

**GENERAL CONDITIONS FOR PROVISION OF SERVICES**

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## THE CITY OF WINNIPEG GENERAL CONDITIONS FOR PROVISION OF SERVICES

### ARTICLE I - INTERPRETATION

#### GC.1.01 Definitions

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

- (1) **"Bid"** or **"Tender"** means the offer as proposed by the Bidder submitted on the Tender Submission. The terms "Bid" or "Tender" are used interchangeably herein.
- (2) **"Bidder"** means any person submitting a Bid for the Work.
- (3) **"Board of Commissioners"** means the Board of Commissioners as that term is defined under The City of Winnipeg Act and any By-Law relative to the organization of the City.
- (4) **"Calendar Day"** means the period from one midnight to the following midnight.
- (5) **"City"** means The City of Winnipeg as incorporated under The City of Winnipeg Act, Chapter 105, Statutes of Manitoba 1971, and any subsequent amendments thereto.
- (6) **"Commissioner"** means that member of the Board of Commissioners or his designate having jurisdiction over the Department of the City responsible for the administration of the Contract.
- (7) **"Contract"** or **"Contract Documents"** means the combined documents consisting of the Agreement, Addenda, the Bidding Instructions, these General Conditions, the Supplemental Conditions, the Drawings, the Specifications, the Tender Submission, Performance Security and all other exhibits mentioned in the Contract Documents as forming part thereof.
- (8) **"Contract Administrator"** means a person duly authorized by the Commissioner in writing to represent the City in the Work pertaining to this Contract.
- (9) **"Contract Time"** means the time stipulated in the Contract Documents for Total Performance of the Work.
- (10) **"Contractor"** means the person undertaking the execution of the Work under the terms of the Contract.
- (11) **"Council"** means the Council of The City of Winnipeg.
- (12) **"Drawings"** or **"Plans"** means drawings or plans which show the character and scope of the Work to be performed and which have been prepared or approved by the Contract Administrator and are referred to in the Contract Documents. The terms "Drawings" or "Plans" are used interchangeably herein.
- (13) **"Extra Work"** means the furnishing of labour, services, materials, Platools, equipment and/or the performance of any Work not directly or by implication called for by the Contract.
- (14) **"Other Contractor"** means any person employed by or having a contract directly or indirectly with the City otherwise than through the Contractor.
- (15) **"Person"** means an individual, firm, partnership, association or corporation, or any combination thereof, and includes heirs, administrators, executors or legal representatives of a person.
- (16) **"Site"** means the lands and other places on, under, in or through which the Work is to be executed and any other lands or places authorized by the Commissioner for the purposes of the Contract.
- (17) **"Solicitor"** means the City Solicitor of the City of Winnipeg or the person from time to time duly authorized by the City Solicitor to act in such capacity in his stead.
- (18) **"Specification"** means the written description of the physical or functional characteristics of the supplies, services and materials, or any part thereof, including without limitation any requirement for testing or inspection.
- (19) **"Street"** means any public highway, lane, square, subway, bridge, wharf, thoroughfare or way or any part thereof as same as defined in The City of Winnipeg Act, Chapter 105, Statutes of Manitoba 1971 and any subsequent amendment thereto.
- (20) **"Sub-contractor"** means a Person contracting with the Contractor or another Sub-contractor of the Contractor for the execution of a part or parts of the Work or for the furnishing of material.
- (21) **"Surety"** means the Person who executes the Bond guaranteeing the fulfillment of the Contract, all as required by the Contract Documents, to be furnished by the Contractor.
- (22) **"Tender Package"** means the Bidding Instructions, these General Conditions, the Supplemental Conditions, the Drawings, the Specifications, the Tender Submission, Performance Security and all Addenda.
- (23) **"Tender Submission"** means the portion of the Tender Package that must be returned to constitute a formal bid.
- (24) **"Total Performance"** of the Work means when the entire Work; except those items arising from the provisions of Article X - Warranty, have been performed to the requirements of the Contract Documents and is so certified in writing by the Contract Administrator.
- (25) **"Work"** means the carrying out and the doing of all things whether of a temporary or permanent nature, that are to be done by the Contractor, pursuant to the terms and conditions of the Contract and in particular, but without limiting the generality of the foregoing, includes the furnishing of all labour, services, materials, Platools and/or equipment necessary or incidental to the performance of the Contract, including all Extra Work or Changes in the Work which may be ordered as herein provided.
- (26) **"Working Day"** means any Calendar Day, other than a Saturday, Sunday or a Statutory or Civic Holiday, on which, in the opinion of the Contract Administrator, atmospheric and/or site conditions are such that the Contractor is able to work at least seven (7) hours during the period between 7:00 a.m. Winnipeg time or the time the Contractor's operations normally commence, whichever is the earlier, and 7:00 p.m. Winnipeg time.

**GC.1.02 Interpretation**

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

**GC.1.03 Headings For Convenience Only**

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

**GC.1.04 Inconsistencies**

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

- (1) figured dimensions shown on a Drawing shall govern over scaled or implied dimensions on the same Drawing;
- (2) Drawings of larger scale shall govern over those of smaller scale of the same date;
- (3) Specifications shall govern over Drawings of the same date;
- (4) the General Conditions shall govern over Specifications;
- (5) Supplemental Conditions shall govern over the General Conditions;
- (6) the executed Agreement between the City and Contractor shall govern over all documents; and
- (7) notwithstanding the foregoing, documents of a later date shall always govern over documents of the same category of an earlier date.

**ARTICLE II - DECLARATIONS BY CONTRACTOR****GC.2.01 Investigating The Site**

The Contractor declares that in bidding for the Work and in entering into the Contract, he has investigated the Site, the character of the Work to be done and all local conditions including the location of any utility which can be determined from the records or other information available at the offices of any public authority or person, including a municipal corporation and any board or commission thereof, having jurisdiction or control over the utility, that might affect his Bid or his acceptance of the Work, or that, not having so investigated, and except as hereinafter provided he is willing to assume and does assume, all risk of conditions now existing or arising in the course of the Work which might or could make the Work, or any items thereof more expensive in character, or more onerous to fulfill, than was contemplated or known when the Bid was completed or the Contract signed. The Contractor also declares that in bidding for the Work and in entering into the Contract he did not and does not rely upon information furnished by the City or any of its servants or agents respecting the character or nature of the conditions at the Site, or the location, character, quality or quantity of the materials to be removed, or to be employed in the Work, or the character of the equipment needed to perform the Work or the general and local conditions and shall verify all matters concerning access to the Site, power supplies, location of existing services, utilities, materials necessary for the completion of the Work and all other matters which could in any way affect the performance of the Work under the Contract other than information furnished in writing for or in connection with the Bid or the Contract by the Contract Administrator.

**GC.2.02 Change in Site Conditions**

Notwithstanding the generality of the foregoing, the Contractor shall refer any substantial difference in the character or nature of the conditions at the Site, or the location, character, quality or quantity of the materials to be removed than the conditions set out in the Plans, Specifications or other information furnished in writing for or in connection with the Bid or the Contract by the Contract Administrator for use by the Contractor in preparing his Bid, for resolution in the manner prescribed in GC.4.05.

