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**PART III – GENERAL CONDITIONS**



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## 1. GENERAL PROVISIONS

### 1.1 Definitions

The following terms, whenever used in the Contract Documents, shall mean:

- a) **“Adjustment”**: a change in either the Contract Price or the Contract Time, or both, in accordance with the applicable provisions of the Contract Documents;
- b) **“Applicable Laws”**: any and all applicable laws, rules, regulations, by-laws, codes and orders of any and all government bodies, agencies, authorities and courts;
- c) **“Arbitrator”**: the person appointed under GC 9.3(a);
- d) **“Articles of Agreement”**: the executed Articles of Agreement;
- e) **“Change Order”**: a written instrument prepared by the City Representative and signed by the City and the Contractor stating their agreement upon:
  - i. a change in the Work, and
  - ii. the method and/or the amount of Adjustment, if any;
- f) **“City”**: the party defined as such in the Articles of Agreement;
- g) **“City Representative”**: A Consultant, Owner’s Agent, and/ or Engineer designated as such in the Articles of Agreement, or such other person designated as such by the City from time to time, who will be responsible for administering the construction contract;
- h) **“Claim”**: any or all of:
  - i. a demand or assertion by the City or the Contractor seeking an interpretation of Contract terms, an Adjustment, or other relief with respect to the terms of this Contract;
  - ii. other disputes and matters in question between the City and the Contractor arising out of or relating to this Contract; and
  - iii. allegations by the City or the Contractor of errors or omissions on the part of the City Representative;
- i) **“Completion Date”**: the date of Substantial Performance of the Work, as certified by the City Representative;

- j) “**Construction Schedule**”: the Construction Schedule referred to in GC 3.6, including revisions thereto as provided in GC 3.6, GC 10.2(d) or otherwise required by the City Representative;
- k) “**Consultant**”: a person retained by the City to act as the City’s Representative;
- l) “**Contract**”: the undertaking by the parties to perform their respective duties and discharge their obligations as set out in the Contract Documents which represents the entire agreement between the parties;
- m) “**Contract Documents**”: the documents referred to in the Articles of Agreement and amendments agreed on by the parties in writing;
- n) “**Contract Price**”: the sum stated in the Articles of Agreement and as may be amended during the progress of the Work;
- o) “**Contract Time**”: the time stated in the Articles of Agreement, and as may be amended during the progress of the Work, elapsing from the date of commencement of the Work until the date of Substantial Performance of the Work, as certified by the City Representative;
- p) “**Contractor**”: the party defined as such in the Articles of Agreement;
- q) “**Day**”: a calendar day;
- r) “**Engineer**”: a person retained by the City to act as the City’s Representative;
- s) “**Final Completion**”: when the Work has been performed in accordance with the Contract Documents, as certified by the City Representative;
- t) “**GC**”: an acronym reference to a clause in these general conditions of this Contract;
- u) “**Holdback Payment Certificate**”: a certificate issued in accordance with GC 5.6;
- v) “**Lien Holdback**”: has the meaning given in GC 5.2(a)(i);
- w) “**Owner’s Agent**”: a person retained by the City to act as the City’s Representative;
- x) “**Project**”: the total construction of which the Work to be performed under this Contract may be the whole or a part;
- y) “**Referee**”: the person appointed under GC 9.2(a);

- z) “**Site**”: the land or actual place designated in the Contract Documents for the performance of the Work;
- aa) “**Subcontractor**”: a party having a direct contract with the Contractor for the performance of any part of the Work, or to supply products worked to a special design for the Work;
- bb) “**Substantial Performance**”: when the Work has progressed to the point where, in the opinion of the City Representative as evidenced by the certificate of Substantial Performance, it is sufficiently complete, in accordance with the Contract Documents, so that the Work can be utilized for the intended purpose;
- cc) “**Supplier**”: a party having a direct contract with the contractor to supply products not worked to a special design for the Work;
- dd) “**Work**”: all or any part of the construction and services required by the Contract Documents, including all labour, materials, equipment and services provided or to be provided by the Contractor to fulfill his obligations under this Contract.

