of any claims that may occur.

This typically involves compiling a detailed photographic record of the existing surface features within the public right-of-way or City-owned property, and by carrying out inspections of the City's underground facilities, as with the example on drainage facilities, with both the Contractor and appropriate City employee present, prior to commencing the Work. Also, during preparation of this record, the exterior of all buildings and residences located adjacent to the site should be visually inspected for distress. Existing damage such as cracked windows, cracks in stucco exteriors and foundations, settlements, disrepair, etc. should be photographed or video recorded. When evaluating cracks in street pavements, sidewalks and private driveways, it may be beneficial to paint small cracks to enhance their visibility in the photograph or video.

On occasion, the Contract Administrator may deem it necessary to examine the interiors of residences and businesses for damage prior to construction. This preconstruction inspection may be required where the proposed works require use of equipment which causes ground vibrations (i.e.: pile driving, pavement breakers, etc.) and which are working close to any buildings. Examination of the interior requires that the owner grant entry to the building. The drawback to inspecting building interiors is that it is both time-consuming and costly.

Some consider the inspection as an invitation to claims, as the owners could view the inspections as the City setting a benchmark for damages to be incurred during the prosecution of the construction works. Measures must be taken during the design, tendering and construction of a contract so that the construction methods utilized do not unduly distress adjacent buildings. Lastly, it should be noted by the Contract Administrator that buildings are damaged over time by factors other than those which are construction related (i.e.: soil swelling and shrinkage, weather, etc.)

Generally, post construction inspections are only made if a complaint or claim is received.

### 9.7.4 Testing

Arranging for testing is a prime activity to ensure the quality of the product. The quality assurance program will have been incorporated into the specifications, and the quality control program must be implemented and monitored by the Contract Administrator.

On-site testing frequency and reporting is either pre-defined or established by the Contract Administrator. The Contract Administrator shall coordinate third-party materials testing firms with progress of the work, receive and interpret test results, instruct the Contractor to propose corrective measures and review Contractor proposed corrective measures for acceptance.

The Contract Administrator is responsible for maintaining complete records of the tests undertaken, their results and the action taken. Distribution of the test results to the three parties (City Project Manager, Contractor and Contract Administrator), the interpretation of the results, and recommended corrective action as required, is the Contract Administrator's responsibility. Where test results indicate a significant defect in the Work, the Contract Administrator is to advise the City Project Manager of the problem and of the recommended action prior to ordering that corrective measures be undertaken by the Contractor. The Contract Administrator shall file all test reports in the Contract file.

Testing and certification of material or equipment fabricated off-site is often delegated to the Contractor. The Contract Administrator may engage specialized inspection services to inspect and monitor the progress of critical off-site activities.

### 9.7.5 Defects

Defects identified by the Contract Administrator are to be communicated immediately upon being discovered. The Contract Administrator must provide written notice of the defects with instructions to the Contractor and retain records of the documentation for follow-up and Contract file.

Resolution of claims against the Contractor for defects can be complicated by a number of factors, including:

- the potential involvement of a number of participants in sorting out the cause of defects
- Contract documents that fail to sufficiently define Contract scope or design details
- ambiguous or poorly drafted Contract provisions and
- extremely unilateral Contract provisions.

When disputes over defects arise, it often becomes evident that insufficient detail was paid at the Contract outset in documenting Contract obligations and in appropriately identifying and specifying relevant design and performance requirements amongst various project participants. These aspects are also high on the list of factors contributing to the difficulty in sorting out responsibility for defects.

Of key importance is the careful administration of the Contract in accordance with the requirements of the Contract documents. Construction Contract documents are, by their nature, working documents responsive to a wide range of traditional Contract circumstances, as typically addressed in the General Conditions, covering a wide range of rights, obligations, procedures and requirements.

### 9.8 Progress Monitoring and Control

#### 9.8.1 Daily Construction Reports (DCR)



Daily Construction  
Report  
template

Download from the  
City's Infrastructure  
Planning Office  
website

The Contract Administrator (or Resident Inspector) shall prepare Daily Construction Reports (DCR). The DCR is an essential document in construction projects as it provides a chronological record of the Contractors progress including a record of the number of workers/employees and work equipment at the site, type of work performed, time work began and ended, job progress – delays or disruptions, the day's weather conditions, incidents, completed tasks, milestones, and documents non-working days, construction issues, communications with the Public, coordination with outside agencies, problems encountered, activities started, completed and planned, site conditions, work stoppages, unusual events, and verbal direction given to the Contractor and inspections completed.

A DCR reports what work was done and what occurred each day and may serve as evidence in case of contract disputes, and/or is useful in actions resulting from liens.

The Contract Administrator shall place DCRs in the Contract file's appropriate subfolder.

#### 9.8.2 Request for Information (RFI)



Request for  
Information

Request for  
Information &  
Response Log  
templates

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Planning Office  
website

The Request for Information (RFI) form is the document used by the Contractor to request information or clarification related to the plans, specifications or Contract requirements.

RFIs are also used to request approval for minor contractual deviations that do not impact scope, cost or schedule, and to obtain direction on how to proceed when there are conflicting Contract requirement or to document Contract claims.

Upon receipt of the RFI from the Contractor, the Contract Administrator is to log the receipt in the Request for Information & Response Log, and forward the RFI to the applicable design discipline for response.

The Contract Administrator shall log the response date and return the RFI to the Contractor for their action. If the RFI will have cost or schedule implications the Contract Administrator shall undertake the Change Management process, and obtain a Project Record Index number (PRI) from the City Project Manager if the PRI system is being used.

#### 9.8.3 Contract Changes

Contract changes may be initiated by the City, the Contract Administrator or the Contractor.

There are numerous reasons for Changes in the Work to occur, including:

- Changed site conditions  
(i.e.: unexpected soil variations or conditions discovered during alterations to an existing structure which were not disclosed in the Contract documents, and which could not have been discovered as part of normal site investigation when preparing the bid.)
- Changes in external requirements  
(i.e.: changes to building codes; where the City cannot obtain a permit to allow the Contractor to proceed with a portion of the Work, affecting the Contract Schedule or the manner in which the Contractor can carry out other phases of the Work.)
- Changes in the Scope of the Work by the City
- Changes to allow for better, faster or more economical construction
- Design errors  
(i.e.: contradictions, discrepancies, inconsistencies, impossibilities, etc.)

## SECTION 9 – CONTRACT ADMINISTRATION

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- Discrepancies in the Contract documents contradicting the intent of the Contract
- Changes in market conditions  
(i.e.: specified products become unavailable, new and products become available, new information becomes available which affects the choice of specified materials.)
- Final coordination of new construction with existing equipment  
(i.e.: space changes, mechanical or electrical changes.)



Contract Change Log  
template

Download from the  
City's Infrastructure  
Planning Office  
website

The Contract Administrator must deal with the change request in a timely manner. The change process is described in the General Conditions and the *PMM Section 7.2*.

All changes must be fully documented including the reason for the change, technical details of the change, cost and schedule impacts, Contract Administrator's recommendation for the change and the formal approval. Changes in contract must be entered in the Contract Change Log template.

### 9.8.4 Change Order (CO)

The City has developed two different types of change orders to accommodate City project work as they are based on two different references to the General Conditions. Both the Change in Work (CWO) and Change in Scope of Services (CSS), from this point on will be referenced as Change Orders (CO) for the sake of simplicity.