**GC.2.03 Good Faith**

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

**ARTICLE III - AWARD AND EXECUTION OF THE CONTRACT****GC.3.01 Execution of Contract**

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

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

**GC.3.02 Failure to Sign Contract**

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

**GC.3.03 Commencement of Work**

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

**GC.3.04 Bar to Payment**

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

**ARTICLE IV - SCOPE OF WORK****GC.4.01 Work To Be Done According To Contract**

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

**GC.4.02 Contractor To Furnish Labour, Equipment and Materials**

- (1) The Contractor shall provide and pay for competent, suitably qualified personnel to execute the Work. He shall at all times maintain good discipline and order at the Site.
- (2) The Contractor shall provide and pay for all labour, equipment, materials, transportation, appliances, fuel, power, light, heat, telephone, water and sanitary facilities and all other facilities and incidentals necessary for the execution, testing, operation, completion and maintenance of the Work.
- (3) Unless otherwise specified in the specifications, all materials and equipment to be incorporated in the Work shall be new, fit for the purpose intended and shall meet or exceed the kind, quality and quantity of same specified in the Contract Documents. If required, the Contractor shall provide at his own expense evidence satisfactory to the Contract Administrator that the foregoing requirements have been met.

**GC.4.03 Documents Supplement Each Other**

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

**GC.4.04 Changes In The Work: City**

- (1) The City shall have the right, at any time before or after the execution of the Contract or after the commencement of the Work or during the prosecution of the Work, to alter, deduct from, add to or omit (referred to collectively herein as a

- "Change in Work") any part of the Work, or to change the location of any part of the Work, all without in any way affecting or vitiating the Contract, and the Contractor shall carry out all such alterations or additions upon receipt of written notice from the Contract Administrator.
- (2) The Contract Administrator shall make a determination at the time of issuing the written notice referred to in GC.4.04 (1) above and shall set out his determination in the said notice as to whether:
    - (a) the Change in Work so ordered falls within the scope of the Work required to be performed under the Contract with no adjustment to the Contract Time and/or Contract Price, or
    - (b) the Change in Work so ordered amounts to Extra Work with a corresponding adjustment to the Contract Time and/or Contract Price, or
    - (c) the Change in Work so ordered amounts to a diminution in the scope of the Work required to be performed under the Contract with a corresponding adjustment to the Contract Time and/or Contract Price.
  - (3) In the event that the Contractor disputes a determination made by the Contract Administrator, the Contractor shall act in accordance with the Contract Administrator's determination provided however that the Contractor shall have the right to appeal the determination of the Contract Administrator to the Commissioner as provided in GC.4.04 (4) below.
  - (4) If the Contractor disagrees with the determination of the Contract Administrator he must within Seven (7) Calendar Days after receiving Notice of the Contract Administrator's determination, notify the Commissioner in writing of his contention with respect thereto and request a determination thereon from the Commissioner.
  - (5) If the Contractor fails to so appeal to the Commissioner for a determination within Seven (7) Calendar Days after receiving Notice of the Contract Administrator's determination, the Contractor shall be deemed to have waived any said claim. Oral appeals or oral protests shall not amount to substantial compliance with the provisions of this Clause.
  - (6) If the Contractor disagrees with the determination of the Commissioner he must within Seven (7) Calendar Days after receiving Notice of the Commissioner's determination, notify the Board of Commissioners in writing of his contention with respect thereto and request that the dispute be referred to Arbitration in accordance with GC.11.01.
  - (7) In the case of the Contractor's neglect or failure to observe fully and faithfully the above conditions, he shall forfeit all right to payment therefor which he otherwise might have had, and shall not make any claim in respect thereof, and if made, the City may reject the same as invalid and he shall not have any right of recovery in respect thereof, at Law or otherwise.
  - (8) It is intended in all matters referred to above that both the Contract Administrator and the Contractor shall act promptly.

#### **GC.4.05 Changes In The Work: Contractor**

- (1) If the Contractor is of the opinion that it is necessary at any time before or after the execution of the Contract or after the commencement of the Work or during the prosecution of the Work, to alter, deduct from, add to or omit any part of the Work to accomplish the result intended by this Contract, he shall provide written notice of this requirement and details of same to the Contract Administrator for a determination as set out GC.4.04 (2) above prior to undertaking the proposed change in Work.
- (2) GC.4.04 (3) through (8) shall apply mutatis mutandis herein.

#### **GC.4.06 Valuation and Certification of Extra Work**

- (1) The value of Extra Work shall be determined by one or more of the following methods:
  - (a) by estimate in a lump sum;
  - (b) by the unit prices set out in the Contract or subsequently agreed upon;
  - (c) by the actual cost of the Work to the Contractor plus a fixed fee;
  - (d) by the actual cost of the Work to the Contractor plus Fifteen Percent (15%) on any portion of the Work undertaken by the Contractor's own forces and Ten Percent (10%) on any portion of the Work undertaken by a Sub-contractor.
- (2) Where the value of Extra Work is proposed or required to be determined by either method (a) or (b) of GC.4.06 (1), the Contractor shall present his proposed change in the Contract Time and/or Contract Price to the Contract Administrator supported by appropriate documentation in a form acceptable to the Contract Administrator prior to the commencement of the proposed Extra Work. The Contract Administrator shall evaluate and verify the acceptability of such claim and, if approved by the Commissioner, a change order shall be issued to the Contractor by the Contract Administrator amending the Contract Time and/or Contract Price.
- (3) Where the value of the Extra Work is determined by either methods (c) or (d) of GC.4.06 (1) the actual cost permitted to be claimed by the Contractor shall be restricted to the actual cost of labour including an allowance for direct supervision, payroll burden including Unemployment Insurance, Canada Pension, Payroll Tax, Worker's Compensation assessments and Vacation Pay assessments, material, rental of equipment and fuel expended on such Work or part thereof and any other payments made by the Contractor with the prior written approval of the Contract Administrator that are necessary for the performance of the Extra Work.
- (4) In the case of Extra Work to be paid for under methods (b), (c) and (d) of GC.4.06 (1), the form of presentation of costs and methods of measurement shall be stipulated in writing by the Contract Administrator prior to the Contractor undertaking the Extra Work. The Contractor shall keep accurate records of quantities and costs and present an account of the costs of the Extra Work, together with all vouchers supporting such costs where applicable.
- (5) Notwithstanding the generality of the foregoing, the Contractor shall keep a detailed daily record for each part of the Extra Work showing the names and times of the workmen engaged thereon and number of hours each day when equipment is employed thereon. This daily record shall be submitted to the Contract Administrator each day for the review and approval of the Contract Administrator.
- (6) If the method of valuation, measurement, change in Contract Time and/or Contract Price cannot be promptly agreed upon

prior to the commencement of the Extra Work and the Contract Administrator requires the Extra Work to proceed, then the Contract Administrator in the first instance will determine the method of valuation, measurement and the change in Contract Time and/or Contract Price. The Contract Administrator shall issue a written authorization for the Extra Work setting out the method of valuation, measurement, and any approved change in the Contract Time and/or Contract Price.