## 1.2 Documents and Interpretation

- a) It is the intent of the Contract Documents to include all labour, materials, equipment and services necessary to perform the Work in accordance with the Contract Documents. Any labour, materials, equipment and services that may be reasonably inferred from the Contract Documents or from prevailing custom or trade usage as being required to produce the intended result, will be furnished and performed by the Contractor, whether or not specifically called for.
- b) The Contract Documents are complementary, and what is required by one document shall be as binding as if required by all.
- c) This Contract represents the entire agreement between the City and the Contractor and supersedes all prior negotiations, representations and agreements, either written or oral.
- d) When words or phrases which have a well-known technical or construction industry or trade meaning are used in the Contract Documents and are not otherwise defined, they shall be interpreted in accordance with that meaning.
- e) The Contract Documents shall not be construed to create a contractual relationship of any kind between:

- i. the City Representative and the Contractor, a Subcontractor, a Supplier, a subcontractor or its or their agent or employee, or other person performing any of the Work;
- ii. the City and a Subcontractor, a Supplier, or their agent, employee, or other person performing any of the Work, or
- iii. between any persons or entities other than the City and the Contractor.

The City Representative shall however, be entitled to demand performance and enforce the obligations of the parties under this Contract, to facilitate performance of the City Representative's duties.

- f) Clarifications and interpretations of the Contract Documents shall be issued by the City Representative as provided in GC 4.1.
- g) In the event of any inconsistency or conflict between provisions of the Contract Documents, the following shall apply:
  - i. documents of later date shall govern over earlier documents of the same classification;
  - ii. figured dimensions shown on drawings shall govern over scaled dimensions;
  - iii. drawings of larger scale shall govern over those of smaller scale;
  - iv. specifications shall govern over drawings;
  - v. the general conditions shall govern over the specifications;
  - vi. supplementary general conditions shall govern over the general conditions, and
  - vii. the Articles of Agreement shall govern over all documents.
- h) The City shall provide the Contractor with as many sets of Contract Documents as are reasonably required for the performance of the Work.
- i) The Contractor shall maintain a set of drawings on the Site and record accurately and legibly all deviations caused by Site conditions and written instructions or change orders ordered by the City Representative. The Contractor shall also keep one copy of all current Contract Documents and shop drawings on the Site, in good condition. These documents shall be available to the City Representative throughout the duration of the Work.

- j) All Contract Documents, including copies, and all models furnished by or to the Contractor are and shall remain the property of the City and are not to be used on other work. The Contract Documents are not to be copied or revised in any manner without the City's written consent.
- k) The division into sections, the table on contents, and the heading in the Contract Documents, other than in the drawings and specifications, form no part of this Contract but are inserted for convenience of reference only.
- l) Any reference to a statutory provision shall include any subordinate legislation made and from time-to-time amended, extended or re-enacted.
- m) Unless otherwise indicated, all dollar amounts referred to in this Contract are in lawful money of Canada.
- n) If any provision of this Contract is determined to be invalid or unenforceable in whole or in part, such invalidity or unenforceability shall attach only to such provision and everything else in this Contract shall continue in full force and effect, In the event that any provision of this Contract, as amended from time to time, shall be deemed invalid or void, in whole or in part, by any court of competent jurisdiction, the remaining terms and provisions of this Contract shall remain in full force and effect.
- o) The schedules, appendices and attachments to this Contract are an internal part of this Contract and a reference to this Contract includes a reference to the schedules, appendices and attachments.
- p) The language of the specifications and other documents comprising this Contract is in many cases written in the imperative for brevity. Clauses containing instruction, directions or obligations are directed to the Contractor and shall be construed and interpreted as if the words "the Contractor shall" immediately preceded the instructions, directions or obligations.
- q) Unless the context otherwise requires, wherever used herein the plural includes the singular, the singular includes the plural, and each of the masculine, feminine and neuter genders include all other genders.
- r) Unless otherwise provided in this Contract, all accounting and financial terms used in this Contract shall be interpreted and applied in accordance with Canadian generally accepted accounting principles, consistently applied from one period to the next.
- s) References containing terms such as:



- i. “hereof,” “herein,” “hereto,” “hereinafter,” and other terms of like import are not limited in applicability to the specific provision within which such references are set forth but instead refer to this Contract taken as a whole; and
- ii. “includes” and “including”, whether or not used with the words “without limitation” or “but not limited to”, shall not be deemed limited by the specific enumeration of items but shall in all cases be deemed to be without limitation and construed and interpreted to mean “includes without limitation” and “including without limitation”;
- t) Whenever the terms “will” or “shall” are used in this Contract in relation to the Contractor they shall be construed and interpreted as synonymous and to read “the Contractor shall”.

