

CITY OF BRANDON
STANDARD CONSTRUCTION SPECIFICATIONS
GENERAL CONDITIONS OF THE CONTRACT

ARTICLE I
DEFINITION OF TERMS

Wherever in these Contract Documents or in any documents or instruments covering or pertaining to construction operations where the General Conditions govern, and where 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, and where the following terms are used, the intent and meaning shall be, unless the context otherwise requires, as follows:

"City" means the City of Brandon of the Province of Manitoba as incorporated under The Brandon Charter Act, Chapter 71, Statutes of Manitoba 1989-1990, and any subsequent amendments thereto, and as represented by the Council of the City of Brandon.

"City Manager" means the City Manager of the City of Brandon or his designate, as appointed by the Council of the City of Brandon.

"Contract" or "Contract Documents" means the combined documents consisting of the executed Agreement between the City and the Contractor, these General Conditions of the Contract, the Supplemental Conditions, the Specifications, all Addenda, the Drawings, the Performance Bond, the Labour and Material Payment Bond, the Schedule of Equipment Rental Rates, and any other document referred to in, or connected with such formal Agreement as may be authorized by the City. It shall also include all modifications and amendments thereto incorporated in the Contract Documents before the execution of the Agreement, and subsequent amendments thereto made pursuant to the provisions of the Contract and agreed upon between the parties, and all the Contractor's Specifications and Contractor's Drawings, if approved and signed by the Engineer.

"Contractor" means the person or persons, proprietorship, firm, partnership, joint venture, consortium, association, corporation or any combination thereof, that has undertaken the execution of the Work under the terms of the Contract.

"Contract Price" means the total of the products of the Contract Unit Prices and their respective quantities plus any lump sum items included in the Agreement.

"Contract Unit Price" means any amount set forth in the Schedule of Unit Prices in the Agreement, and as described in the Specifications for the performance of an item of Work.

"Engineer" means the City Engineer of the City of Brandon Department of Engineering and Operations and includes any person duly authorized by him to perform on his behalf any of his functions under the Contract.

"Extra Work" means the furnishing of labour, services, materials, Plant, equipment and/or the performance of any Work not directly or by implication called for by the Contract Documents.

"Final Completion" means when the entire Work, except those items arising from the provisions of Article XII Warranty, have been performed to the requirements of the Contract Documents and is so certified in writing by the Engineer.

"Other Contractor" means any person or persons, proprietorship, firm, partnership, joint venture, consortium, association, corporation or any combination thereof employed by or having a contract directly or indirectly with the City otherwise than through the Contractor, or is employed by or having a contract with a third party having the City's permission to do work on City owned property.

"Plant" means all material and/or equipment and/or things brought to or constructed upon the Site by the Contractor for the performance of the Work, but does not include material, equipment or other things which are to form part of the permanent Work.

"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 Engineer for the purposes of the Contract.

"Street" means any public highway as defined in the Municipal Act, Chapter M225, Statues of Manitoba 1988, and any subsequent amendments thereto.

"Subcontractor" means any person or persons, proprietorship, firm, partnership, joint venture, consortium, association, corporation or any combination thereof having a contract with the Contractor or another Subcontractor of the Contractor for the execution of a part or parts of the Work or who furnishes material called for in the Contract Documents and worked to a special design provided therein, but does not include one who merely furnishes material not so worked.

"Substantial Performance" means Substantial Performance as defined in The Builders' Liens Act of Manitoba, Chapter B91, Statutes of Manitoba 1987 and any subsequent amendment thereto, and is so certified in writing by the Engineer.

"Work" means the carrying out and doing of all things, whether of a temporary or permanent nature, that are to be done by the Contractor or another Subcontractor of the Contractor, pursuant to the terms and conditions of the Contract Documents and in particular, but without limiting the generality of the foregoing, includes the furnishing of all labour, superintendence, services, transportation, materials, Plant, equipment and articles necessary or incidental to the proper performance of the Contract, including all Extra Work which may be ordered as herein provided.

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

ARTICLE II PRELIMINARY MATTERS

2.1 Interpretation

The Contract has been entered into and shall be governed by and construed and enforced in accordance with the laws of the Province of Manitoba. 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.

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.

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.

No acceptance of Work, payment of money, or failure on the part of the City to enforce compliance by the Contractor with any term of this Contract, nor any act or omission of the City or of any officer or employee of the City, shall be taken as a waiver of any of the provisions of this Contract, it being understood that any provision hereof may only be waived by express waiver in writing authorized by the proper officers of the City. No express waiver of any provision of this Contract shall impliedly waive any other provision of this Contract.

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

2.2 Assignment

The Contract may not be assigned by the Contractor, either in whole or in part, without the written consent of the City. The Contractor shall not assign any monies due to him hereunder, except to a bank or financial institution acceptable to the City. The Contractor shall not be relieved of any liabilities or obligations relating to the Contract, because of the consent of the City to any assignment. The Contractor shall have the same responsibilities as though no assignment had been made.

2.3 Notices

Any notice, consent, order, decision, approval, statement, authorization, document, direction or other communication required or permitted to be given under the Contract to any party pursuant to the Contract shall be deemed to have been given to the Contractor:

- if delivered personally to the Contractor or the Contractor's superintendent; or

- if forwarded by mail or facsimile to the civic/phone address of the Contractor as set out in the Agreement; and to the City:
 - if delivered personally to the Engineer; or
 - if forwarded by mail or facsimile to the civic/phone address of the Engineer as set out in the Agreement; or
- at such other address or addresses as the party to whom such notice, consent, order, decision, approval, statement, authorization, document, direction or other communication is to be given may designate by notice in writing so given to the other party hereto as provided herein.

Any notice, consent, order, decision, approval, statement, authorization, document, direction or other communication given under the Contract will be deemed to have been received by either party:

- if delivered personally, on the day that it was delivered; or
- if forwarded by facsimile, 24 hours after it was transmitted; or
- if forwarded by mail, on the earlier of the day it was received or the sixth day after it was mailed.

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

ARTICLE III CONTRACT DOCUMENTS

3.1 Intent

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

The headings, titles and marginal notes in the Contract Documents, other than the Drawings and Specifications, form no part of the Contract but are inserted for convenience of reference only.

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

3.2 Inconsistencies

The City shall have the right at any time to correct errors or omissions in the Contract Documents or to issue additional Drawings and Specifications at any time to further detail or explain the Work, all without in any way affecting or vitiating the Contract.

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

- a) figured dimensions shown on a Drawing shall govern over scaled or implied dimensions on the same Drawing;
- b) Drawings of larger scale shall govern over those of smaller scale of the same date;
- c) Specifications shall govern over Drawings of the same date;
- d) the General Conditions shall govern over the Specifications;
- e) the Supplemental Conditions shall govern over the General Conditions;
- f) the executed Agreement between the City and the Contractor shall govern over all documents;

- g) notwithstanding the foregoing, Contract Documents of a later date shall always govern over Contract Documents of the same category of an earlier date.