- (7) In the case of a dispute in the method of valuation, measurement, change in Contract Time and/or Contract Price for the Extra Work authorized in writing by the Contract Administrator and pending determination thereof in accordance with GC.4.06 (8) or GC.4.06 (10) hereof, the Contract Administrator shall certify the value of the Extra Work performed in accordance with the Contract Administrator's own valuation and measurement of the Extra Work and shall also certify any change in Contract Time and/or Contract Price. The Contractor shall keep accurate records of quantities and cost of such Extra Work.
- (8) If the Contractor disagrees with the Contract Administrator's method of valuation, measurement, change in Contract Time and/or Contract Price, he must within Seven (7) Calendar Days after receiving Notice of the Contract Administrator's determination, notify the Commissioner in writing of his contention with respect thereto and request a determination thereon from the Commissioner.
- (9) If the Contractor fails to so appeal to the Commissioner for a determination within Seven (7) Calendar Days after receiving Notice of the Contract Administrator's determination, the Contractor shall be deemed to have waived any said claim. Oral appeals or oral protests shall not amount to substantial compliance with the provisions of this Clause.
- (10) If the Contractor disagrees with the determination of the Commissioner he must within Seven (7) Calendar Days after receiving Notice of the Commissioner's determination, notify the Board of Commissioners in writing of his contention with respect thereto and request that the dispute be referred to Arbitration in accordance with GC.11.01.
- (11) In the case of the Contractor's neglect or failure to observe fully and faithfully the above conditions, he shall forfeit all right to any claim for additional payment therefor over and above that approved by the Contract Administrator which he otherwise might have had, and shall not make any claim in respect thereof, and if made, the City may reject the same as invalid and he shall not have any right of recovery in respect thereof, at Law or otherwise.
- (12) It is intended in all matters referred to above that both the Contract Administrator and Contractor shall act promptly.

#### **GC.4.07 Diminution of Work**

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

**GC.4.08 Cleanup and Final Cleaning Of The Site**

- (1) The Contractor shall maintain the Site and the Work in a tidy condition and free from the accumulation of waste products and debris, other than that caused by the City or Other Contractors. The Contractor shall remove any equipment, materials and tools not required for the performance of the remaining Work. He shall also remove waste products and debris other than that caused by the City or Other Contractors and leave the Site and the Work clean and suitable for occupancy by the City unless otherwise specified.
- (2) Total Performance of the Work shall not be attained until the Contractor has cleaned up the Site and has removed all surplus materials, tools and equipment. The Contractor shall also have removed waste products and debris, other than that left by the City or Other Contractors.

**ARTICLE V - CONTROL OF WORK****GC.5.01 Authority of Contract Administrator**

- (1) The Contract Administrator shall be the City's representative throughout the duration of the Contract and shall have authority to act on behalf of the City to the extent expressly provided in the Contract Documents or otherwise in writing.
- (2) The Contract Administrator shall be responsible for the interpretation or clarification of the Contract Documents or any part thereof which appear indefinite, not clear or contradictory to the Contractor.
- (3) The Contract Administrator shall have full authority to examine, inspect, approve or reject materials, methods of procedure and workmanship without in any way relieving the Contractor from his responsibilities under GC.5.02. The Contract Administrator shall be the sole judge of determining whether the kind, quantity and quality of the materials, equipment, methods of procedure and workmanship meet or exceed the requirements of the Contract Documents.
- (4) The Contract Administrator shall have the authority to object to any person employed or retained by the Contractor in the execution of the Work with or without reason. The Contractor shall forthwith remove the person so objected to. The Contract Administrator may recommend to the Commissioner that the Commissioner refuse to pay any invoice submitted by the Contractor or to issue any Certificate to the Contractor while such person remains engaged upon the Work.
- (5) The Contract Administrator shall have the authority to order the Contractor to stop the Work or to take such remedial measures as the Contract Administrator considers necessary, if, at any time, the Contract Administrator is of the opinion that a danger to life or to property exists. The Contractor shall comply with such orders immediately. Neither the giving or carrying out of such orders shall thereby entitle the Contractor to any extra payment, nor shall the Contractor be relieved of his responsibilities under GC.5.02.
- (6) The Contract Administrator shall have the authority to order the Contractor to stop the Work whenever such stoppage may be necessary, in the Contract Administrator's reasonable opinion, to ensure the proper execution of the Work in accordance with the requirements of the Contract Documents. The Contractor shall comply with such orders immediately. Neither the giving or carrying out of such orders shall thereby entitle the Contractor to any extra payment, nor relieve the Contractor of his responsibilities under GC.5.02.
- (7) In the event that the Contractor disputes a determination made by the Contract Administrator on any of the foregoing matters, the Contractor shall act in accordance with the Contract Administrator's decision. If the Contractor disagrees with the Contract Administrator's decision, he must within Seven (7) Calendar Days after receiving Notice of the Contract Administrator's decision notify the Commissioner in writing of his contentions with respect thereto and request a determination thereon from the Commissioner.
- (8) If the Contractor fails to so appeal to the Commissioner for a decision within Seven (7) Calendar Days after receiving Notice of the Contract Administrator's decision, the Contractor shall be deemed to have waived any said claim. Oral appeals or oral protests shall not amount to substantial compliance with the provisions of this Clause.
- (9) If the Contractor disagrees with the determination of the Commissioner he must within Seven (7) Calendar Days after receiving Notice of the Commissioner's determination, notify the Board of Commissioners in writing of his contention with respect thereto and request that the dispute be referred to Arbitration in accordance with GC.11.01.
- (10) It is intended in all matters referred to above that both the Contract Administrator and Contractor shall act promptly.

**GC.5.02 Responsibilities Of Contractor**

- (1) The Contractor shall be responsible for ensuring that all Work is carried out in accordance with and within the time limits set out in the Schedule of Work which is required to be provided by the Contractor and approved by the Contract Administrator under GC.8.01 and any approved amendments thereto. Further, the Contractor shall be responsible for obtaining the prior written consent of the Contract Administrator for any changes in the approved Schedule of Work or any approved amendments thereto in a timely fashion.
- (2) The Contractor shall have complete control over the methods of prosecuting the Work except as otherwise provided in the Contract Documents and shall direct and supervise the Work so as to ensure conformance with the Contract Documents. The Contractor shall be solely responsible for means, methods, techniques, sequences and procedures and for coordinating the various parts of the Work under the Contract so as to ensure its proper completion with Schedule.
- (3) The Contractor shall obey, perform and comply with the Contract Administrator's orders or instructions with respect to the Work or concerning the conduct thereof, promptly, efficiently and to the satisfaction of the Contract Administrator.
- (4) The Contractor shall carry out such rules and regulations as may from time to time be issued by the Contract Administrator for the securing and maintaining of good order on the Site and he will assist Other Contractors, their employees and

- agents, and those of the City, to do the same.
- (5) The Contractor shall employ and keep on the Work during its progress a competent Supervisor and any necessary assistants all satisfactory to the Contract Administrator both on the commencement and at all times during the prosecution of the Work. The Contractor shall inform the Contract Administrator in writing of the name of such Supervisor prior to the commencement of the Work. If at any time the Contract Administrator requires such Supervisor to be replaced then the Contractor shall arrange for him to vacate his position and be removed from the site within forty-eight (48) hours after receiving notice in writing from the Contract Administrator to replace the Supervisor with another Supervisor. Any person so removed shall not be re-employed on the Work by the Contractor or by a Sub-contractor. The Supervisor shall not be replaced except with the prior written consent of the Contract Administrator unless the Supervisor proves to be unsatisfactory to the Contractor and ceases to be in his employ. The Supervisor shall represent the Contractor in his absence and directions on matters given to him shall be held to be given to the Contractor.
  - (6) The Contractor agrees that the list of names of Sub-contractors included in his Tender Submission is the list of Sub-contractors proposed to be used to carry out those parts of the Work noted thereon, and he shall not employ any to whom the City may reasonably object. The Contractor shall not make any change to the Subcontractor list unless prior written approval is received from the Contract Administrator. The Contractor, with respect to Work to be performed under subcontract, shall:
    - (a) enter into contracts or written agreements with his Sub-Contractors to require them to perform their work in complete conformance with and subject to the terms and conditions of the Contract Documents, and,
    - (b) be as fully responsible to the City for acts and omissions of his Sub-contractors and of persons directly or indirectly employed by them as for acts and omissions of persons directly employed by him.