Once the Contract Administrator has received the City Project Manager's authorization to proceed, the Contract Administrator is to prepare a Change Order (CO), including references to the Project Record Index (if being used), the Proposed Change Notice, date of Contractor's written quotation, value of change and impact on Contract time.

The Contract Administrator will obtain the Contractor's signature, confirming the Contractor's agreement to the Change in the Work and affix the Contract Administrator's signature recommending the CO approval. The Contract Administrator will then forward the CO to the City for signature and acceptance.

The Contract Administrator shall file all change documentation in the Contract file.

#### 9.8.4.1 Change Work Order (CWO)



Change Work Order  
(CWO)  
template

Download from the  
City's Infrastructure  
Planning Office  
website

The Change Work Order (CWO) serves as the vehicle to issue a formal notice of a change to the Contract in accordance with the applicable General Conditions for Construction, Services (for example: software, cleaning, snow clearing; which is not to be confused with Consultant Services), or Goods.

A CWO is issued by the Contract Administrator for Construction, Goods, and Services contracts.

#### 9.8.4.2 Change in Scope of Services (CSS)



Change in Scope of  
Services (CSS)  
template

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City's Infrastructure  
Planning Office  
website

The Change in Scope of Services (CSS) serves as the vehicle to issue a formal notice of a change to a Consultant Services Contract in accordance with the applicable General Conditions for Consultant Services.

A CSS is issued by the City Project Manager for Consulting Contracts.

### 9.8.5 Field Instructions (FI)



Field Instructions (FI)  
template

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City's Infrastructure  
Planning Office  
website

In cases where there is insufficient time to follow the formal change process, the Contract Administrator has the authority to issue an Field Instruction authorizing the Contractor to proceed immediately, in accordance with *PMM Section 7.2 – Perform Integrated Change Control Process*.

### 9.8.6 Cost Control

The premise of cost control is to know the complete financial status of a Contract at any given point in time during progress of the Works. Cost control is a commitment based strategy that provides the City with early indication of estimated final costs for the Contract prior to final job cost accounting. A commitment based system means that no costs will be charged against the Contract unless there is a corresponding commitment authorization, in other words invoicing cannot exceed the committed value.

The Contract Administrator shall prepare a Monthly Forecast Cost Report which will include a record of all commitments including the initial Contract price and Change Orders (Change Work Order (CWO) and/or Change in Scope of Services (CSS)), Progress Estimates coupled with a Forecast to Complete, and Estimated Final Contract price.

The Estimate to Complete is an estimate of Known Unknowns (i.e. Outstanding Proposed Changes Notices and pending claims) as well as a sum for Unknown Unknowns (i.e. contingency).

The Forecast Cost Report is to be included in the Monthly Contract Status Report and include a variance report explaining changes that have occurred during the reporting period.

### 9.8.7 Over-Expenditure Analysis

When required, the Contract Administrator shall provide analysis and documentation supporting changes in the Work. The analysis and documentation will be used by the City as part of the Contract Over-Expenditure Report required by City of Winnipeg FM-002 Materials Management Administrative Standard.

### 9.8.8 Contractual Disputes

The General Conditions generally provide methods for resolving contractual disputes between the Contract Administrator and the Contractor over the Contract Administrator's valuation, measurement or change in Contract time and/or Contract price for the extra work. The methods are specific to the General Conditions that are applicable to the Contract.

In most cases dispute resolution between the Contract Administrator and the Contractor is as follows:

- If the Contractor disputes a determination made by the Contract Administrator, the Contractor shall act in accordance with the Contract Administrator's determination.
- The Contractor has the right to appeal a determination or order in accordance with the terms of the General Conditions.

### 9.8.9 Claims Resulting From Extra Work or Diminution of Work (Non Insurance Related)

Claims resulting from extra work can be classified into the following categories:

1. The Contractor disputes the determination of the Contract Administrator as to whether the Change in Work is extra work.
2. The Contractor disputes the Contract Administrator's valuation of the extra work.
3. If the Contractor feels strongly that the value indicated in their quote for the extra work is fair and reasonable, they may appeal the Contract Administrator's determination in accordance with the General Conditions.
4. There is no way for the Contractor or the Contract Administrator to evaluate the effect of multiple Change Orders for extra works on the Contract at the time an individual Change Order is being priced (the "ripple effect").
5. Taken individually, the valuation of the Change Orders may appear reasonable; however, multiple Change Orders on a Contract can potentially disrupt a Contractor's operations.

(i.e.: the Contractor may find that their original schedule for labour resources and equipment is subject to the demands of the extra work, and they may have to take personnel from "critical path" activities to complete the extra work. Or, the extra work may require supply of equipment or material which is not readily available and which prevents the Contractor from proceeding with the extra work and with previously scheduled critical activities.)

6. While the Contractor may be positive that all the Change Orders have affected their productivity, the Contract Administrator may consider that the Contractor was poorly organized and that their labour was uncoordinated; in short, that the Contractor caused their own problem. In order to evaluate the Contractor's claim, it is imperative that the Contract Administrator have the Contractor document the events and activities that may have caused any delays or loss of productivity.
7. The Change Order(s) may extend the Contract time. This may result in extra costs if the extended duration of the Contract takes the Work into late fall or winter, causing the Contractor to heat and/or hoard the Work, and with resulting productivity.
8. Extensions to the Contract time may result in the Contractor facing new wage rate increases or material price increases.

**Material variations in the scope of the Contract or in the Contract time could result in the surety being discharged from its obligation to the City under the performance bond. Where Change Orders result in these changes, the surety must consent to such changes prior to undertaking the extra work.**

9. The Contractor proceeds to perform extra work before receiving written authorization to proceed.
10. There is potential for a claim to be made by the Contractor if they are directed to proceed with extra work or a Change in the Work without written authorization. There may certainly be a dispute if the Contract Administrator considers the extra work to have a lesser value than the Contractor. Also, such direction may have been given without fully understanding the effect of the changes on the operation or safety of the facility being constructed, and may ultimately not be accepted by the City.

To qualify and evaluate all claims, it is important that the Contract Administrator carefully document in the field all activities related to Changes in the Work. These should be included as a separate component of Daily Inspection Reports.

### 9.9 Claims and Damages (Contractual – Non Insurance Related)

This section illustrates the process for addressing Contractor claims during the course of the Contract, identifying the duties of the Contract Administrator and the routing of the associated documentation.

Refer to *PMM Appendix F: Claims Management Process* for additional information on claim prevention, mitigation, identification and quantification, and resolution.

#### 9.9.1 Claims

Upon receipt of a claim from a Contractor, the Contract Administrator shall examine the justification for the claim, evaluate the merit of the claim within the context of the Contract documents, and develop a recommended course of action.

The Contract Administrator shall notify the City Project Manager of the claim within 24 hours of receipt of a Contractor's claim.

The City Project Manager shall log the claim in the Request For Information (RFI) Log or as a Project Record Index (PRI) if this system is being used.