In the case of an obvious clerical error, the one most consistent with the Contract as a whole will be accepted.

The Contractor shall not be responsible for verifying that the Contract Documents are in compliance with the applicable laws, ordinances, rules, regulations, codes and orders relating to the Work. If the Contractor has knowledge that the Contract Documents are at variance therewith, or if the Contract Documents or any part thereof appear indefinite, not clear, contradictory, contain errors or omissions the Contractor shall, prior to proceeding with the Work, promptly refer such part or parts to the Engineer for interpretation and/or clarification.

ARTICLE IV SITE CONDITIONS

4.1 Contractor Declaration

The Contractor declares that in bidding for the Work and in entering into the Contract, he has investigated for himself the Site, the character of the Work to be done and all 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 fulfil, than was contemplated or known when the Tender 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 surface and subsurface conditions at the Site, or the location, character, quality or quantity of the materials to be removed, or to be employed in the construction of the Work, or the character of the Plant needed to perform the Work or the general and local conditions and shall verify all matters concerning access to the Site, power supplied, location of existing services, utilities, materials necessary for the completion of the Work and all other matters 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 Tender or the Contract by the Engineer.

Although the Drawings may show the location of existing surface and underground works and services, the City does not warrant the completeness or accuracy of the information or assume responsibility for discrepancies between the Drawings and the actual locations of the works and services.

Notwithstanding the generality of the foregoing, the Contractor shall promptly refer any substantial difference in the character or nature of the surface or subsurface conditions at the Site, or the location, character, quality or quantity of the materials to be removed than the conditions set out in the Contract Documents or other information furnished in writing for or in connection with the Contract by the Engineer for resolution in the manner prescribed in Article IX Change in Work.

4.2 Use of the Site

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

ARTICLE V BONDING

5.1 Requirement

Prior to the execution of the Contract, the Contractor shall, at his own expense, provide and deliver to the City a Performance Bond and a Labour and Material Payment Bond. All such bonds shall be issued by the same duly incorporated Surety or Bonding Company approved by the City and authorized to transact a business or suretyship in the Province of Manitoba. Each Bond shall incorporate by reference the Contract and be signed by both the Contractor and the Surety, and the signature of the authorized agent of the Surety shall be notarized.

5.2 Performance Bond

A Performance Bond written on the standard form approved by the City, conditioned on the faithful performance of the terms of the Contract, including corrections after final payment provided for in Article XII Warranty hereof, and the payment of all obligations arising under the Contract, in the amount of *fifty percent (50%)* of the Contract Price. The said Performance Bond as aforesaid shall remain in full force and effect for at least twelve (12) months after the date on which the Certificate of Final Completion of the Work has been issued in accordance with the terms of the Contract.

5.3 Labour and Material Payment Bond

A Labour and Material Payment Bond written on the standard form approved by the City, covering payment for all labour and materials used or reasonably required in the performance of the Contract, conditioned on the faithful performance of the terms of the Contract for the amount of *fifty percent (50%)* of the Contract Price.

ARTICLE VI INSURANCE

6.1 Indemnification

The Contractor shall indemnify and save harmless the City, its officers, agents, servants and employees, from and against all actions, suits, proceedings, costs, damages, expenses, losses, claims and demands of any kind whatsoever committed by the Contractor, his Subcontractor(s), the City, their employees or agents and by whomsoever made, brought or prosecuted by reason of the performance of the Work, and more particularly from:

- a) accidental injury (including accidental death) to any person whether retained by or in the employ of the Contractor or not, arising directly or indirectly by reason of the execution and performance of the Work, or by reason of any trespass on or damage to property;
- b) damage to any property owned 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 in accordance with the requirements of the Builders' Liens Act; non-payment of a Workers Compensation assessment, Unemployment Insurance, Federal or Provincial Tax, and for encroachments owing to errors in the Contractor's survey;
- e) inaccuracies in any information provided to the City by the Contractor;
- f) infringement or alleged infringement of the use of any patent, design, device, material or process, or any trade mark or trade name or copyright in connection with the Work .

The Contractor shall be responsible for all such claims except such claims in which the injury or damage shall have been occasioned by the sole negligence of the City.

If the City or the Contractor is served with a claim or notice, the party so served shall immediately inform the other party with notice in the manner provided herein.

6.2 Policy Requirements

Without restricting the generality of Article VI Insurance, the Contractor shall, at his own expense, obtain and maintain public liability and property damage insurance policies, from the commencement of the Work (and all matters incidental thereto) and until twelve (12) months following the date of the Certificate of Substantial Performance of the Work, or ten (10) calendar days following the issuance of the Certificate of Final Completion of the Work, whichever is the later; and with respect to Product and Completed Operations coverage, for a period of not less than twelve (12) months from the date of the Certificate of Final Completion of the Work, cancellation or termination of the Work, and thereafter be maintained for a further period of four (4) years. If the Contractor has to return to the Site of the work for the purpose of repairing defects in material or workmanship as provided in Article XII Warranty, he shall again be required to secure and maintain insurance policies in such amounts as the Engineer may require.

All such Insurance policies shall be issued by a duly incorporated Insurance Company approved by the City, and authorized to transact a business of Insurance underwriting in the Province of Manitoba. All deductibles shall be borne by the Contractor and shall be acceptable to the City in amount.

Each insurance policy required herein shall include an endorsement whereby the insurer agrees to provide to the City not less than sixty (60) calendar days written notice by registered mail of any non renewal, cancellation, material change or amendment restricting coverage of any of the insurance policies.

6.3 Certificate of Insurance

A certified certificate of insurance for each insurance policy maintained by the Contractor shall be filed with the City prior to the execution of the Contract. And if requested by the Engineer, the originals or certified true copies of all contracts of insurance maintained by the Contractor pursuant to the requirements of these insurance coverages. The extent of coverage shall be subject to the City's approval as to the adequacy of protection.

The City has the right, acting reasonably and upon notice to the Contractor, to obtain and maintain in force the required insurance, to settle any such action, proceeding, claim or demand and charge

the Contractor and deduct the costs thereof from monies which are due or may become due to the Contractor with the amount so paid or to be paid in effecting a settlement. And the Contractor shall pay to the City the value of all legal fees and disbursements required to defend the City against any such action, proceeding, claim or demand arising out of the Contract notwithstanding that the defence of the said action, proceeding, claim or demand was undertaken on behalf of the City by a salaried employee of the City.

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 to take whatever other remedies against the Contractor that the City may have at law.