The Contractor shall incorporate the terms and conditions of the Contract Documents into all subcontract agreements he enters into with his Sub-contractors.
  - (7) The Contractor shall arrange and carry on his Work so as not to conflict with the Work being carried on or to be carried on for the City by Other Contractors or by the City's employees. Should he find it difficult to work in harmony with such parties he shall notify the Contract Administrator who will deal with the matter as he in his judgment may deem best, and the Contractor shall abide by the decision and directions of the Contract Administrator.
  - (8) The Contractor shall be solely responsible for safety at the Site and for compliance with all laws, rules, regulations and practices required by the applicable safety legislation.
  - (9) The Contractor shall be solely responsible for securing the Site, any existing facility thereon and for the proper care and protection of the Work already performed.
  - (10) The Contractor shall, at his own expense, do whatever is necessary to ensure that:
    - (a) no person, property, right, easement or privilege is injured, damaged or infringed by reason of the Contractor's activities in performing the Contract;
    - (b) pedestrian and other traffic on any public or private road or waterway is not unduly impeded, interrupted or endangered by the performance of the Work;
    - (c) hazards in or about the Work or its Site are eliminated;
    - (d) the health and safety of all persons employed in the performance of the Work or otherwise is not endangered by the method or means of its performance;
    - (e) adequate medical services are available to all persons employed on the Work or its Site at all times during the performance of the Work;
    - (f) adequate sanitation measures are taken and facilities provided with respect to the Site.

#### **GC.5.03 Inspection**

- (1) All equipment to be provided, work to be performed and materials to be supplied under this Contract shall be subject to inspection by the Contract Administrator. The Contractor shall afford to the Contract Administrator every facility, whether at the Site of the Work, or at the premises of the Contractor or any Sub-contractor, for the observation of the methods and progress of the Work, and to give the Contract Administrator free of cost to the City any and all assistance which he may require in the performance of his duties.
- (2) The Contractor shall before beginning or resuming operations upon any portion of the Work, formally notify the Contract Administrator in writing so as to enable the Contract Administrator to arrange for proper inspection.
- (3) The Contractor shall not proceed to prosecute any portion of the Work, against the orders of the Contract Administrator. In the case of any portion of the Work prosecuted contrary to the orders of the Contract Administrator the cost of such taking down or exposure, and re-building, if any, shall fall upon the Contractor.
- (4) The Contractor shall, if and when required by the Contract Administrator, to forthwith take down or expose any portion of the Work where the Contract Administrator is of the opinion that the Work is not in accordance with the Contract Documents. The cost of such taking down or exposure, and re-building, if any, shall fall upon the City if the taking down or exposure indicates that the part exposed is properly constructed and of satisfactory materials, but if otherwise the cost shall be borne by the Contractor.
- (5) In case the Contract Administrator observes improper workmanship or the use of defective materials in the course of the Work, he will call the same to the attention of the Contractor or the Supervisor in charge of the Work, but should such Supervisor be inaccessible at the time, the Contract Administrator shall order the workmen to stop such improper Work until a Supervisor or the Contractor remedies the defects.
- (6) Orders given by the Contract Administrator in accordance with the above powers shall be obeyed by the Contractor without delay.
- (7) The inspection herein provided for shall in no way relieve the Contractor of full responsibility for the quality, character,



proper operation and performance of the completed Work.

#### **GC.5.04 Defective Work**

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

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

#### **GC.5.05 Right of Entry**

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

### **ARTICLE VI - CONTROL OF EQUIPMENT AND MATERIAL**

#### **GC.6.01 Risk and Responsibility**

- (1) The equipment and material brought to the Site and/or the Work by the Contractor or provided to the Contractor by the City shall remain at the risk and the responsibility of the Contractor from the commencement of the Work (and all matters incidental thereto) and until the Total Performance thereof has been certified by the Contract Administrator unless otherwise specified in the Supplemental Conditions.
- (2) The Contractor shall be liable to the City for any loss of or damage to equipment or material that is supplied or placed in the care, custody and control of the Contractor by the City for use in connection with the Contract, whether or not that loss or damage is attributable to causes beyond the Contractor's control, from the commencement of the Work (and all matters incidental thereto) and until the Total Performance thereof has been certified by the Contract Administrator.

#### **GC.6.02 Contractor To Keep Records**

The Contractor shall keep such records of all equipment and material supplied or placed in the care, custody and control of the Contractor by the City as the Contract Administrator may from time to time require and shall satisfy the Contract Administrator, when requested, that such equipment and material are at the place and in the condition required by the City.

#### **GC.6.03 Material To Remain on Site**

- (1) The Contractor shall not remove any equipment or material that he has brought to the Site and which is required to complete the Work without the prior written consent of the Contract Administrator until the Total Performance of the Work has been certified by the Contract Administrator.
- (2) Equipment or material that is the property of the City shall not be taken away from the Site, disposed of or used except for the purposes of the Work without the prior written consent of the Contract Administrator.

**GC.6.04 Defective Material**

- (1) The Contractor shall, at his own expense, and in the manner and within the time period specified in the written notice from the Contract Administrator:
  - (a) remove from the Site any materials brought onto the Site, whether incorporated in the Work or not, which the Contract Administrator has determined to be inferior, unfit for the purpose intended or does not comply the requirements of the Contract Documents; and
  - (b) promptly replace such inferior or unfit material with material which is fit for the purpose intended and which does meet the requirements of the Contract Documents.
- (2) If the Contractor fails to remove or replace the said materials in the manner and within the time period specified in the said notice, the Commissioner may take all steps necessary to have the said materials removed or replaced by the City's own forces or by an Other Contractor or Contractors. The cost of correcting or replacing the said materials shall be paid to the City by the Contractor immediately upon receipt of written notice from the Commissioner setting out the amount to be so paid. In the event that the Contractor fails to make payment to the City as required hereby the City shall deduct the amount of such payment from any payment required to be made by the City to the Contractor under this Contract. If in the opinion of the Commissioner the Contractor has received all payments due to him under the Contract and the Contractor refuses or fails to make payment immediately upon receipt of the Commissioner's written Notice as required hereby, the Surety shall make such payment immediately upon receipt of written notice from the Commissioner setting out the amount to be so paid.