The Contract Administrator should undertake the follow steps:

1. Gather pertinent information to verify the existence of a basis for the claim within the scope of the Contract, specifically the circumstances that gave rise to the claim and the principles on which the claim can be contractually considered.
2. Evaluate the Contractor's assessment of their loss or delay.
3. Evaluate the criticality of the affected tasks on the Contract's Critical Path.
4. Assess the causality of the claim. Integral to this shall be a review of any actions that could be reasonably expected that the Contractor should have undertaken to mitigate their losses.

#### 9.9.2 Damages

If the Contract Administrator makes a determination in favor of the Contractor's claim for damages, a recommendation is to be submitted to the City Project Manager.

Upon receiving authorization from the City Project Manager, the Contract Administrator shall prepare a change order reflecting the claim criteria and price, and forward the change order with the Contract Administrator's recommendation to the City Project Manager for formal authorization.

If the Contract Administrator determines the claim has no merit, the Contract Administrator shall issue a Field Instruction (FI) notifying the Contractor of the rejection of their claim with the basis for such rejection.

If the Contractor does not agree with the Contract Administrator's determination, the Contractor has the right to appeal the determination, as provided for in the General Conditions.

#### 9.9.3 Delay Damages

It is important to recognize that timely completion of the Work does not depend solely on the behavior of the Contractor. The City Project Manager and Project Team, and the Contract Administrator also have contractual responsibilities which, if not met, can impede progress of the Work and result in delays for which the Contractor may seek compensation. Examples of delays in which the Contractor is not likely to be held responsible were listed previously in *PMM Section 9.5.2 – Delays in Completing Work*.

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To be successful in a claim for delay under the above circumstances, the Contractor must prove that any change or delay was a risk which it had not assumed and that its reasonable reaction resulted in extra costs or damages.

Where a Contractor fails to comply with the Contract Schedule, the City may obtain damages for costs incurred as a result of the delay. The City is entitled to have the Work completed in the time specified. However, the Contractor will not be liable for excusable delays or for damages that are too remote.

Some reasons that the Contractor could be held liable include:

- ineffective supervision and direction of workers,
- labour disruptions,
- problems with subcontractors, and
- slow or incompetent work at any stage of construction.

On a Contract, there is a duty for all parties – the Contractor, the City and the Contract Administrator – to cooperate and not interfere with the performance of the other parties.

Interference with the Contractor's work by the City or the Contract Administrator may take the form of:

- not providing proper access to the site,
- inhibiting performance of the required work,
- dictating procedures or the order of work to be done after award of the Contract, or
- otherwise making the Contractor's job more difficult.

### 9.9.4 Default by Contractor during Construction

The Contract Administrator has an obligation to ensure that the Contractor complies with the Contract documents when undertaking the Work.

The Contract Administrator has a further obligation to instruct the Contractor to remedy any breach of its contractual obligations. If there has been a material breach of the terms of the Contract, the Contract Administrator must direct the Contractor in writing to remedy the default and also send a copy of that direction to the surety.

Examples of situations in which a letter must be written to the Contractor and copied to the surety are:

- The Contractor has failed to remedy, reconstruct, or replace faulty work or work that fails to meet contract requirements during construction as instructed.
- The Contractor has failed to follow instructions to remove and replace inferior materials (whether incorporated into the work or not) and material that does not comply with Contract requirements during construction.
- The Contractor is not complying with the latest approved schedule of work.
- The Contractor disobeys or refuses to follow the Contract Administrator's instruction to improve methods of work, to increase or improve the plant, or to employ additional or better qualified workers.

If a consulting firm has been retained, the City Project Manager should instruct the Contract Administrator to document all breaches and to advise the City Project Manager immediately if a breach occurs.

### 9.9.5 Default by Contractor during Warranty Period

The Contract Administrator also must inspect the Contractor's work for defects and deficiencies and give the Contractor notice, if they occur, with an instruction to remedy them before the warranty period expires.

The surety must be advised before the warranty period expires of any defects or deficiencies the Contractor has not remedied otherwise the surety will be discharged from its obligations under the performance bond. Inspections must be carried out well before the expiration of the warranty period to ensure the City can meet its obligations to the surety.

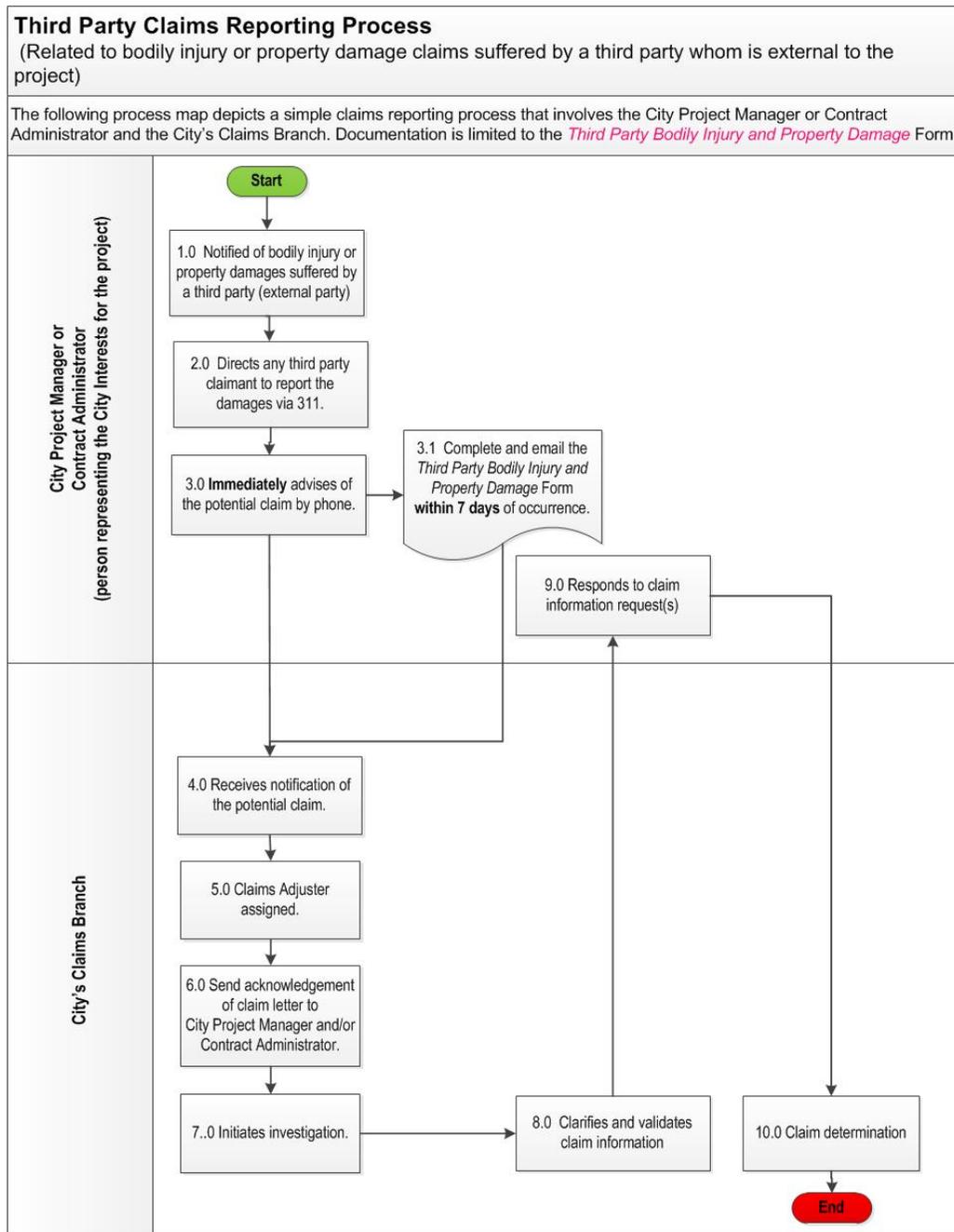
In conclusion, if any of the defaults described above occur either during construction or during the warranty period, the City Project Manager is to notify the Legal Services Department immediately.