6.4 Liability Insurance

Comprehensive General Liability (Occurrence form) policy written in the Contractor's name and including the City of Brandon as an additional named insured in the amount of not less than \$5,000,000.00 (five million dollars) inclusive for bodily injury and/or property damage for any one occurrence or series of occurrences arising out of one cause. Legal or defence costs incurred in respect of a claim or claims shall not operate to decrease the limit of liability.

The policy shall include but not necessarily be limited to the following coverage provisions:

- a) Liability arising out of or resulting from the ownership, existence, maintenance or use of premises by the Contractor and operations necessary or incidental to the performance of the Work;
- b) 'Broad Form' property damage including the loss of use of property;
- c) Removal or weakening of support of any building or land whether such support be natural or otherwise;
- d) Elevator liability (including escalators, hoists and similar devices);
- e) Contractor's Protective Liability;
- f) Contractual and Assumed Liabilities under the Contract.

Additional Exposures

The policy shall either include or be endorsed to include the following exposures, perils or hazards if the Work is subjected thereto: blasting, pile driving, caisson work, underpinning, use of vibratory equipment, risks associated with the activities on an active airport, radioactive contamination resulting from the use of commercial isotopes, damage to the portion of an existing building beyond that directly associated with an addition, renovation or installation contract (the care custody and control exclusion shall not apply), and marine risks associated with the construction of piers, wharves and docks.

Cross Liability

The policy shall contain the following clause or one to like effect:

"The insurance as is afforded by this policy shall apply in respect to any claim or action brought against any one insured by any other insured. The coverage shall apply in the same manner and to the same extent as though a separate policy had been issued to each insured. The inclusion herein of more than one insured shall not increase the limit of the Insurance Company's liability."

Severability of Interests

The policy shall contain the following clause or one to like effect:

"This policy, subject to the limits of liability stated herein, shall apply separately to each insured in the same manner and to the same extent as if a separate policy had been issued to each. The inclusion herein of more than one insured shall not increase the limit of the Insurance Company's liability."

6.5 Risk Insurance

"All Risk" Builder's Risk Course of Construction Insurance policy written in the name of the Contractor and including the City of Brandon as an additional named insured, which shall insure the entire Work and all property, Plant, equipment and materials intended to become part of the finished Work at the Site while awaiting, during and after installation, erection or construction, against the perils of fire, loss or damage including, without duplication of coverage, theft, vandalism, malicious mischief, or collapse of falsework, for the amount equal to the initial Contract

Price as well as subsequent modifications thereto on a replacement cost basis plus the declared value (if any) set forth in the Contract Documents of all material and equipment supplied by the City at the Site of the Work to be incorporated into and form part of the finished Work.

The policy shall have coverage for; debris removal including demolition occasioned by enforcement of any applicable legal requirements, removal of water however caused, and its damage, removal of any damaged or undamaged area of the Work (or existing building) that is no longer useable in the common understanding of the word usable, excavations, hoarding, tarpaulins, formworks, heating, temporary services and buildings, clean up, restoring, refinishing, demolition, and all additional professional fees of Consultant fees, legal fees necessary to repair the Work to new condition.

The policy may be subject to the standard exclusions but the following qualifications shall apply:

- a) Faulty materials, workmanship or design may be excluded only to the extent of the cost of making good thereof and shall not apply to loss or damage resulting therefrom;
- b) Loss or damage caused by contamination by radioactive material may be excluded except for loss or damage resulting from commercial isotopes used for industrial measurement, inspection, quality control, radiographic or photographic use;
- c) Use and occupancy of the project or any part or section thereof shall be permitted where such use and occupancy is for the purposes for which the project is intended upon completion.

Subrogation

The following shall be included in the policy; "All rights of subrogation or transfer of rights are hereby waived against any corporation, firm, individual or their interest, with respect to which, insurance is provided by this policy."

Should a loss be sustained, the Contractor shall act on behalf of the City and himself for the purpose of adjusting the amount of such loss with the insurance companies. As soon as such adjustment has been completed, the Contractor shall repair the damage and complete the Work and shall be entitled to receive from the City, in addition to the Contract price, the amount at which the City's interest has been appraised in the adjustment, to be paid to the Contractor as the work of restoration proceeds and

in accordance with the Engineer's certificates. In addition the Contractor shall be entitled to receive from the payments made by the Insurer, the amount of the Contractor's interest in the restoration of the Work, such amount to be paid as the restoration of the Work proceeds. Damage shall not affect the rights and obligations of either party under the Contract except as aforesaid and except that, in such event, the Contractor shall be entitled to such reasonable extension of time for the performance of the Work as the Engineer may decide.

6.6 Automobile Insurance

Automobile Public Liability and Property Damage, owned and non-owned vehicles

Bodily Injury: each person each accident \$5,000,000.00 per occurrence

ARTICLE VII THE CONTRACTOR

7.1 Contractor's Responsibilities

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

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

- a) no person, property, livestock, right, easement or privilege is injured, damaged or infringed by reason of the Contractor's or any Subcontractor's activities in performing the Work;
- b) pedestrian and other traffic on any public or private road or waterway is not unduly impeded, interrupted or endangered by the performance or existence of the Work or Plant. Should any of the Contractor's Work cause interference with any existing public road, the Contractor shall provide and maintain the necessary detour roads and shall post such signs, warnings and protection as may be required for public convenience and safety;
- c) fire hazards in or about the Work or the Site are eliminated;
- d) the health and safety of all personnel employed in the performance of the Work or otherwise is not endangered by the method or means of its performance, and the Work is in compliance with all laws, rules, regulations and practices required by the applicable construction and safety legislation;
- e) adequate medical services are available to all personnel 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 Work and the Site;
- g) all survey posts, monuments or bars are protected and are not removed, defaced, altered or destroyed;

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

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

Unless stated otherwise in the Supplemental Conditions, all materials, products and equipment to be incorporated in the Work shall be new, undamaged, fit for the purpose intended and shall meet or exceed the kind, quality and quantity of same specified in the Contract Documents. If required, the Contractor shall provide, at his own expense, evidence satisfactory to the Engineer that the foregoing requirement has been met.

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

7.2 Superintendence

The Contractor shall employ a competent and responsible superintendent well skilled in the type of Work being undertaken, who shall direct and supervise the Work and be in attendance on the Site at all times while Work is being performed. The superintendent shall be the executive representative of the Contractor in his absence and directions on matters given to him verbally or in writing shall be deemed to be given to the Contractor. The presence of a superintendent on the Site shall not relieve the Contractor from his duty to personally supervise the Work. The Contractor shall inform the Engineer in writing of the name, address and telephone number of such superintendent prior to the commencement of the Work.