### 1.3 Notices

- a) Where a notice is required by the Contract Documents to be given in writing to the Contractor, it may be delivered personally to the Contractor or his site superintendent, or delivered or sent by mail or facsimile transmission to the Contractor’s address set out in the Articles of Agreement or to his office at or near the Site.
- b) Where a notice is required by the Contract Documents to be given in writing to the City Representative, it may be delivered personally, by email, or delivered or sent by mail or facsimile transmission to the City Representative’s address set out in the Articles of Agreement, or to the office of the City Representative at or near the Site.
- c) Notwithstanding the foregoing provisions of this GC 1.3, each party shall use the most expeditious method of giving the written notice or communication.
- d) A written notice or communication sent by mail shall be deemed to have been received ten (10) calendar days from the date of posting. Whenever a notice or communication is sent by facsimile transmission, acknowledgement from the receiving party must be given to the other party that the notice or communication has in fact been received, for it to be effective; this acknowledgement may be made verbally, in person or by telephone. If no such acknowledgement is given, it shall be deemed to have been received and be effective ten (10) calendar days from the date the original document was sent.

### 1.4 Rights and Renders

- a) No obligations or responsibilities of any kind by or on behalf of the City shall be implied into the Contract Documents if in the opinion of the City Representative, it is

not reasonable under the circumstances to imply that such obligations or responsibilities form part of the Contract Documents.

- b) Any failure by the City or the City Representative to enforce or to require the strict performance of any of the provisions of this Contract shall not, in any way constitute a waiver of those provisions and affect or impair those provisions or any right the City has at any time to avail itself of any remedies the City may have for any breach of these provisions or to require the Work to be performed in accordance with the Contract Documents.
- c) Except as expressly provided in the Contract Documents, the duties and obligations imposed by the Contract Documents and the rights and remedies available thereunder shall be in addition to and not a limitation of any duties, obligations, rights and remedies otherwise imposed or available by law.

## **1.5 Assignment**

This Contract, or any part of it, or any benefit or interest in it, shall not be assigned by either party without the prior written consent of the other party, which consent shall not be unreasonably withheld. Notwithstanding the foregoing, the City has the right, in the event of any default by the Contractor, to assign all its rights and remedies against the Contractor to the Government of Nunavut.

## **1.6 Applicable Law**

This Contract shall be deemed to have been made in Nunavut and shall be governed by and interpreted in accordance with the laws of Nunavut and the laws of Canada applicable therein.

## **1.7 Successors and Assigns**

This Contract shall ensure to the benefit of and be binding upon the parties hereto and their lawful heirs, executors, administrators, successors and assigns.

## **2. CITY'S OBLIGATIONS**

### **2.1 Payment**

Subject to any other provision in the Contract Documents, the City shall make payments to the Contractor at the times and in the manner set out in GC 5.

### **2.2 Site Availability**

- a) The City shall furnish, as indicated in the Contract Documents, the lands upon which the Work is to be performed, rights-of-way and easements for access to the Site and any other lands designated for the use of the Contractor. The Contractor shall

provide and pay for any additional lands and access the Contractor may require, in accordance with GC 3.10(a).

- b) Except for permits and fees which are the responsibility of the Contractor under GC 3.13, the City shall obtain and pay for necessary approvals, easements and charges required for the development of the Site and for the use or occupancy of permanent structures or for permanent changes in existing facilities.

### **2.3 Consultant, Owner’s Agent, and/ or Engineer as City Representative**

- a) Unless otherwise provided in the Contract Documents, the City shall communicate with the Contractor through the Consultant, and the Contractor shall communicate with the City through the Consultant.
- b) If the contract with the Consultant is terminated, the City shall promptly appoint a replacement.

### **2.4 Reference Points**

The City shall establish physical reference points for construction on the Site which are, in the opinion of the City Representative, necessary to enable the Contractor to proceed with the Work. The Contractor shall safeguard such reference points in accordance with GC3.11(b).