## 9.10 Claims and Damages (Insurance Related)

### 9.10.1 Third Party Bodily Injury or Property Damage Claims

The following flowchart describes the steps in the Third Party Claims Reporting Process for reporting claims of bodily injury or property damages claims suffered by a third party as depicted.

**Figure 9-1. Third Party Claims Reporting Process**



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### 9.10.2 Third Party Claims Reporting Process Narrative

(Related to bodily injury or property damage claims suffered by a third party whom is external to the project).

The following Table 9-1 describes the steps in the Third Party Claims Reporting Process as depicted in Figure 9-1.

**Table 9-1. Third Party Claims Reporting Process description**

Third Party Claims Reporting Process		
Step Number	Responsible	Action
1.0	City Project Manager or Contract Administrator	Is notified of a claim relating to bodily injury or property damage suffered by a third party (external party), that may have arisen from the operation of the construction project.
2.0	City Project Manager or Contract Administrator	<b><i>Directs any third party</i></b> claimant <b><i>to</i></b> report the damages via <b><i>311</i></b> .
3.0	City Project Manager or Contract Administrator	Immediately advises of the potential claim to the City's Claim Branch by telephone at (204) 986-2828.
3.1	City Project Manager or Contract Administrator	Complete and email the <i>Third Party Bodily Injury and Property Damage</i> form to <a href="mailto:claims@winnipeg.ca">claims@winnipeg.ca</a> . The form can be found on the City's Intranet – CityNet.
4.0	City Claims Branch	Receives the notification of potential claim and a completed <i>Third Party Bodily Injury and Property Damage</i> form.
5.0	City Claims Branch	Claims file assigned to an internal City Adjuster and a claim file is opened.
6.0	City Claims Branch	Email claim acknowledgement letter to City Project Manager and/or Contract Administrator.
7.0	City Claims Branch	City Adjuster initiates unbiased investigation with various stakeholders by gathering relevant information, such as witness statements, reports, pictures, list of damages and quantifying losses.
8.0	City Claims Branch	Clarifies and validates claim information from various stakeholders.
9.0	City Project Manager or Contract Administrator	Responds to claim information request(s) in a timely manner.
10.0	City Claims Branch	Upon completion of investigation, City Adjuster determines City responsibility or liability, if any. Investigation may determine that the City Adjuster refer the claim to an external source, such as Insurers, general Contractors, and/ or Consultants for handling.  If City denies responsibility, confirmation of position is provided to claimant in writing.

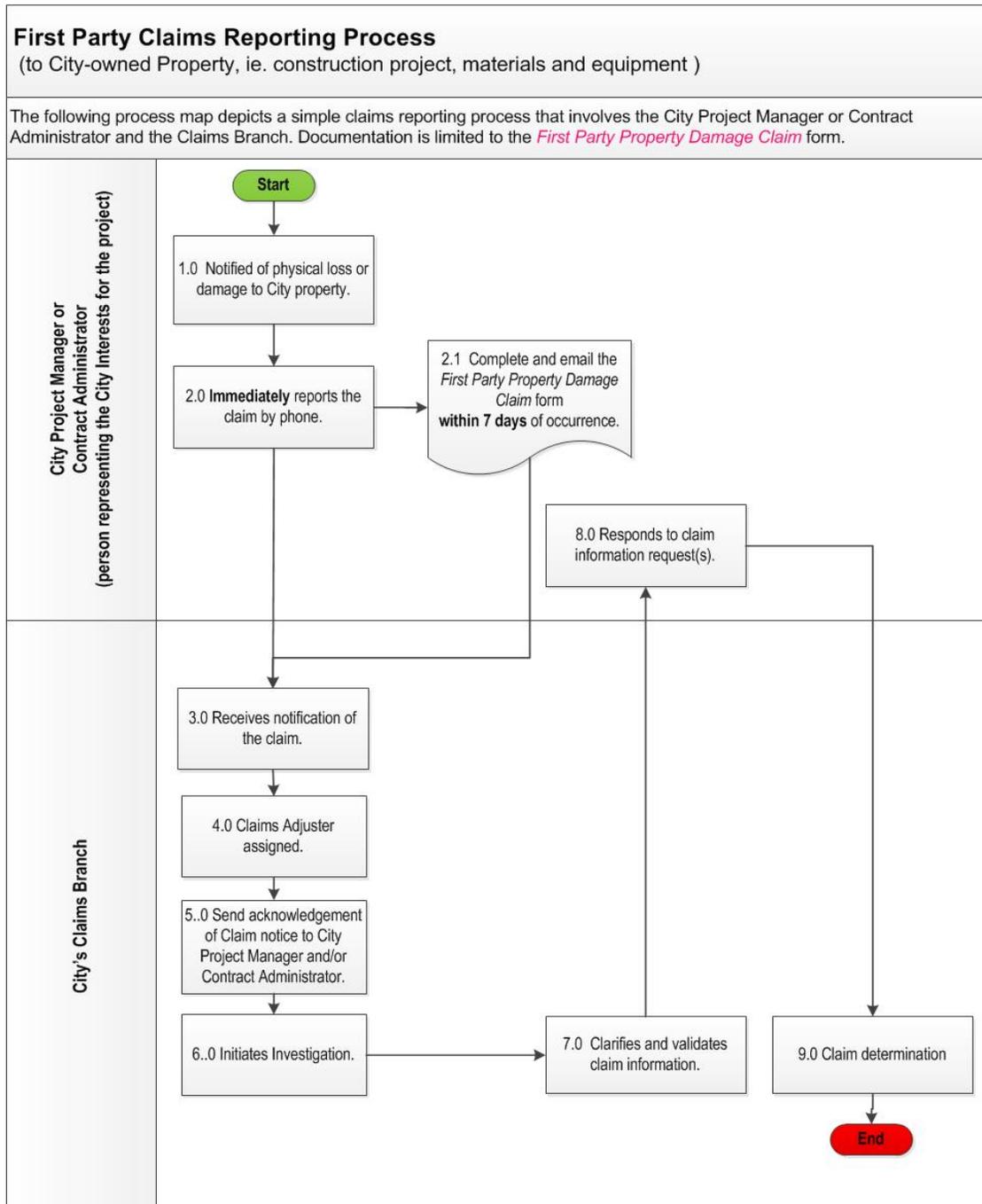
## SECTION 9 – CONTRACT ADMINISTRATION

### 9.10.3 First Party Property Damage Claims

The following process flow chart describes the steps in the First Party Claims Reporting Process for reporting claims of damages which occurred during the course of a construction contract on City-owned structures being built or worked on.