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

7.3 Subcontractor

The Contractor shall notify the Engineer in writing of his intention to subcontract. Such notification shall identify the part of the Work, and the name and location of the place of business of each Subcontractor with whom it is intended to subcontract. The Contractor shall not employ any Subcontractor to whom the City may reasonably object, such objection being made by the Engineer notifying the Contractor in writing within six (6) calendar days of receipt by the Engineer of the above notification. The Contractor shall not, without the written consent of the Engineer, change a Subcontractor who has been engaged by him. The City reserves the right to order the Contractor to dispense with the services of a Subcontractor if such services are not satisfactory to the Engineer.

The Contractor with respect to Work to be performed under subcontract, shall:

- a) enter into contracts or written agreements with his Subcontractors to bind and require them to incorporate the terms and conditions of the Contract Documents into all agreements and to perform their work in complete conformance with and subject to the terms and conditions of the Contract Documents; and
- 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 the acts and omissions of persons directly employed by him; and
- c) be responsible for conveying the interpretation or clarification of the Contract Documents, as given by the Engineer, to his Subcontractors.

Nothing contained in the Contract Documents shall create any contractual relation between any Subcontractor and the City. Neither the subcontracting nor the Engineer's consent to a subcontracting by the Contractor shall be construed to relieve the Contractor from any obligation under the Contract or to impose any liability upon the City.

The Specifications and Drawings have been divided into sections according to the type of work and the Contractor shall be solely responsible for determining the division of the Work amongst his Subcontractors.

7.4 Other Contractors

The City reserves the right to let other contracts in connection with the Work. The Contractor shall arrange and carry on his Work so as not to conflict with the work being carried on or to be carried on for the City by Other Contractors or by the City's employees. The Contractor shall allow them access to the Site and cooperate with them in the carrying out of their duties and obligation in the best manner possible. If any part of the Work depends for its proper execution or result upon the work of Other Contractors, the Contractor shall connect properly and co-ordinate his work with that of such Other Contractors.

The Contractor shall, in writing, notify the Engineer of any defects in the work of such Other Contractors as may interfere with the proper execution of the Work. Should the Contractor fail to so inspect the work and report any such defects he shall have no claim against the City by reason of the defective or unfinished work of Other Contractors except as to latent defects not reasonably noticeable at the time of commencement of the Work. If the sending onto the Work or its Site of Other Contractors could not have been reasonably foreseen or anticipated by the Contractor when entering into the Contract, and the Contractor incurs additional expense or delay in completing the Work he shall notify the Engineer who will deal with the matter as stated in Article XI Time.

7.5 Permits and Fees

The Contractor shall, at his own expense, procure and maintain all permits, licences, and certificates required by law, ordinances, rules, regulations, codes and orders of the authorities having jurisdiction for the execution of the Work, but this shall not include the obtaining of permanent easements or rights of servitude. The Contractor shall give the required notices, pay for all required inspections and comply with the laws, ordinances, rules, regulations, codes and orders of the authorities having jurisdiction which are or become in force during the performance of the Work and which relate to the Work. If there is a discrepancy between any laws, ordinances, rules, regulations, codes and orders the most stringent shall apply.

If the Contract requires or the Contractor desires the use of any design, device, material or process covered by letters of patent or copyright, trademark or trade name, the Contractor shall provide for, at his own expense, such use by suitable legal agreement with the patentee or owner and a copy of said agreement shall be filed with the City upon request. If the City or the Contractor is prevented by injunction from using any patent, design, device, material or process, or any trade mark, trade name or copyright, the Contractor, shall, at his own cost, substitute an equally suitable product, part or method of carrying out the Work, all subject to the prior written approval of the Engineer.

ARTICLE VIII THE ENGINEER

8.1 Authority of the Engineer

The Engineer will be the City's representative throughout the duration of the Work and shall have authority to act on behalf of the City to the extent expressly provided for in the Contract Documents. The Engineer will be solely responsible for the interpretation or clarification of the Contract Documents or any part thereof which appear indefinite, not clear or contradictory to the Contractor and his decision will be final and binding on all parties concerned in respect of the Work. The Contractor shall obey, perform and comply with the Engineer's orders or instructions with respect to the Work, or concerning the conduct thereof, promptly, efficiently and to the satisfaction of the Engineer, and he will assist Other Contractors, their employees and agents, and those of the City, to do the same.

If the Engineer does not give any direction, instruction or order with respect to the Work, or any part thereof, the Contractor shall not thereby be relieved on any responsibility under the Contract. It is understood and agreed that the Engineer owes no duty either of superintendence or of supervision of the Work to the Contractor; and that each of the provisions of the Contract Documents shall be construed accordingly.

The Contractor shall permit the Engineer to have access to the Work and the Site at all times and the Contractor shall give the Engineer, free of cost to the City, any and all possible assistance and any such information respecting the performance of the Work, whether at the Site of the Work, or at the premises of the Contractor or any Subcontractor, to enable the Engineer to carry out his duty to see that the Work is performed in accordance with the Contract Documents.

The Engineer shall have the authority to object to any person employed or retained by the Contractor in the execution of the Work who is in the opinion of the Engineer incompetent, negligent, disrespectful, disorderly or conducting himself improperly. The Contractor shall forthwith remove the person so objected to. The Engineer may refuse to issue any Progress Estimate and/or Certificate to the Contractor while such person remains engaged upon the Work.

8.2 Inspection

The Engineer shall have full authority to examine, inspect, test, approve or reject all Plant, materials, equipment, methods or procedure and workmanship without in any way relieving the Contractor from his responsibilities under the Contract. The Engineer shall be the sole judge of determining whether the kind, quantity and quality of the Plant, materials, equipment, methods or procedure and workmanship meet or exceed the requirements of the Contract Documents.

The Contractor shall before beginning or resuming operations upon any portion of the Work, give the Engineer not less than three(3) calendar days notice of his intention to commence construction at a certain time and date. It will be the responsibility of the Engineer to ensure that he or his representative is available to inspect the Work, providing that the Contractor has given the required notice.

The following construction operations shall not be in progress without the Engineer present on the Site, unless otherwise authorized by the Engineer:

- Pipe laying; or
- Backfilling; or
- Placing Concrete; or
- Placing Asphalt Pavement; or
- Construction involving existing works or utilities.

If the Contractor covers or permits to be covered any of the Work that is subject to inspection or testing without the prior approval of the Engineer, the Contractor shall, at his sole expense, forthwith take down, expose and rebuild any portion of the Work in order that the Engineer can inspect the Work.

If, at any time after the commencement of the Work but prior to the expiry of the warranty period, the Engineer has reason to believe that the Work or any part thereof has not been performed in accordance with the Contract Documents, the Engineer may have that Work examined by an expert of his choice. If, as a result of an examination of the Work referred to above, it is established that the Work was not performed in accordance with the Contract Documents, then, in addition to and without limiting or otherwise affecting any of the City's rights and remedies under the Contract or at law, the Contractor shall pay the City, on demand, all reasonable costs and expenses that were incurred by the City in having that examination performed.