**ARTICLE VII - LEGAL RELATIONS****GC.7.01 Laws, Notices, Permits and Fees**

- (1) The Contractor shall at his own expense, procure permits, licenses and certificates required by law, any ordinances, rules, regulations, codes and orders of the authorities having jurisdiction for the execution of the Work, but this shall not include the obtaining of permanent easements or rights of servitude. The Contractor shall give the required notices and comply with the laws, ordinances, rules, regulations, codes and orders of the authorities having jurisdiction which are or become in force during the performance of the Work and which relate to the Work, to the preservation of the public health, and to safety. Where there are two or more laws, ordinances, rules, regulations or codes applicable to the Work, the most restrictive shall apply.
- (2) The Contractor shall not be responsible for verifying that the Contract Documents are in compliance with the applicable laws, ordinances, rules, regulations, codes and orders relating to the Work. If the Contract Documents are at variance therewith, or if changes which require modifications to the Contract Documents are made to any of the laws, ordinances, rules, regulations and codes by the authorities having jurisdiction subsequent to the date of bid closing, any resulting change in the cost shall constitute a corresponding change in the Contract Price. The Contractor shall notify the Contract Administrator in writing requesting direction immediately if any such variance or change is observed by the Contractor.
- (3) If the Contractor fails to notify the Contract Administrator in writing to obtain direction and performs any Work knowing it to be contrary to any laws, ordinances, rules, regulations, codes and orders of any authority having jurisdiction, the Contractor shall be responsible for and shall correct any violations thereof and shall bear all costs, expenses and damages attributable to his failure to comply with the provisions of such laws, ordinances, rules, regulations, codes and orders.

**GC.7.02 Patents and Royalties**

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

**GC.7.03 Contractor's Risk**

- (1) The Work shall remain at the risk and the responsibility of the Contractor from the commencement of the Work (and all matters incidental thereto) and until the Total Performance thereof has been certified by the Contract Administrator.
- (2) The Contractor shall, at his own cost, be required to maintain the Work, make good all damage thereto and imperfections therein and to deliver the completed Work to the City in accordance with the provisions of the Contract.

**GC.7.04 Indemnity**

- (1) The Contractor covenants to save harmless and effectually indemnify the City against all actions and proceedings, costs, damages, expenses, claims and demands whatsoever committed by the Contractor, his Sub-contractor, employees or agents and by whomsoever brought by reason of the performance of the said Work, and more particularly from:
  - (a) accidental injury (including death) to any person whether retained by or in the employ of the Contractor or not, arising directly or indirectly by reason of the performance of the Work, or by reason of any trespass on or damage to property;
  - (b) damage to any property owned in whole or in part by the City or which the City by duty or custom is obliged, directly or indirectly, in any way or to any degree, to construct, repair or maintain;
  - (c) trespass or damage to private property or properties owned by persons other than the City;
  - (d) failure to pay and obtain a discharge of a Notice of Claim for Lien served upon the City or non-payment of a Workers' Compensation assessment, Unemployment Insurance, Federal or Provincial Tax;
  - (e) inaccuracies in any information provided to the City by the Contractor.
- (2) The City has the right, acting reasonably and upon notice to the Contractor, to settle any such action, proceedings, claim or demand and charge the Contractor with the amount so paid or to be paid in effecting a settlement or which may be adjudged due to the City by the Commissioner.
- (3) The Contractor shall pay to the City the value of all legal fees and disbursements required to defend the City against any such claim, action, proceeding, claim or demand arising out of the Contract notwithstanding that the defense of the said action, proceeding, claim or demand was undertaken on behalf of the City by a salaried employee of the City.
- (4) The Contractor shall pay to the City all costs taxed against the Contractor in any litigation between the Contractor and the City arising out of this Contract.
- (5) If the Contractor fails to make any payment required to be made to the City hereunder, the City shall be entitled to deduct the amount of such payment from any payment required to be made by the City to the Contractor under this Contract or take whatever other remedies against the Contractor that the City may have at law.

**GC.7.05 Rights and Remedies**

- (1) The duties and obligations imposed upon the Contractor by the Contract Documents and the rights and remedies available to the City hereunder shall be in addition to and not a limitation of any duties, obligations, rights and remedies otherwise imposed upon the Contractor or available to the City at law.
- (2) No acceptance of Work or payment of money and no failure on the part of the City to enforce compliance by the Contractor with any term of this Contract and no other act or omission whatever on the part of the City, and no act or omission of the Commissioner or Commissioners or of any officer or employee of the City shall be taken as a waiver of any of the provisions of this Contract, it being understood that any provision hereof may only be waived by express waiver in writing authorized by the proper officers of the City. No express waiver of any provision shall impliedly waive any other provision.

**GC.7.06 Notices**

- (1) Except as provided in GC.5.02 (4) hereof, all notices, consents, approvals, statements, authorizations, documents of other communication required or permitted to be given under this Contract shall be in writing and shall be delivered personally or mailed by registered mail, postage prepaid to the City at the address set out in the Supplemental Conditions; and to the Contractor at the address set out in the Form of Tender; or at such other address or addresses as the party to whom such notice, consent, approval, statement, authorization, document or other communications is to be given may designate by notice in writing so given to the other party hereto as provided herein.
- (2) Any notice, consent, approval, statement, authorization, documents or other communication given as provided herein shall:
  - (a) in the case of personal delivery, be deemed to have been received on the day of delivery, if a business day, or if not a business day, on the business day next following the day of delivery; and
  - (b) in the case of delivery by registered mail, be deemed to have been received on the second business day on which mail is delivered by Canada Post following the date of mailing.
- (3) In the event of a postal dispute or threat of a post dispute, all notices required to be given hereunder shall be personally delivered.

**GC.7.07 Independent Contractor**

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

**ARTICLE VIII - PROSECUTION AND PROGRESS****GC.8.01 Schedule**

- (1) The Contractor shall, immediately after the award of the Contract, prepare and submit for the Contract Administrator's

approval, a Schedule of activities for the Work confirming the commencement date, the completion date which date shall be no later than the date specified in the Tender Submission required to complete the various phases or parts of the Work, in relation to both the Contract Time stated in the Contract Document and the Schedule of Work submitted by the Contractor in his Tender Submission unless otherwise specified in the Supplemental Conditions. The Contractor shall provide any additional details required by the Contract Administrator. After approval has been given, the Schedule shall not be changed by the Contractor without the prior written consent of the Contract Administrator.

- (2) The City reserves the right to withhold payment from the Contractor if:
  - (a) such Schedule has not been submitted or has not received the approval of the Contract Administrator prior to or with the first application for payment, or
  - (b) a revised Schedule has not been submitted or has not received the approval of the Contract Administrator prior to the first application for payment or any subsequent application for payment in the event of a change in the aforementioned Schedule, or
  - (c) a revised Schedule has not been submitted or has not received the approval of the Contract Administrator after an extension of time has been granted.
- (3) The Contractor shall comply with the approved Schedule and shall bear all costs to meet the Schedule. If the progress of the Work falls behind the most recent Schedule or is delayed for any reason other than one for which extra time is provided for in GC.8.06, the Contractor shall immediately adopt such measures including but not limited to engaging such additional labour and equipment, and work such additional hours as the Contract Administrator may order, to bring the Work back on schedule, at the Contractor's expense.
- (4) If at any time the Contractor has been granted additional time under the provisions of GC.4.04 or GC.8.06, he shall forthwith submit a revised Schedule for the Contract Administrator's approval.
- (5) More detailed requirements for these Schedules may be described in the Supplemental Conditions.