### 9.10.4 First Party Claims Reporting Process

Figure 9-2. First Party Claims Reporting Process for City-owned property



#### First Party Claims Reporting Process Narrative (for City-owned Property)

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The following Table 9-2 describes the steps in the First Party Claims Reporting Process for reporting claims of damages which occurred during the course of a construction contract on City-owned structures being built or worked on as depicted in Figure 9–2.

**Table 9-2. First Party Claims Reporting Process (for City-owned property) description**

First Party Claims Reporting Process (for City-owned property)		
Step Number	Responsible	Action
1.0	City Project Manager or Contract Administrator	Is notified of physical loss or damage to City property under construction, or any City owned property and/or equipment
2.0	City Project Manager or Contract Administrator	Immediately reports the claim to the City's Claim Branch by telephone at (204) 986-2828 during business hours.
2.1	City Project Manager or Contract Administrator	Completes and emails the <i>First Party Property Damage Claim</i> form <b>within 7 days of the occurrence</b> to <a href="mailto:claims@winnipeg.ca">claims@winnipeg.ca</a> . The form can be found on the City's Intranet – CityNet.
3.0	City Claims Branch	Receives the initial claim notification and a completed <i>First Party Property Damage Claim</i> form.
4.0	City Claims Branch	Claims file assigned to an internal City Adjuster and a claim file is opened.
5.0	City Claims Branch	Email claim acknowledgement to City Project Manager and/or Contract Administrator.
6.0	City Claims Branch	City Adjuster initiates unbiased investigation with various stakeholders by gathering relevant information, such as witness statements, reports, pictures, and list of damages relating to the loss.
7.0	City Claims Branch	Clarifies and validates claim information from various stakeholders.
8.0	City Project Manager or Contract Administrator	Responds to claim information request(s) in a timely manner.
9.0	City Claims Branch	Upon completion of investigations, City Adjuster determines availability of funding the damage by way of the City's insurance programs/insurance contracts or other available sources.

### 9.11 Manage Contract Risks

The City has established practices to manage certain types of Contract risks, including insurance and bonding. Ways to preserve the City's claim against the insurer are described in the following sections.



**Note:** *Contract work is to be included in the project Risk Management Plan (RMP) as defined in the Project Delivery Plan.*

Risks identified in the risk register will have defined risk response owners assigned in accordance with Project Delivery Plan Section 8 Risk Management Plan. The identified risks are to be managed in accordance with the risk response plans.

#### 9.11.1 Managing Risk from an Insurance Perspective

1. Communication - Report all possible insured losses to the City's Claims Branch with 24 hours of discovery.
2. City construction projects are typically insured under a Course of Construction Policy (Builders Risk) and Wrap Up Liability policy. The Wrap Up Liability policy provides coverage for claims involving possible negligence of the Contractor as long as they are discovered after substantial completion and prior to the expiry of the timeframe provided under the Products and Completed Operations extension included in the Wrap Up Liability coverage. Typically the time frame allotted after substantial completion has been reached is 12, 24 or 36 months depending on the type of project.
3. Loss Prevention plans should include methods to reduce risk via transference or reduced by contract (insurance), retention of risk, financial plans/contingencies, etc.

#### 9.11.2 Liability Insurance Policies

##### **Comprehensive or Commercial General Liability (CGL) Policies and Contractor-Purchased Wrap Up (WU) Policies**

The City requests to be listed as an Additional Insured or Named Insured on Contractor-purchased liability policies.

In the event that the Contract Administrator and/or Project Manager is contacted by a third party claimant – they should direct the claimant to 311. To protect the City's claim against the Insurer, the City has an obligation, independent of the Contractor who may have purchased the CGL or WU Policy, to put the Insurer on notice immediately following receipt of advice that a third party has suffered bodily injury or property damage as a result or consequence of the Contractor undertaking the work.

Contract Administrator's therefore must be instructed to call the City Project Manager who will notify the City's Claims Branch of any such claim including particulars, immediately after witnessing or being advised of the issue.

#### 9.11.3 Professional Liability Insurance Policies (Errors and Omissions)

The Contract Administrator and/or City Project Manager must inform the City's Claims Branch if it becomes aware of an error or omission attributable to its Architects or Engineers that will or may result in a loss to the City.

The City RFP or Bid Opportunity requires the architect or engineer to continue their professional liability insurance or to provide an extended reporting period from 12 – 36 months after total performance. This period of time allows for discovery of any defect or deficiency and for reporting to the City Claims Branch.

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The City's Claims Branch will determine if there is professional liability insurance on file for the project and request that the architects or engineers put their Insurers on notice.

If no insurance is available, the City's Claims Branch in consultation with the Insurance Branch, the Contract Administrator and/or the City Project Manager will contact the City's Legal Services Department immediately to determine next steps.

### 9.11.4 Construction Property Insurance Policies

Course of Construction or All Risks Builders Risk Policies are two names used for the policy that provides for damage to a structure while it is under construction.

The City may be listed as an Additional Insured or Named Insured on these policies. Therefore, the procedure to follow is identical to the procedure outlined for First Party Property losses.

### 9.11.5 Contractor's Equipment and Automobile Insurance Policies

The City is not an Additional Insured on the Contractor's Equipment Insurance Policies.

Contractor's equipment is defined as tools and mobile machinery such as graders, excavators, backhoes, etc. used in the construction industry. The City requires evidence of unlicensed motor vehicle liability under the Contractor's general liability insurance be provided on a certificate of insurance.

City bid opportunities or RFPs require evidence of automobile liability from the Contractor, if their vehicles will be operated on the roadways or City property. Evidence of insurance is provided by a certificate.

Only in instances when a Contractor's vehicle has damaged a City owned facility, signage, fencing, etc. does the Contract Administrator and/or City Project Manager need to notify the Claims Branch of the damage. For those instances follow the identical procedure outlined for First Party Property Damage claims including the name of the person or Contractor, if known.

### 9.11.6 How to Preserve the Claim against the Surety

For the City to preserve its claim against the surety if the Contractor defaults, the City must honour the terms and conditions of the bid and performance security and the law as it relates to them.

If the City fails to honour these terms and conditions or acts in a manner that prejudices the surety's right to a contribution or an indemnity, the surety will be discharged in whole or in part from its obligation to the City under the performance security.

The following describes an example of City acts or omissions that could result in the surety being discharged, in whole or in part, from its obligations to the City under the performance bond:

- Failure to Disclose Material Facts

An example of failing to disclose material facts can be found in the leading 1937 Supreme Court of Canada case *Doe et al. vs. Canadian surety Company*, in which the Contractor had omitted bidding on two items totaling \$13,000 in a \$100,000 Contract to build a church.

The Contractor attempted to withdraw his bid, however was faced with losing his deposit. As a result, the Contractor proceeded with the work, ran into financial problems, and defaulted on the Contract. The Court held that the surety was discharged on the grounds that the owner did not disclose the two substantial bid omissions prior to the surety issuing its blanket performance security.

### 9.11.7 Material Variation in the Terms of the Contract

Material variations include a material change in the nature or scope of the work, overpaying or underpaying the Contractor, and extending the Contractor's time for completion without the consent of the surety.

#### 1. Alterations in the Nature or Scope of the Work

The key word under this heading is "material." If the alteration in the work is so material that the Contractor would no longer be performing the type of work described in the bid opportunity, the surety will be discharged.