8.3 Correction of Deficiencies

The City shall have the right to any one of and all of the following options in addition to those provided elsewhere in the Contract Documents and to its ordinary remedies at law if, in the opinion of the Engineer, the Work or any part thereof attributable to the Contractor is determined to be inferior, unfit for the purpose intended or does not comply with the requirements of the Contract Documents:

- a) The Engineer shall direct the Contractor to repair, reconstruct, or replace the Work determined to be inferior, unfit for the purpose intended or does not comply with the requirements of the Contract Documents and the Contractor shall, at his sole expense, and in the manner and within the time period specified, carry out the orders of the Engineer in that respect.
- b) If the Contractor fails or neglects to act as set out above the City may correct or replace the Work determined to be inferior, unfit for the purpose intended or does not comply with the requirements of the Contract Documents either by the City's own forces or by an Other Contractor. The cost of

correcting or replacing same shall be paid to the City immediately by the Contractor upon receipt of written notice from the City setting out the amount to be so paid. 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 City, the Contractor has received all payments due to him under the Contract, the Surety shall make such payment immediately upon receipt of written notice from the City stating the amount to be so paid.

- c) If, in the opinion of the Engineer, it is not expedient to correct the Work determined to be inferior, unfit for the purpose intended or does not comply with the requirements of the Contract Documents, the City may deduct from the Contract Price the difference in value between the Work as done and that called for by the Contract Documents. The amount of which will be determined by the Engineer.
- d) Pending action under the above, the City shall have the right to use the Work or any portion thereof, without in any way affecting its right of rejection of any Work determined to be inferior, unfit for the purpose intended or does not comply with the requirements of the Contract Documents or relieving the Contractor of responsibility to complete the Work.

In the event the Contractor disputes a determination made by the Engineer on any of the foregoing matters, hold such decisions to be at variance with the Contract Documents, or to involve changes in Work already built, fixed, ordered or in hand in excess of the Contract, or to be given in error, he shall notify the Engineer before proceeding to carry them out. In the event of the Engineer and the Contractor failing to agree as to such excess or error and the Engineer deciding to carry out such disputed Work, the Contractor shall act in accordance with the Engineers decision and seek restitution as outlined in Article XIV Disputes.

ARTICLE IX CHANGE IN WORK

9.1 City's Right to Change Work

The City shall have the right, at any time before or after the execution of the Contract or at any time during the prosecution of the Work prior to the issuing of the Certificate of Final Completion of the Work to alter, deduct from, add or omit, or change the method and manner of performance of any part of the Work or to delete or change the lines, grades, dimensions, character, quantity, quality, description, location or position of the whole or any part of the Work or material, (referred to collectively herein as a "Change in 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 to do so from the Engineer.

The Engineer will make a determination at the time of issuing the written notice referred to above and will 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 either Additional Work or 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.

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 the Contract, he shall provide written notice of this requirement and details of same to the Engineer for a determination as set out in the above, prior to undertaking the proposed change in Work.

In the event that the Contractor disputes a determination made by the Engineer, the Contractor shall act in accordance with The Engineer's determination provided however that the Contractor shall have the right to appeal the determination of the Engineer as outlined in Article XIV Disputes.

A Change in the Work, made pursuant to the Contract, shall in no way release the Contractor or Surety from their obligations. Notice of such change shall be waived by the Surety.

9.2 Change of Costs The Contract Price will not be increased or decreased by reason of any increase or decrease in the cost of the Work to the Contractor which arises as a result of an increase or decrease in the cost of labour, Plant, material or otherwise unless the increase or decrease is a result of a change in a tax imposed under the Excise Act, The Excise Tax Act, the Customs Act, the Customs Tariff or The Retail Sales Tax Act which:

- 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.

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 will not be entitled to an increase in the Contract Price. If the change referred to above occurs, the Contract Price will be increased or decreased by an amount equal to the amount that is established, by an examination of the relevant records of the Contractor, to be the increase or decrease in the cost incurred that is directly attributable to that change.

9.3 Change of Quantity

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

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

Where a change results in a diminution of Work after commencement of the Work or any part thereof resulting in extra cost to the Contractor, for which he would not be entitled to payment on a unit price basis, or in loss of Work already completed but not paid for, or loss to the Contractor in respect of

material or equipment purchased by him for the Work but not used thereon as required by the City, compensation shall be made to the Contractor by the City in the sum or sums to be fixed by the Engineer.

9.4 Change of Contract Price

The Engineer shall determine the value of any Change in Work by one or more of the following methods:

- a) at the rate of rates per unit as set forth in the Schedule of Prices for like work done under the Contract; or
- b) at the rate or rates per unit or a lump sum amount subsequently agreed upon; or
- c) by the actual cost of the Work to the Contractor plus 15% on any portion of the Work undertaken by the Contractor's own forces or 10% on any portion of the Work undertaken by a Subcontractor. Equipment costs will be paid for at the rental rates set forth in the written order, or otherwise in accordance with the Schedule of Equipment Rental Rates; or
- d) in accordance with the terms of a special agreement, in writing, which may be entered into between the City and the Contractor at the time the alterations are made.

Where the value of the Change in Work is to be determined by either method a) or b) (Unit Price or Lump Sum) above, the Contractor shall present his proposed change in the Contract Time and/or Contract Price to the Engineer, supported by appropriate documentation in a form acceptable to the Engineer prior to the commencement of the proposed Work. The Engineer will evaluate and verify the acceptability of such proposal and, if approved by the Engineer, a Change Order will be issued to the Contractor amending the Contract Time and/or Contract Price. The Change Order will stipulate the form of presentation of costs and methods of measurement.

Where the value of the Change in Work is to be determined by either method c) or d) (Cost Plus or Special Agreement) above, the Contractor shall maintain and present, in such form as the Engineer may direct, a complete and accurate account of the actual net cost of labour, Plant, equipment and materials directly attributable to the performance of the Change Order, including an allowance for direct supervision, payroll burden, unemployment insurance, Canada Pension, Payroll Tax, Workers Compensation Assessments and vacation pay, and any other payments made by the Contractor with the prior written approval of the Engineer, together with all vouchers supporting such costs. The Contractor shall maintain and keep detailed daily records of each piece of work covered by the Change Order, showing the names of the workmen engaged thereon, the number of hours each workman was employed, the number of hours Plant and equipment was employed thereon and the quantities of material necessary for and consumed in the performance of the Change Order. These daily records shall be made in duplicate each day and submitted to the Engineer for verification. The Engineer may require the Contractor to submit receipted invoices for all materials incorporated in the ordered Work. The Contractor shall provide the Engineer when a valuation is required pursuant to any of the above with every facility for the compilation of cost records, and when requested shall supply all data necessary for such purpose from payrolls, time books, invoices, and all other sources from which the City may find it necessary to obtain information.