#### **GC.8.02 Contract Administrator May Order Better and More Equipment and Labour**

- (1) If at any time the Contractor's methods or equipment or the quality or quantity of labour employed or materials furnished be such, in the opinion of the Contract Administrator that there is likelihood that the Work will not be completed satisfactorily, or if progress will not be maintained to the extent guaranteed in the latest approved Schedule, then in every such case, the Contract Administrator may in writing order the Contractor so to alter and improve his methods, to increase or improve his equipment, to employ additional or more qualified workmen, or otherwise to conform with the Contract as the Contract Administrator may deem fit and the Contractor shall within forty-eight hours comply or take steps to comply with the requirements of the Contract Administrator in these respects, without in any way relieving the Contractor from his responsibilities under GC.5.02.
- (2) If in the opinion of the Contract Administrator, the Contractor has not complied sufficiently with the immediately preceding sub-clause, the Contract Administrator may arrange, after the expiration of the forty-eight (48) hour period referred to in GC.8.02 (1), for better and more equipment through other sources and the Contractor shall reimburse the City for the cost thereof immediately upon receipt of written notice from the Commissioner setting out the amount to be so paid. In the event that the Contractor fails to make payment to the City as required hereby the City shall deduct the amount of such payment from any payment required to be made by the City to the Contractor under this Contract. If in the opinion of the Commissioner the Contractor has received all payments due to him under the Contract and the Contractor refuses or fails to make payment immediately upon receipt of the Commissioner's written Notice as required hereby, the Surety shall make such payment immediately upon receipt of written notice from the Commissioner setting out the amount to be so paid.

#### **GC.8.03 The City's Right To Suspend Work**

- (1) The Commissioner has the right and may, by an order in writing, at any time stop or suspend all or any part of the Work, or direct any portion to be commenced or completed in priority to any other part or portion, or may cancel the order to proceed with the Work, or with any part thereof, and the Contractor shall not thereby be entitled to any claim for loss of profit, or anticipated profit, or for damages or for any additional payment except as allowed under GC.8.03 (3) by reason of such order.
- (2) Whenever in the opinion of the Commissioner for any reason it is deemed advisable to suspend the Work, or any part thereof, the Contractor shall, on notice from the Commissioner, forthwith place the Work and secure the Site and any existing facilities thereon in a proper and satisfactory condition for the safe accommodation of the public, and for the effectual protection of the Site and any existing facilities and the Work against damage from the weather, vandalism or other causes, and shall so maintain it.
- (3) In the event of such right being exercised to cause any delay to the Contractor, then an extension of time to be fixed by the Commissioner, shall be allowed for the completion of the Contract, and the City shall pay to the Contractor all reasonable expenses arising from such suspension of the Work, unless such suspension be due to default on the part of the Contractor. The Contractor shall furnish the Commissioner with proper vouchers for all items upon which a claim is made under this clause, and the Commissioner's decision as to such expenses shall be final and binding upon both the City and the Contractor.
- (4) No such suspension shall vitiate this Contract or any part thereof, and at any time after such Work has been suspended, such Work may again be resumed in whole or in part at the option of the Commissioner, and upon the Contractor receiving written notice from the Commissioner that such Work or any part thereof is to be resumed he shall at once resume Work and diligently carry on the same.

**GC.8.04 Forfeiture Of Contract**

- (1) The Commissioner shall have the full right and power to take the whole of the Work, or any part or parts thereof out of the hands of the Contractor, without process or action at law, upon giving the Contractor written notice, a copy of which notice shall be given to the Surety, or the Winnipeg agent of the latter, in the event that the Contractor:
  - (a) abandons the Work; or
  - (b) is adjudged bankrupt or insolvent; or
  - (c) makes a general assignment for the benefit of his creditors; or
  - (d) should have a receiver or liquidator appointed in respect of his assets; or
  - (e) is in the judgment of the Commissioner not executing or has not executed the Work, or any part thereof, in a sound and workmanlike manner and to his satisfaction and in all respects in strict conformity with the Contract; or
  - (f) in the judgment of the Commissioner, is not progressing with the Work or any part thereof continuously and in such a manner as to ensure its entire completion of the Work or any part thereof, within the time stipulated; or
  - (g) refuses or neglects forthwith, when so ordered, to conduct the Work so as to ensure its completion, in the opinion of the Commissioner, within the time stipulated; or
  - (h) has not completed the Work within the time required; or
  - (i) refuses or neglects to correct any defective or unsatisfactory Work, or to remove any condemned material or workmanship, or to comply with any reasonable order in connection therewith he may receive from the Commissioner; or
  - (j) fails to make prompt payment of wages to his Subcontractor or accounts for the purchase or rental of material or equipment; or
  - (k) fails to promptly secure a discharge of a lien or trust claim, served upon the City, within Thirty (30) Calendar Days after receipt of written Notice of the claim from the Solicitor; or
  - (l) persistently disregards any laws, by-laws and statutory regulations; or
  - (m) commits any other material breach of this Contract which in the opinion of the Commissioner indicates an unwillingness or inability upon the part of the Contractor to carry out the terms thereof.
- (2) Upon such Notice being given to the Contractor, he shall immediately discontinue the Work or any part or parts thereof specified in the said Notice.
- (3) The Surety may, at its option, assume this Contract in respect of the whole of the Work, or the portion thereof specified in the Notice on which the Commissioner has ordered the Contractor to discontinue the Work, as the case may be, and proceed to perform same, and may with the written consent of the Commissioner sublet the Work or portion of the Work so taken over; provided however that the Surety shall exercise its option, if at all, within Fourteen (14) Calendar Days after written notice to discontinue the Work has been served upon the Contractor and a copy of same upon the Surety or the Winnipeg agent of the latter.
- (4) The Surety in such event shall take the Contractor's place in all respects, shall be bound by all terms and conditions of the Contract Documents and shall be paid by the City in accordance with the terms of the Contract for all Work performed by it.
- (5) In case the Surety does not within Fourteen (14) Calendar Days exercise its right and option to assume the Contract as aforesaid or in the event that there is no Surety, then the City shall have the power to complete by contract or otherwise as it may determine, the Work hereinbefore referred to or such portion of it as the City may deem necessary, and the Contractor agrees that the City shall have the right to take possession of and use any of the equipment, materials, supplies and property of every kind provided by the Contractor for the purpose of the Work and to procure other equipment and materials for the completion of the same. The City shall not be required to obtain the lowest price for the Work taken over from the Contractor.
- (6) In case the cost to the City, as certified by the Commissioner, of completing the Work or portion thereof as aforesaid, be less than the amount to which the Contractor would have been entitled under the Contract for so doing, the Contractor shall have no claims in respect thereof against the City, but if such certified cost of the Work performed by the City is more than the amount to which the Contractor would have been entitled under the Contract for the same Work, then the City shall have a claim against the Contractor for all additional costs of the Work which have been incurred by the City in addition to the amount of any liquidated damages that the City is entitled to hereunder from the date fixed for the Total Performance of the Work in the Contract Documents and the Contractor shall pay the amount of such additional cost of the Work together with liquidated damages as provided for herein to the City upon notice from the Commissioner setting out the amount so due. When any particular part of the Work is being carried on by the City, by contract or otherwise, under the provisions of this clause, the Contractor shall continue the remainder of the Work in conformity with the terms and conditions of this Contract, and in such manner as in no way to hinder or interfere with the persons, Other Contractor, Contractors, or workmen employed by the City.