#### 2. Overpayment

If the City overpays a Contractor, the surety may argue that the overpayment has prejudiced its rights by depleting the Contract monies that would have been available to the surety to complete the work. Overpayment can take the form of premature payments, payment for faulty or defective work, or paying without deducting the required holdbacks.

#### 3. Underpayment

Conversely, as the surety is entitled to the same defense as the Contractor, if the City wrongfully fails to pay the full amount of the Contractor's progress payments, the surety may be discharged from its obligations under the performance bond on the grounds that the City breached the Contract by failing to make the required payments. Further, if the Contractor becomes insolvent, the surety can argue that the City caused the Contractor's financial difficulties and by doing so has prejudiced the surety.

#### 4. Extending Time

By issuing a performance bond, the surety has agreed to guarantee the Contractor's performance of the Contract for the period of time specified in the Contract. If the City extends the contract time for a reason other than the reasons permitted by the General Conditions without the consent of the surety, or incorrectly determines that the delay was beyond the control of the Contractor, the surety can be released from its obligations under the performance bond.

### 9.11.8 Laches

"Laches" is a legal term involved when the City has omitted to do something it has contracted with the surety to do, or has failed to preserve some security or benefit to which the surety is entitled.

If the City does not provide the surety with prompt notice of the Contractor's default or faulty performance, the surety will definitely be discharged. The surety could also be discharged if the City neglects to call a Contractor to account within a reasonable period of time after faulty performance (i.e. defective work) or default (i.e.: failure to meet schedule).

### 9.11.9 Protecting the City's Claim against the Surety

The general rule to follow is "**if in doubt, notify the surety.**"

However, the individual directors have not delegated authority to the City Project Manager or Contract Administrators to make the foregoing contacts.

As a result, if the City Project Manager or Contract Administrator wants the Contractor to undertake a material change in the work, or if the Contractor's actions are so serious that they have resulted in a situation covered by the General Conditions, the City Project Manager or Director must contact the Legal Services Department immediately. Legal Services will prepare the required letters to the surety for the Director's signature.

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The **Department's Director** and the **City Solicitor on the Director's behalf** are the **only people authorized to contact the surety** to:

- Obtain the surety's consent to materially change the work; and
- Put the surety on notice, by copy of the Default Letter to the Contractor, that the Director is taking the whole or part of the work away from the Contractor (General Conditions 8.04).

### 9.12 Liquidated Damages

Liquidated damages can only be applied to chargeable (non-excusable) delays. Chargeable delays involve situations which are the responsibility of the Contractor, and therefore do not entitle the Contractor to an extension of time or to any other compensation.

The amount of liquidated damages is the amount as stated in the Bid Opportunity, regardless of the actual loss or damages. Liquidated damages become payable immediately upon breach and must be deducted from progress estimates payable to the Contractor.

When liquidated damages are deducted, the Contract Administrator must fully document the decision, and the details of the deductions.

It must be noted that time extensions do not constitute a waiver of liquidated damages. The extended dates for the phases of the Work and for the Substantial and/or Total Performance of the Work are merely substituted for the original dates without affecting the City's right to damages if the new dates are not met.

### 9.13 Start Up, Commissioning and Transfer

Start Up, Commissioning and Transfer takes place in the Project Delivery Process "Transfer" sub-phase as defined within this manual.

The Contract deliverables from this phase include items such as Installation Verification and Performance Verification, Training as outlined in the Contract documents, Operation and Maintenance (O&M) Manuals, as-built drawings, and Asset Register updates.

### 9.14 Operation and Maintenance Manuals

Operation and Maintenance (O&M) Manuals may include manufacturer's operating and maintenance instructions, manufacturers' drawings, constructions drawings, shop drawings, catalogues, spare part lists, and photographs, all as necessary to operate and maintain the Works.

O&M Manuals are clearly required for the safe and effective operation of equipment. They are part of the Contract, and Total Performance cannot be achieved without them. In fact, in many cases the Works are not ready to be used without O&M Manuals; that is, they are necessary for Substantial Performance.

The specifications must outline what is required and the timing of the manuals which will then create a contractual obligation for their delivery.

The final step in the Contract implementation involves completion and submission of "as-built" record drawings for the Contract, as well as a "Final Construction Report" and all applicable design notes and shop drawings.

### 9.15 Training

The Contract Administrator is responsible for coordinating the training at the job site. The Contract Administrator will receive and review lesson plans submitted by the Contractors and forward them to the operating units for review and comment. The submittals shall be tracked via the submittal procedure.

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The Contract Administrator, in concert with the City Project Manager, City operations, Contractors and Equipment Vendors, will develop the training schedules for both classroom and field level training.

The Contract Administrator shall prepare a Training Session Log of all training sessions. A Certificate of Satisfactory Classroom Training identifying the component training and sign-offs signifying completion and acceptance for each session, is to be prepared by the Contract Administrator and recorded on the Training Session Log. A Certificate of Satisfactory Field Training identifying field training and sign-offs, will also be recorded on the Training Session Log.

When required, the Contract Administrator shall coordinate video recording of the training sessions by City designated videographers.

### 9.16 Operation between Substantial and Total Performance

In some cases the specifications will require all or a portion of the completed Work to be placed into service after Substantial Performance but before Total Performance.

For these situations, the specifications will identify the documentation and training required for the City to assume responsibility, and responsibilities for the cost of operations and warranty obligations during the interim period. The Contract Administrator will be responsible for advanced arrangements and proper allocation of responsibilities and cost during this interim period.

In the case of treatment works, it is to be made clear that the Contractor is obligated to operate the Work and that the City is operating the Works under the "guidance and direction" of the Contractor. The Contractor has responsibility for faults, even those caused by actions of City employees. This is especially advisable where training, operating and maintenance manuals still have not been delivered by the Contractor.

### 9.17 As-built Drawings

A primary responsibility of the Contract Administrator is to accurately document all changes that have occurred throughout the course of construction on a Contract, and to produce accurate "as-built" drawings for Contract record purposes.

These as-built drawings become the description of the Contract after construction, which invariably is somewhat different from the design drawings. Typically, in consulting contracts, as-built drawings are required within one month to three months of Total Performance of a Contract. The Contract Administrator should ensure that the as-built drawings are complete in the time-frame specified in the consulting contract.

The specifications require that the Contractor is to supply information on any deviation from the Contract drawings for the purpose of preparing the as-built drawings. These are to be turned over to the Contract Administrator as each section of the Work is complete. Foundation as-built drawings should be turned over immediately after foundation work is complete, before the foundation subcontractor leaves the job. This level of attention to as-built drawings throughout the Contract will ensure that the as-built drawings are accurate at the end of the project.

#### 9.17.1 As-built Drawings in Commissioning Plan

**As-built drawings must be produced in accordance with City drawing standards.**

The Contract Administrator shall be responsible for coordinating implementation of the Commissioning Plan as defined in the specifications. The Contract Administrator will coordinate Contractors' commissioning efforts in relation to the Commissioning Plan, which in some cases may involve consulting staff, the use of a new subcontractor, or even a new contractor.

The Contract Administrator shall store all pre-commissioning tests and documentation completed by Contractor in the Contract file.