If the method of valuation, measurement or change in Contract Time and/or Contract Price cannot be promptly agreed upon prior to the commencement of the proposed Work and the Engineer

requires the same to proceed, then the Engineer in the first instance will determine the method of valuation, measurement and the change in Contract Time and/or Contract Price. The Engineer will issue a written Change Order setting out the method of valuation, measurement and any change in the Contract Time and/or Contract Price. The Contractor shall proceed with the Work and the matter shall be subject to final determination in the manner set out in Article XIV Disputes. The Engineer shall certify the value of the Work performed in accordance with his own valuation and measurement of the Work and shall also certify any change in Contract Time and/or Contract Price.

Where the Work or a substantial part thereof is ready for use or is being used for the purposes intended and the remainder of the Work or a part thereof cannot be completed by the time specified for reasons beyond the control of the Contractor or were the Engineer and the Contractor agree not to complete a part of the Work within the specified time, the cost of that part of the Work which was either beyond the control of the Contractor to complete or the Engineer and the Contractor have agreed not to complete by the time specified shall be deducted from the value of the Contract and the said cost shall not form part of the cost of the Work remaining to be done.

ARTICLE X PAYMENT

10.1 Engineer's Progress Estimate

The Contract Price to be paid by the City to the Contractor will be the sums certified by the Engineer in the interim and final Progress Estimates; such sums to be ascertained and determined by the Engineer as follows:

- a) For Unit Price Contracts, upon the basis of the Contract Unit Prices for the various classes of the Work included in the Schedule of Unit Prices or Change Order(s). These Contract Unit Prices are gross prices including duty, freight, cartage, Provincial and Federal taxes (GST excluded) and all charges governmental or otherwise paid and including profit and all compensation which shall be due to the Contractor for supplying labour, materials, Plant, supervision and all details necessarily connected with the completion of the Work and all risks and contingencies connected therewith. The total amount to be paid to the Contractor for the Work described in the Contract will be the amount arrived at by measuring the net amount of each class of the Work listed in the Schedule of Unit Prices, and pricing the same, in accordance with the Contract Unit Prices therein.
- b) For Lump Sum Contracts, upon the basis of the lump sum price included in the Schedule of Prices or Change Order(s). The lump sum price shall be a gross price including duty, freight, cartage, Provincial and Federal taxes (GST excluded) and all charges governmental or otherwise paid and including profit and all compensation which shall be due to the Contractor for supplying labour, materials, Plant, supervision, and all details necessarily connected with the completion of the Work and all risks and contingencies connected therewith. When, in the opinion of the Engineer, lump sum prices are unbalanced, the payments for the applicable lump sum item will be made on a pro-rata basis over the life of the Contract.

By the fifth (5th) calendar day after the end of any month following the month during which any authorized, additional and/or Extra Work has been completed and before the Engineer completes the Progress Estimate for the month, the Contractor

shall deliver to the Engineer a statement signed by the Contractor which shall set forth accurately all of the authorized additional and/or Extra Work completed during the previous month and the amount claimed therefor in accordance with the valuation method set out in the Change Order. Every such statement certified by the Engineer shall be final and binding upon the Contractor.

By the seventh (7th) calendar day after the end of any month, or as soon there after as possible, the Engineer will prepare a monthly Progress Estimate setting out the quantity and value of the Work performed during the preceding month which in the opinion of the Engineer is in accordance with the Contract Documents and was not included in any other Progress Estimate relating to the Contract. Payment will be made on or before the twenty-fifth (25th) calendar day of each month pursuant to the provisions of the Builders' Liens Act Chapter B91, 1987 and subsequent amendments thereto. The Progress Estimate will be made out on the basis of quantities as determined by actual measurements made by the Engineer as stated in the Measurement and Payment clauses of the each applicable section of the Specifications.

10.2 Payment Withheld

The City may withhold or on account of subsequently discovered evidence, nullify the whole or part of any Progress Estimate to the extent necessary to protect the City from loss on account of any one or more of the following in the event 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 judgement of the Engineer not executing or has not been executing the Work, or any part thereof, in a sound and workmanlike manner and to his satisfaction and in all respects in strict conformity with the Contract; or
- f) in the judgement of the Engineer, is not progressing continuously with the Work or any part thereof, and in such a manner as to ensure the proper completion of the Work or any part thereof, within the time stipulated; or
- g) refuses or neglects forthwith, when so ordered, to conduct the Work so as to ensure its completion, in the opinion of the City, within the time stipulated; or
- h) fails to submit a schedule or revised schedule of work activities for the Work to the Engineer for approval when such schedule has been requested by the Engineer; or
- i) has not completed the work within the time required; or
- j) 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 which he may receive from the Engineer; or
- k) fails to make prompt payment to his Subcontractors, his employees or on account of the purchase or rental of material or Plant; or
- l) fails to promptly secure a discharge of a lien or trust claim served upon the City pursuant to the Builders Liens Act or Workmen Compensation Act; or
- m) persistently disregards any laws, bylaws and statutory regulations; or
- n) fails to sign a Certificate of Final Completion of the Work as required; or
- o) fails to employ or keep a competent Superintendent on the Work or to replace the Superintendent as required by the Engineer; or

- p) fails to comply with the provisions of the Schedule of Work; or
- q) commits any other material breach of this Contract which in the opinion of the City indicates an unwillingness or inability upon the part of the Contractor to carry out the terms thereof; or
- r) fails to make good any loss or damage for which he is liable under Article VI Insurance within a reasonable time after being required to do so by the Engineer.

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

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

ARTICLE XI TIME

11.1 Contract Time

Time shall be deemed to be of the essence for this Contract.

The Contractor shall complete the Work in accordance with the Contract Documents and to the satisfaction of the Engineer within the time specified in the Agreement. The time for Final Completion shall be specified either as a stipulated date or as a number of Working Days (referred to collectively herein as the "Contract Time").

11.2 Working Days

Counting of working days shall commence fourteen (14) days after the Contractor has been notified that in the opinion of the Engineer, seasonal (atmospheric and/or ground) conditions are such that the Contractor can commence work, or the Contractor commences work, whichever occurs first and will continue to be assessed until the Certificate of Final Completion of the Work is issued. The Engineer will at the end of each day certify on a inspection report as to whether or not the day is to be considered as a Working Day.

11.3 Schedule of Work

The Contractor shall, prior to commencement of the Work, prepare and submit for the Engineer's approval, a Schedule of the Work listing the order in which the Contractor proposes to carry on the Work, including the dates at which major components/projects of the Work will commence and be completed, and confirming the construction start date and the completion date, the later date being no later than the date specified in the Agreement for completion of the Work. Once accepted by the Engineer, the Schedule of Work shall not be changed by the Contractor without the Engineer's approval. The Contractor shall be responsible for ensuring that all Work is carried out in accordance with and within the time limits set out in the Schedule of Work.