**GC.8.05 Effect of Taking the Work Out of the Contractor's Control**

- (1) The taking of the Work or any part thereof out of the Contractor's control pursuant to GC.8.04 shall not relieve or discharge the Contractor from any obligation under the Contract or imposed upon him by law except the obligation to complete the performance of that part of the Work that was taken out of the Contractor's control.
- (2) If the Work or any part thereof is taken out of the Contractor's control pursuant to GC.8.04, all equipment and material and the interest of the Contractor in all licenses, powers and privileges acquired, used or provided by the Contractor under the Contract shall be assigned by the Contractor to the City without compensation to the Contractor.
- (3) When the Contract Administrator certifies that any equipment, material, or any interest of the Contractor referred to

GC.8.05 (1) above is no longer required for the purposes of the Work, or that it is not in the best interest of the City to retain that equipment, material, or interest, it shall revert to the Contractor.

#### **GC.8.06 Delay In Completing Contract**

- (1) Time shall be deemed to be of the essence for this Contract.
- (2) The Contractor shall be required to complete the Work in accordance with the Contract Document and to the satisfaction of the Contract Administrator by the day fixed for the Total Performance of the Work in the Contract Documents.
- (3) Unless otherwise specified in the Supplemental Conditions, should the Contractor fail to complete the Work in accordance with the Contract Documents and to the satisfaction of the Contract Administrator by the day fixed for the Total Performance of the Work in the Contract Documents, the Contractor, subject to GC.8.05 hereof, shall pay the City the sum stipulated in the Supplemental Conditions as liquidated damages for each and every Working Day following that day fixed for the Total Performance of the Work in the Contract Documents and ending on the day immediately preceding the day that Total Performance of the Work has been achieved and is so certified by the Contract Administrator.
- (4) Should the Contractor be delayed in the completion of the Work by reason of strikes, lock-outs (including lock-outs decreed by a recognized contractor's association for its members of which the Contractor is a member), an act of God, or any other cause which the Contractor satisfies the Commissioner to be totally beyond his control or any cause within the Contractor's control which the Commissioner has determined justified the delay, then the time for completion shall be extended for a period of time equal to the time lost due to such delays.
- (5) No extension for delay shall be approved unless a written notice of the claim is received by the Contract Administrator from the Contractor within Seven (7) Calendar Days of the date on which the cause of delay arose.
- (6) Any notice or claim for extension must state the cause of delay and the length of extension requested.
- (7) In the case of a continuing cause of delay only one claim for an extension shall be necessary.

### **ARTICLE IX - MEASUREMENT AND PAYMENT**

#### **GC.9.01 Contract Prices**

The Contract Price to be paid by the City to the Contractor shall be the sums certified by the Commissioner, such sums to be ascertained and determined by the Contract Administrator as follows:

- (1) For unit price contracts, upon the basis of the unit prices for the various classes of the Work included in the Schedule of Prices. These unit prices are gross prices including duty, freight, cartage, Provincial and Federal Taxes and all charges governmental or otherwise paid and including profit and all compensation which shall be due to the Contractor for supplying labour, equipment, materials and supervision not only for the classifications expressly specified but for those which have been omitted and all details necessarily connected with the completion of the Work and all risks and contingencies connected therewith. The total amount to be paid to the Contractor for the Work described in the Contract will be the amount arrived at by measuring the net amount of each class of the Work listed in the Schedule of Prices, and pricing the same, in accordance with the unit prices therein.
- (2) For Lump Sum Contracts, upon the basis of the lump sum price included in the Schedule of Prices. The lump sum price shall be a gross price including duty, freight, cartage, Provincial and Federal taxes and all charges governmental or otherwise paid and including profit and all compensation which shall be due to the Contractor for supplying labour, equipment, materials and supervision not only for the classifications expressly specified but for those which have been omitted and all details necessary connected with the completion of the Work and all risks and contingencies connected therewith.

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

- (1) The Contract Price shall not be increased or decreased by reason of any increase or decrease in the cost of the Work to the Contractor which arises as a result of an increase or decrease in the cost of labour, equipment, material or otherwise unless expressly provided for herein.
- (2) Notwithstanding GC.9.02 (1) and subject to GC.9.02 (4), the Contract Price shall be adjusted in the manner provided in Article IV - Scope of Work, if any change in a tax imposed under the Excise Act, the Excise Tax Act, the Customs Act, the Customs Tariff or The Retail Sales Tax Act:
  - (a) occurs after the Time and Date Set for Final Receipt of Bids;
  - (b) applies to material, and
  - (c) affects the cost to the Contractor of that material.
- (3) If a change referred to in GC.9.02 (2) above occurs, the Contract Price shall be increased or decreased by an amount equal to the amount that is established, by an examination of the relevant records of the Contractor, to be the increase or decrease in the cost incurred that is directly attributable to that change.
- (4) For the purpose of GC.9.02 (2) above, where a tax is changed after the Time and Date Set for Final Receipt of Bids but public notice of the change has been given by either the Federal or Provincial Minister of Finance before that date, the change shall be deemed to have occurred before the Time and Date Set for Final Receipt of Bids and the Contractor shall not be entitled to an increase in the Contract Price.

**GC.9.03 Measurement and Payment**

- (1) By the Fourteenth (14) Calendar Day following the Total Performance of the Work, or as soon thereafter as possible, the Contract Administrator shall, subject to receiving all necessary information from the Contractor, including an accurate statement of all of the authorized Extra Work completed and the amount claimed therefor in accordance with the valuation method set out in GC.4.07, make and deliver to the Commissioner, the Contractor's Invoice approved for payment. The signature of the Commissioner thereon will make such Invoice valid for payment.
- (2) Subject to the Contractor's right to appeal in GC.9.03 (3) or (5), every such statement certified by the Contract Administrator shall be final and binding upon the Contractor.
- (3) Should the Contractor have reason to claim that an error has been made in the measurement and payment for Extra Work by the Contract Administrator, the Contractor shall notify the Commissioner in writing of his contention with respect thereto within Seven (7) Calendar Days of receiving the Contract Administrator's approval of the Contractor's Invoice for payment, and request a determination thereon from the Commissioner. The Contractor shall be paid the amount certified by the Contract Administrator until a determination has been made by the Commissioner hereunder or in accordance with GC.9.06 (5) hereof.
- (4) If the Contractor fails to so appeal to the Commissioner for a determination within Seven (7) Calendar Days of receiving the Contract Administrator's approval of the Contractor's Invoice for payment, the Contractor shall be deemed to have waived any said claim. Oral appeals or oral protests shall not amount to substantial compliance with any of the provisions of this Article.
- (5) If the Contractor disagrees with the determination of the Commissioner he must within Seven (7) Calendar Days after receiving Notice of the Commissioner's determination, notify the Board of Commissioners in writing of his contention with respect thereto and request that the dispute be referred to Arbitration in accordance with GC.11.01.
- (6) In the case of the Contractor's neglect or failure to observe fully and faithfully the above conditions, he shall forfeit all right to payment therefor which he otherwise might have had, and shall not make any claim in respect thereof, and if made, the City may reject the same as invalid and he shall not have any right of recovery in respect thereof, at law or otherwise.
- (7) All the foregoing information shall be furnished by the Contractor on behalf of himself and all Sub-contractors before payment shall be made by the City.
- (8) It is intended in all matters referred to above that both the Contract Administrator and Contractor shall act promptly.
- (9) Payment of the Contractor's Invoice shall not be transferable or assignable in any way as a debt or liability of the City to the Contractor.
- (10) Notwithstanding the provisions of GC.9.03 (1) to (9) hereof, for contracts which set out a payment schedule in the Supplemental Conditions, payment shall be governed by said payment schedule. Such payments shall not be transferable or assignable in any way as a debt or liability of the City to the Contractor.