### 9.18 Final Construction Report

The Final Construction Report provides complete documentation of all aspects of construction on the Contract, including a complete photographic record.

Included with, or attached as separate Volumes, can be such Contract-specific documentation as may be required by the Contract, as follows:

- Detailed Design Notes – including such items as structural and hydraulic design calculations.
- Detailed Operational Template – describing the intended operation of the system, and referring to the Operation & Maintenance Manuals received from the Contractor.
- Related Shop Drawings – reviewed and accepted ‘final’ copies.
- Equipment Manuals.
- Details and copies of any extended (product or equipment) Warranties – provided in accordance with the Contract specifications by the applicator, manufacturer, supplier and/or Contractor.
- Service records, video inspections, other contract record information.

### 9.19 Progress Payments

The Contract Administrator is responsible for progress payments made to the Contractor during the course of the Contract. Progress Payments are to be made in accordance with the terms of the Contract. Typical terms of payment for construction contracts are as follows:

- The Contract Administrator shall prepare a Progress Estimate based on the value of the Work performed during the preceding month:
  - A completed progress estimate is to be submitted to the City Project Manager by the fourteenth Calendar Day after the end of each month, or as soon thereafter as possible, subject to receipt of all necessary information from the Contractor by the seventh calendar day after the end of the month.
  - The Contract Administrator shall also ensure **reasonable amounts** are withheld for deficient work. The retention holdbacks and holdback releases must be indicated on the Progress Estimates. Retentions that set off deficiency works can be paid out to the Contractor when the corrective measures have been reviewed and accepted by the Contract Administrator. (Holdbacks for uncompleted work may also apply in some cases, however are not normally required since no payment should have been made for uncompleted work).
  - The Progress Estimate shall be structured in accordance with the bid pricing. Line item breakdowns may be used for cases such as lump sum contracts where greater detail is required on progress and payments, however must roll-up to the Contract price.
  - The progress payments are to include those for subcontractor work, since the City does not contract directly with subcontractors.
  - It is the Contract Administrator’s responsibility to certify progress of the Work and the payment valuation.
- All approved Change Orders (Change Work Order (CWO) and/or Change in Scope of Services (CSS)) shall be listed on the Progress Estimate with applicable progress valuation. The Contract Administrator shall attach copies of all COs being progressed during the period.
- Progress Estimates must reflect statutory holdbacks, holdbacks to date and holdback releases.
- The Contract Administrator shall apply Statutory Holdbacks to all Interim Progress Payments in the amount stipulated in the Manitoba Builders Lien Act.

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- Once Substantial Performance has been achieved, the Contract Administrator shall prepare a Release of Holdback Progress Estimate identifying the payable date as the end of the 40-day lien expiry period. The Contract Administrator shall also retain Lien Holdbacks on Progress Estimates submitted during the period between Substantial Performance and Total Performance. The release of these holdbacks shall be triggered on the Date of Total Performance and paid at the expiry of another 40-day Lien Period.
- Lien Holdbacks cannot be utilized to set off the cost of deficiency corrective measures should the Contractor abandon the Work.

A requirement to report the value of Manitoba Retail Sales Tax (MRST) included in the Progress Estimate, may apply for manufactured goods within the Province of Manitoba.

The Contract Administrator shall ensure the Contractor identifies applicable MRST on the Progress Estimate. In the case where the Contractor is an Equipment Supplier that is not registered as a Manitoba Vendor, the Contract Administrator shall self-assess the MRST value and indicate same on the Interim Progress Estimate.

More information on MRST is available here: [citynet/finance/tax\\_info.stm](http://citynet/finance/tax_info.stm).

### 9.20 Substantial Performance

The Contract Administrator is responsible for retaining and releasing Builders' Liens Act holdbacks, and for issuing a "Certificate of Substantial Performance" on Contracts and, where requested on subcontractors. The Act provides for a holdback on contracts of 7.5% of the dollar value of the Work. This money and earned interest is held in trust by the Owner. In effect, this holdback serves to formalize the process of dealing with the Builders' Lien Act. The holdback also protects the Owner, ensuring that subcontractors and workers are being paid, avoiding a registered lien.

"Substantial Performance" is defined under the Builders' Liens Act, and accordingly must be used in administering a contract.

#### 9.20.1 Builders' Liens Act

The Builders' Lien Act is complex and it is risky summarizing it. The Act is intended to protect the interests of Contractors, subcontractors, workers and suppliers, so that each is paid for their work on a Contract. It lays out the responsibilities of Owners and Contractors and the procedures for making a claim (lien) for payment of money owed.

The definition of "Substantial Performance" and the requirements for Holdbacks should be obtained from the most recent version of the Builders' Lien Act. The clause that has historically been in place is as follows:

##### **Substantial Performance:**

2(1) For the purposes of this Act, a contract or subcontract shall be conclusively deemed to be substantially performed when:

- a) the structure to be constructed under the contract or subcontract of a substantial part thereof is ready for use or is being used for the purpose intended or, where the contract or subcontract relates solely to improving land, the improved land or a substantial part thereof is ready for use or is being used for the purpose intended; and
- b) the work to be done under the contract or subcontract is capable of completion or correction at a cost of not more than
  - i. 3% of the first \$250,000.00 of the contract price;
  - ii. 2% of the next \$250,000.00 of the contract price; and
  - iii. 1% of the balance of the contract price.

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The Act also lays out the deadlines for registering liens, after which, the City need not be concerned about a lien. Under the Builders' Lien Act, holdbacks must be retained for 40 days after Substantial Performance (or Total Performance for work after Substantial Performance). This corresponds to the period within which a lien must be registered.

In the event a lien occurs, the City's obligation is to put the holdback account into court, asking that the liens be vacated.

If a lien occurs on a contract that you are working, in all likelihood you will hear about it from the Legal Services Department. The Legal Services Department will instruct that no further progress payments be made until a resolution is made.

If you receive a question from any person working on the job about the Builders' Lien Act or if anyone on the Contract complains that they are not being paid for their work, don't give any advice. Suggest that they contact the Legal Services Department or their own legal counsel.

As a consequence of previously discussed clauses with respect to Builders' Lien or Risk, Liquidated Damages, it is obvious that the Contract Administrator should issue the Certificate if and only if Substantial Performance is achieved. In other words, the Contract Administrator should take the Certificate very seriously.

### **9.20.2 “Substantial Performance” on a Subcontract**

The Builders' Lien Act contains sections whereby holdbacks can be released and paid on subcontracts that are complete. This occurs when a subcontractor requests a Certificate of Substantial Performance for a subcontract, in advance of Substantial Performance of the Work. The example often used is completion of a foundation subcontract. The Builders' Liens Act allows for this. Accordingly, more than one Certificate of Substantial Performance may be necessary on a Contract.

The Contract may make many references to Substantial Performance as trigger dates. The Contract Administrator should refer to the specific Contract to confirm how the Contract has been written:

- The City takes over risk at the point the Contract is put to use. This makes sense, since the City is using the Contract. So for example, if a fire damages a building after Substantial Performance and before Total Performance, the City is at risk.
- The Contractor is normally expected to remove any products, tools, construction machinery and equipment not required for the performance of the remaining Work.
- Substantial Performance can be the trigger date with respect to liquidated damages.
- Commencement of the Warranty may commence (as an alternative to Total Performance).