If the progress of the Work falls behind the most recent approved Schedule of Work or is delayed for any reason other than one for which an extension of time is provided for under Article XI Time, the Contractor shall, at his sole cost work such additional time, including weekends and holidays, employ additional workers, or both as may be required to bring the work back on schedule.

11.4 Delays

If the Contractor is delayed in the performance of the Work by a stop work order issued by a court or other public authority and providing that such order was not issued as the result of an act or fault of the Contractor or anyone employed or engaged by him directly or indirectly; or if the Work is delayed by labour disputes, legitimate or legal strikes, lock-outs (including lock-outs decreed by a recognized contractor's association for its members of which the Contractor is a member), acts of God, unavoidable casualties or any other cause which the Contractor satisfies the City to be totally beyond his control, fault or negligence or any other cause within the Contractor's control which the Engineer has determined is justified by the delay, then the time for completion of the Work will be extended for a period of time equal to the time lost due to such delay.

Any unduly prolonged delay upon the part of the City will entitle the Contractor to a corresponding extension of time within which to complete the Work. Delays incurred as a result of seasonal changes and adverse weather should be anticipated by the Contractor and are neither compensatory nor eligible for extensions of time.

No extension of time or claim for costs due to delay will be granted by the Engineer unless a written notice, clearly stating the cause of delay and the length of extension requested, is received by the Engineer from the Contractor within seven (7) calendar days of the date on which the cause of the delay arose. In the case of a continuing cause of delay, only one notice shall be necessary. Failure to provide such notice shall constitute a waiver by the Contractor of any claim. The Engineer may require that any request for an extension of time be accompanied by a written consent of the Surety whose bond forms part of the Contract Documents.

In the event of an extension of time is granted, time shall continue to be deemed the essence of the Contract.

11.5 Liquidated Damages

Subject to the extensions of time as provided for herein, should the Contractor fail to complete the Work in accordance with the Contract Documents and to the satisfaction of the City by the day fixed in the Agreement for completion of the Work, the Contractor, subject to removal of Work hereof, shall pay the City the sum stipulated in the Agreement as liquidated damages (and not as penalty) for each and every calendar day following that day fixed for the completion of the Work and ending on the day immediately preceding the day on which the Final Completion Certificate for the Work is issued by the Engineer.

11.6 Certificate of Final Completion of The Work

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

No payment made to the Contractor and no partial or entire use or occupancy of the Work by the City shall be taken as an accurate setting forth of the state of the Work or as an acceptance of any Work or material not in accordance with the Contract Documents. Neither the issue of a Certificate of Final Completion of the Work nor payment of the Final Progress Estimate shall relieve the Contractor from his responsibility either under Article XII Warranty hereof or as a result of any breach of this Contract by the Contractor including but not limited to faulty or defective

Work appearing after final completion, failure of the Work to comply with the Contract Documents or the requirement to comply with the terms of any special guarantees set out in the Supplemental Conditions, nor shall it conclude or prejudice any of the powers of the Engineer or the City.

Subject to his right to appeal, acceptance by the Contractor of payment of the Final Progress Estimate and the Certificate of Final Completion of the Work shall constitute a waiver and release by him of all claims against the City whether for payment for Work done, damages or otherwise arising out of the Contract, except those previously made and still unsettled, if any.

ARTICLE XII WARRANTY

12.1 Warranty

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

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 City may permit the warranty period to commence prior to the issuance of the Final Completion Certificate for the Work.

Upon receipt of written notice from the City, the Contractor or his Surety shall, at his sole cost and expense, remedy any defect or deficiency, remedy any and all damage that may arise or result from the defect, deficiency or as a result of the correction of same, or otherwise identified by the Engineer within the twelve (12) month period as aforementioned, in the manner and within the time periods specified in the said notice.

All Work completed following the commencement of the warranty period and prior to the issuance of the Certificate of Final Completion for the Work shall be warranted for twelve (12) months as outlined herein.

If the Contractor fails or neglects to act for any reason whatsoever to remedy the defects or deficiencies or otherwise in the manner and within the time periods specified in the said notice, the City may take all steps necessary to have the defects, deficiencies or otherwise remedied either by the City's own forces or by another contractor acceptable to the City and the Surety. The cost of such remedial work shall be paid to the City by the Contractor within seven (7) calendar days of receipt of written notice from the City to the Contractor setting out the amount to be paid. 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.

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 City setting out the amount to be so paid.

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 or his Surety, except

that the City shall immediately notify the Contractor or his Surety and shall withdraw its forces as soon as the Contractor's or the Surety's forces assume performance of the repair.

- b) All costs resulting from the need to undertake remedial work during the warranty period as aforesaid, whether by the Contractor, his Subcontractor or by the City, as provided herein, shall be borne by the Contractor or his Surety. In addition, the Contractor shall be liable to the City for all expenses, losses or damages incurred by the City as a result of such defects, deficiencies or otherwise referred to herein or as a result of the Contractor's failure to meet the warranty requirements specified herein, including, but without limiting the generality hereof, all costs of engineering, inspection and testing.

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 Subcontractor, the City shall promptly reimburse the Contractor for the cost of undertaking such remedial work. If the Contractor fails for any reason whatsoever to remedy the defect, deficiency or otherwise in the manner and within the time limit specified in herein, the Contractor shall not be entitled to repayment of any monies that he is required to pay the City as outlined in the above.

Notwithstanding the provisions of this Article, if any Statute in force in the Province of Manitoba or in the jurisdiction where the material was manufactured or if a manufacturer's warranty extends beyond the warranty period specified in the Contract Documents, then the provisions of such Statute or manufacturer's warranty shall apply.

ARTICLE XIII SUSPENSION OF WORK

13.1 City's Right to Stop Work

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

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

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

13.2 Contractor's Right to Suspend Work or Terminate Contract

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

Should the Work be stopped or delayed for less than sixty (60) calendar days then the Contract Time may be extended for such reasonable time as the Engineer and the Contractor may agree.

13.3 Forfeiture of Contract

The City shall have the full right and power to take the whole of the Work, or any part or parts thereof, out of the hands of the Contractor, and may employ such means as the City sees fit to have the Work completed, without process or action at law, upon giving the Contractor written notice, a copy of which notice shall be given to the Surety, or the local agent of the latter, 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 creditor without the City's consent; or
- d) should have a receiver or liquidator appointed in respect of his assets; or
- e) is in the judgement of the Engineer not executing or has not executed the Work, or any part thereof, in a sound and workmanlike manner and to his satisfaction and in all respects in strict conformity with the Contract Documents; or
- f) in the judgement of the Engineer, is not progressing with the Work or any part thereof continuously and in such a manner as to ensure the proper completion of the Work or any part thereof, within the time stipulated in the Contract Documents; or
- g) refuses, neglects or fails forthwith, when so ordered, to conduct the Work so as to ensure its completion, in the opinion of the Engineer, within the time stipulated; or
- h) has not completed the Work within the time required; or
- i) refuses, neglects or fails to take down, rebuild, repair, alter or amend any defective or unsatisfactory Work, or to remove any condemned material or workmanship, or to comply with any reasonable order in connection therewith which he may receive from the City; or
- j) fails to make prompt payment of wages to his, employees, Subcontractor or accounts for the purchase or rental of material or Plant; 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, within thirty (30) calendar days after receipt of written notice of the claim from the City; 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 City indicates an unwillingness or inability upon the part of the Contractor to carry out the terms thereof.