**GC.9.04 Payment Withheld**

- (1) The Commissioner may withhold or retain the whole or part of any payment to the extent necessary to protect the City from loss on account of one or more of the following in the event that the Contractor:
  - (a) abandons the Work, or
  - (b) is adjudged bankrupt or insolvent, or
  - (c) makes a general assignment for the benefit of his creditors, or
  - (d) should a receiver or liquidator be appointed in respect of his assets, or
  - (e) is in the judgment of the Commissioner not executing or has not been executing the Work, or any part thereof, in a sound and workmanlike manner and to his satisfaction and in all respects in strict conformity with the Contract, or
  - (f) in the judgment of the Commissioner, is not progressing continuously with the Work or any part thereof and in such a manner as to ensure its entire completion of the Work or any part thereof, within the time stipulated, or
  - (g) refuses or neglects forthwith, when so ordered, to conduct the Work so as to ensure its completion, in the opinion of the Commissioner, within the time stipulated, or
  - (h) has not completed the Work within the time required, or
  - (i) refuses or neglects to take down, rebuild, repair, alter or amend any defective or unsatisfactory Work, or to remove any condemned material or workmanship, or to comply with any reasonable order in connection therewith he may receive from the Commissioner, or
  - (j) fails to make prompt payment to his Sub-contractors, his employees or on account of the purchase or rental of equipment or material, or
  - (k) fails to promptly secure a discharge of a lien or trust claim served upon the City pursuant to The Builder's Liens' Act, or
  - (l) persistently disregards any laws, by-laws and statutory regulations; or
  - (m) fails to employ or keep a competent Supervisor and necessary assistant on the Work or to replace the Supervisor as required by GC.5.01 (4), or
  - (n) fails to comply with the provisions of GC.8.01 (2), or
  - (o) commits any other material breach of this Contract which in the opinion of the Commissioner indicates an unwillingness or inability upon the part of the Contractor to carry out the terms thereof, or
- (2) Where the Contract Administrator deems it necessary to correct any portion of the Work, the Commissioner may deduct the difference in value between the Work done and that called for by the Contract from the Contract Price, said amount to be determined by the Contract Administrator.

**GC.9.05 Waiver of Claims**

Subject to GC.9.03 (3), acceptance by the Contractor of payment of the Contractor's Invoice shall constitute a waiver and release by him of all claims against the City whether for payment for Work done, damages or otherwise arising out of the Contract.

**GC.9.06 Cost Records**

- (1) The Contractor, at his sole cost and expense, shall provide the Commissioner, when a valuation is required pursuant to GC.4.06, GC.4.07 or GC.9.02, with every facility for the compilation of cost records, and when required, as aforesaid, shall supply all data necessary for such purpose from payrolls, time books, invoices, and all other sources from which the Commissioner may find it necessary to obtain information.
- (2) The Contractor, at his sole cost and expense, shall, when a valuation is required pursuant to GC.4.06 or GC.4.07, furnish the Commissioner with correct statements of number, name, rate and time for each of the persons, and identifying description, rate and time for each piece of equipment, employed or used by him, including expenses for maintenance and operation.

**ARTICLE X - WARRANTY****GC.10.01 Warranty**

- (1) The Contractor, unless specifically stated otherwise in the Contract Documents, shall, at his sole cost and expense, maintain the Work against any and all defects or deficiencies or otherwise which may arise for a period of one (1) year from the date of the Certificate of Total Performance.
- (2) Upon receipt of written notice from the Commissioner, the Contractor shall, at his sole cost and expense, remedy any defect or deficiency or otherwise identified by the Commissioner within the one (1) year period as aforementioned, in the manner and within the time periods specified in the said Notice. A copy of the said Notice shall be given to the Surety or its Winnipeg Agent.
- (3) The Contractor shall also at his sole cost and expense, remedy any and all damage that may arise or result from the defect, deficiency or otherwise referred to in the said Notice or as a result of the correction of same.
- (4) If the Contractor fails for any reason whatsoever to remedy the defects or deficiencies or otherwise in the manner and within the time periods specified in the said Notice, the Commissioner may take all steps necessary to have the defects, deficiencies or otherwise remedied either by the City's own forces or by another contractor or contractors. The cost of such remedial work shall be paid to the City by the Contractor within Seven (7) Calendar Days of receipt of written notice from the Commissioner to the Contractor setting out the amount to be paid. In the event that the Contractor fails to make payment to the City as required hereunder, the Surety shall make such payment to the City within Seven (7) Calendar Days of receipt of written notice from the Commissioner setting out the amount to be paid.
- (5) Notwithstanding the generality of the foregoing:
  - (a) In any case where repairs must be made immediately, by reason of an emergency existing or otherwise, the City shall have the right to undertake such repairs and charge the cost of making such repairs to the Contractor, except that the Commissioner shall immediately notify the Contractor and shall withdraw its forces as soon as the Contractor's forces assumes performance of the repair.
  - (b) All costs resulting from the need to undertake remedial work during the warranty period as aforesaid, whether by the Contractor, his Sub-contractor or by the City, as provided herein, shall be borne by the Contractor. In addition, the Contractor shall be liable to the City for all expenses, losses or damages incurred by the City as a result of such defects, deficiencies or otherwise referred to herein or as a result of the Contractor's failure to meet the warranty requirements specified herein, including, but without limiting the generality hereof, all costs of designing, inspecting and testing.
- (6) Notwithstanding the provisions of this Article, if any statute in force in the Province of Manitoba or in the jurisdiction where the material was manufactured or if a manufacturer's warranty extends beyond the warranty period specified in these Contract Documents, then the provisions of such statute or manufacturer's warranty shall apply.
- (7) In the event that the Contractor can prove, following completion and payment for the remedial work, that the defect, deficiency or otherwise was attributable to a design defect, deficiency or otherwise or resulted from third party damage not attributable to the Contractor or his Sub-contractors, the City shall promptly reimburse the Contractor for the cost of undertaking such remedial work. If the Contractor fails for any reason whatsoever to remedy the defect, deficiency or otherwise in the manner and within the time limit specified in GC.10.01 (2), the Contractor shall not be entitled to repayment of the monies that he is required to pay to the City under GC.10.01 (4) if the Contractor is later able to establish that the defect, deficiency or otherwise was due to a design defect, deficiency or otherwise or resulted from third party damage not attributable to the Contractor or his Sub-contractors.
- (8) Where because of adverse weather or other conditions reasonably beyond the control of the Contractor a component of the Work cannot be completed but that component does not prevent the balance of the Work from being put to its intended use, the Commissioner may permit the warranty period to commence prior to the Total Performance of the Contract in the manner set out in the Supplemental Conditions.



**GC.10.02 Acceptance Of The Work**

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

**ARTICLE XI - DISPUTES****GC.11.01 Arbitration**

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