### **9.20.3 Determining Substantial Performance**

The Contract Administrator shall determine if and when Substantial Performance is achieved and shall certify the date thereof.

When the Contractor is of the opinion the Work of their Contract has been substantially performed, they shall notify the Contract Administrator requesting arrangement of an inspection of the Work. The Contract Administrator shall arrange an inspection with the applicable engineering discipline inspectors, City representative and the Contractor. The Contract Administrator shall review the outcome of the inspection in context with the Builders' Liens Act and certify whether Substantial Performance of the Contract has been achieved.

In cases where correction of deficiencies is restricted by climatic or seasonal conditions, AND the asset is fit for its intended use, the Contract Administrator can issue Substantial Performance of the Work. In these instances, the start of the Warranty Period on the completed works only will begin 30 days following the Date of Substantial Performance. Documentation to this effect must be saved in the Contract file.

### 9.20.4 Certificate of Substantial Performance



Certificate of Substantial Performance template

Download from the City's Infrastructure Planning Office website

When the Contract Administrator determines the conditions of Substantial Performance have been achieved, a Certificate of Substantial Performance must be completed and signed by the Contract Administrator.

The Contract Administrator shall forward a copy of the completed signed Certificate of Substantial Performance to the Contractor to prominently display at the Contract work site as notice to subcontractors and suppliers of the Contract completion status.

Copies of the signed Certificate of Substantial Completion shall also be forwarded to the City Project Manager, included with the Progress Payment, and included in Contract file.

### 9.21 Total Performance

Total Performance means that the entire work, except those items arising from the provision of Warranty items, have been performed in accordance with the Contract. Removal of all temporary services for construction including however not limited to site trailers, storage facilities, restoration of laydown areas and debris removal are complete.

There can be no deficiencies or defects in the Works apparent at Total Performance. If you certify Total Performance and there are deficiencies, you will likely not be able to bind the surety in respect of those deficiencies, unless they are identified to the surety and on the Certificate of Total Performance in a manner acceptable to the Legal Services.

The Total Performance Date may initiate the start of the Warranty Period, however may have extended durations as further specified in the Supplemental Conditions or Contract specifications. The Contract Administrator with the City Project Manager and Contractor shall complete a final inspection to certify the Date of Total Performance.

Total Performance is also of importance in the Builders' Lien Act, in that it triggers another 40-day period for holdbacks on work done since Substantial Performance.

Total performance also triggers the end of the period for Contract changes. Since the Work is finished, the City and or Contractor no longer have the right to issue a Change in Work.

#### 9.21.1 Certificate of Total Performance



Certificate of Total Performance – Construction

Certificate of Total Performance - Goods templates

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When the Contract Administrator determines that Total Performance has been reached on the Contract, a Certificate of Total Performance must be completed and signed by the Contract Administrator.

The Contract Administrator shall prepare either the Certificate of Total Performance – Construction or Certificate of Total Performance – Goods, depending on the contract.

The Contract Administrator shall forward a copy of the completed signed Certificate of Total Performance to the City Project Manager, Contractor and Contract file.

The Certificate of Total Performance should include a statement indicating specifically what warranties begin at Total Performance, or if warranties on some of the Work began earlier.

The Certificate of Total Performance must not be signed if there are deficiencies, since certifying Total Performance releases the surety for all but Warranty Items.

### 9.22 Warranty

The Warranty Period shall begin on the date specified in the Contract, and extend for the duration specified in the Contract. Extended warranties may remain in effect for specified items, usually specific to a product or manufacturer, and include a separate Warranty Certificate that will be maintained and managed by the City.

Once the Contract has been Totally Performed (or at the date stated in the Supplemental Conditions for commencement of the Warranty Period), the Contract Administrator is responsible for providing inspection services during the Warranty Period.

The Contract Administrator is responsible for making regular visits to the site to inspect for defects in the completed Works.

#### 9.22.1 Warranty Defects

The Contract Administrator shall notify the Contractor in writing of any observed defects or deficiencies which are categorized as warranty items. The Contractor shall remedy all defects or deficiencies identified on the notice to the satisfaction of the Contract Administrator within the time period specified on the notice.

The Contractor is responsible for maintaining the Works during the course of the Warranty Period, as stated in the General Conditions. The Certification of Acceptance shall not however relieve the Contractor from their responsibilities for any breach of Contract including but not limited to, defective or deficient work appearing after the date of Acceptance.

In the event that defects become apparent, the Contract Administrator is to evaluate the defect(s) in terms of:

- define the defect
- determine whether the cause of the defect is obvious, and testing and investigations that may be required to determine/confirm the cause of the defect
- begin a monitoring program to determine the extent of the defect and whether the defect is getting progressively worse
- determine whether there is a correlation between the defect and the data gathered during the course of the Contract (i.e.: test results, weather, etc.)

With the available information at hand, the Contract Administrator is to immediately advise the City Project Manager of the defect(s) and their proposed resolution of the defect(s). Upon receiving concurrence of any proposed action by the Contract Administrator, the Contract Administrator shall forward to the Contractor appropriate Notice from the City to correct the defect(s).

At this point, the Contractor is fully responsible for correcting the defect(s). In the event that the Contractor cannot or does not meet their obligation to correct the defect(s), the City may take appropriate action to correct the defect(s).



***Note: Prior to the City proceeding to undertake the remedy with its own forces or by another Contractor(s), the City's first step is to advise the Contractor's surety of the failure of the Contractor to remedy the defect and allow the surety the choice of assuming the obligation to undertake the Work to remedy the defect. Only the Director, not their designate, can send Notice directly to the surety.***

The intent is that the Contractor is responsible for correcting all defects evident during the Warranty Period, and is obliged to correct same upon receiving notice from the City. In the event that the Contractor disputes that they are responsible for the defect, they are responsible for providing proof to support their claim.

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In the event that there are unresolved defects as the end of the Warranty Period approaches, the surety must receive Notice from the Director, as noted previously, of the defects prior to the end of the Warranty Period, in order to preserve the City's right to claim against the surety in the event of default by the Contractor.

### 9.23 Acceptance

Prior to expiry of the Warranty Period, the Contract Administrator shall arrange an acceptance inspection with the Contractor and City representatives to identify any outstanding warranty issues.

The Contract only terminates at the end of the Warranty Period, or upon successful resolution of any Warranty Defect disputes, whichever is the latter. As of the date of the Certificate of Acceptance, the Contract shall be considered to be closed, with the exception of any manufacturers or special warranties that extend beyond the Warranty Period of the Contract.

In no case shall the Performance Security be released, or allowed to lapse, prior to successful resolution of all disputes and/or correction of all defects.

#### 9.23.1 Certificate of Acceptance



[Certificate of Acceptance – Construction](#)

[Certificate of Acceptance - Goods templates](#)

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If the work has been completed in compliance with all requirements of the Contract, the Contract Administrator shall certify acceptance of the Work, in accordance with the General Conditions.

The Contract Administrator shall prepare either a Certificate of Acceptance – Construction or Certificate of Acceptance – Goods, depending on the Contract.

The Certificate of Acceptance is signed by the Contract Administrator and City Manager or Director, or his/her designate.

The Contract Administrator shall forward a copy of the completed signed Certificate of Acceptance to the City Project Manager, Contractor and Contract file.