Upon such Notice being given to the Contractor, he shall subject to any conditions stipulated in the notice, immediately discontinue the Work or any part or parts thereof specified in the notice.

The Surety may, at its option, assume this Contract in respect of the whole of the Work, or the portion thereof specified in the notice on which the City has ordered the Contractor to discontinue the Work, as the case may be, and proceed to perform same, and may with the written consent of the City sublet the Work or portion of the Work so taken over; provided however that the Surety shall exercise its option, if at all, within fourteen (14) calendar days after written notice to discontinue the Work has been served upon the Contractor and a copy of same upon the Surety or the local agent of the latter.

The Surety in such event shall take the Contractor's place in all respects, shall be bound by all terms and conditions of Contract Documents and shall be paid by the City in accordance with the terms of the Contract for all Work performed by it.

In case the Surety does not within fourteen (14) calendar days exercise its right and option to assume the Contract as aforesaid or in the event that there is no Surety, then the City shall have the power to complete by contract or otherwise as it may determine, the Work hereinbefore referred to or such portion of it as the City may deem necessary, and the Contractor agrees that the City shall have the right to take possession of and use any of the materials, Plant, supplies and property of every kind provided by the Contractor for the purpose of the Work and to procure other Plant and materials for the completion of the same. The City shall not be required to obtain the lowest price for the Work taken over from the Contractor.

If the Work or any part hereof is taken out of the Contractor's control, all Plant and material and the interest of the Contractor in all licences, powers and privileges acquired, used or provided by the Contractor under the Contract shall be assigned by the Contractor to the City without compensation to the Contractor. When the Engineer certifies that any Plant, material, or any interest of the Contractor referred to above is no longer required for the purpose of the Work, or that it is not in the best interest of the City to retain that Plant, material, or interest, it shall revert to the Contractor.

In case the cost to the City, as certified by the Engineer, of completing the Work or portion thereof as aforesaid, be less than the amount to which the Contractor would have been entitled under the Contract for so doing, the Contractor shall have no claims in respect thereof against the City. 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 Final Completion of the Work in the Contract Documents and the Contractor shall pay the amount of such cost of the Work together with liquidated damages as provided for herein to the City upon Notice from the City setting out the amount so due. When any particular part of the Work is being

carried on by the City, by contract or otherwise, under the provisions of this Clause, the Contractor shall continue the remainder of the Work in conformity with the terms and conditions of the Contract, and in such manner as in no way to hinder or interfere with the Other Contractor, or workmen employed by the City.

If the whole or any part of the Work is taken out of the Contractor's hands, the Contractor's right to any further payment that is due or accruing due under the Contract is extinguished, and the Contractor is liable to pay the City, upon demand, and amount that is equal to the amount of all loss and damage incurred or sustained by the City in respect of the Contractor's failure to complete the Work.

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

In the event the Contractor disputes a determination made by the Engineer on any of the foregoing matters, or hold such decisions to be at variance with the Contract Documents, the Contractor shall act in accordance with the Engineers decision and seek restitution as outlined in Article XIV Disputes.

ARTICLE XIV DISPUTES

14.1 Compliance with Engineer's Decision

If the Contractor gives a protest pursuant to any compliance by the Contractor with the decision or direction of the Engineer, such compliance by the Contractor shall not be construed as an admission by the Contractor of the correctness of that decision or direction, or prevent the Contractor from taking whatever action he considers appropriate in the circumstances. However the giving of a protest by the Contractor shall not relieve him from complying with the decision or direction that is the subject of the protest.

14.2 Appeals

If the Contractor has reason to claim an error has been made in any Progress Estimate or more particularly in the measurement and payment for any Work, or if the Contractor disagrees with a determination of the Engineer, or disagrees with the Engineers method of valuation, measurement, change in Contract Time and/or Contract Price he must within seven (7) calendar days after receiving the Progress Estimate or after receiving any notice of the Engineers decision and/or determination, regarding any section of the Contract Documents, notify the City in writing of his contention with respect thereto and request a decision thereon from the City Engineer. Such Notice shall set forth particulars of the matters in dispute, and if applicable, state the probable extent and value of the damage and the relevant provisions of the Contract Documents. If the Contractor fails to so appeal to the City for a determination within seven (7) calendar days after receiving the Progress Estimate or a notice of the Engineers decision and/or determination regarding matters of the Contract, the Contractor shall be deemed to have waived any said claim. Oral appeals or oral protests shall not amount to substantial compliance with any of the provisions of this Clause.

If the Contractor disagrees with the decision of the City Engineer he must within seven (7) calendar days after receiving notice of City Engineer's decision, notify the City in writing of his contention with respect thereto and request that the dispute be referred to the City Manager.

If the Contractor disagrees with the decision of the City Manager he must within seven (7) calendar days after receiving notice of City Manager's decision, notify the City in writing of his contention with respect thereto and request that the dispute be referred to Arbitration.

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 Engineer which the Contractor otherwise might have had, and shall not make any claim in respect thereof, and if made, the City may reject the same as invalid and he shall not have any right of recovery in respect thereof, at law or otherwise.

14.3 Arbitration

The City and the Contractor agree that the Arbitration shall not proceed until Substantial Performance of the Work.

Arbitration proceedings shall not take place until after the performance or alleged performance of the disputed Work except where either party can show that the matter in dispute requires immediate consideration while evidence is available or in the case of legal proceedings, or where the action may become prescribed by reason of delay.

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 City and the Contractor, be referred to three arbitrators, one to be appointed by each party to the reference and the third to be appointed by the first named two arbitrators in writing before they enter upon the business of the reference. 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, and name the arbitrator appointed by him. If the party receiving the notice refuses or neglects to appoint an arbitrator within ten (10) calendar days, 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 the majority of them if there are three arbitrators, shall be final and binding upon the parties hereto, their successors and assigns.

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 hearing, whether either party may be interviewed separately by the panel; and other relevant matters; and shall render a decision, and announce awards within the time limits and the requirements of The Arbitration Act of Manitoba Chapter A120, Statutes of Manitoba 1987, and any subsequent amendments thereto.

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.