### **2.5 Materials Supplied by the City**

Any materials, instructions, information or services required to be supplied by the City under this Contract shall be furnished with reasonable promptness to avoid delay in the orderly progress of the Work.

### **2.6 Control of the Work**

Neither the City nor the City Representative shall supervise or have control or authority over, nor be responsible for, the Contractor’s means, methods, techniques or procedures of construction. Neither the City nor the City Representative will be responsible for the Contractor’s failure to perform the Work in accordance with the Contract Documents, nor for its failure to comply with Applicable Laws.

### **2.7 Limitation of Liability**

In no event, including without limitation if the City breaches its obligations under this Contract, shall the City be liable to the Contractor, its Subcontractors, its Suppliers, or any other parties engaged directly or indirectly by or acting on their behalf, for indirect loss, consequential loss, loss of business opportunity or loss of anticipated profit.

### **3. CONTRACTOR'S OBLIGATIONS**

#### **3.1 General Obligations**

Notwithstanding any omissions from the Contractor's tender, the Contractor is required to perform all of the Work required by the Contract Documents, including any Work which can be reasonably inferred from them as being necessary to produce the intended result. The Contractor is to perform the Work within the Contract Time, in accordance with the Construction Schedule referred to in GC 3.6.

#### **3.2 Independent Contractor**

The Contractor is an independent contractor and shall have complete control of the Work. The Contractor shall effectively direct and supervise the Work to ensure conformance with the Contract Documents. The Contractor shall be solely responsible for all construction means, methods, techniques, sequences and procedures and for coordinating all parts of the Work, except as may be otherwise specified in the Contract Documents.

Nothing in this Contract shall be construed to mean that the Contractor is an employee, agent or other representative of the City.

#### **3.3 Review of Contract Documents**

- a) By executing this Contract, the Contractor represents that the Contractor has reviewed the Contract Documents and has verified the dimensions, quantities and details described in them. Failure to discover or correct errors, omissions, conflicts or discrepancies which ought to have been discovered by such a review shall not relieve the Contractor from full responsibility for unsatisfactory Work, faulty construction or improper operations resulting therefrom, nor from rectifying such conditions at the Contractor's expense.
- b) If the Contractor proceeds with the Work in the face of an error, inconsistency or omission that the Contractor discovered, or that a competent Contractor reasonably experienced in the Work would have discovered, without additional instructions from the City Representative, then the Contractor shall at the Contractor's cost remove or replace any incorrectly constructed Work.

#### **3.4 Site Conditions**

- a) By executing this Contract, the Contractor represents that the Contractor is familiar with the conditions under which the Work is to be performed. The Contractor further represents that the Contractor understands the requirements of the Contract Documents and what effects the Site conditions will have on the Work. The Contractor's failure to visit the Site will not excuse the Contractor from the responsibility which otherwise would have been assumed, had the Contractor visited the Site.

- b) Following the start of the Work, if the subsurface conditions are substantially different from what could reasonably have been expected, based on a reasonable and proper examination of the Site by the Contractor and the information provided in the tender documents, if any, the Contractor must promptly notify the City Representative in writing prior to performing the Work. The Contractor may make a claim for changed site conditions in only accordance with GC 9.1.

### **3.5 Temporary Structures**

The Contractor shall have the sole responsibility for the design, erection, operation, maintenance and removal of temporary structures and other temporary facilities and the design and execution of construction methods required in their use. The Contractor shall engage and pay for professional engineering personnel, registered to practice in Nunavut, skilled in the appropriate discipline, to perform these functions where required by law or by the Contract Documents and in all cases where such temporary facilities and their method of construction are of such a nature that professional engineering skill is required to produce safe and satisfactory results. The Contractor shall submit engineered documents to the City Representative, for review, before commencing temporary work.

### **3.6 Schedule**

- a) Within fourteen (14) calendar days of executing the Articles of Agreement and as a condition of the first progress payment, the Contractor shall submit to the City Representative for review, a proposed Construction Schedule showing the anticipated time of commencement and completion of each of the major activities of the Work to be performed. This Construction Schedule shall include the sequence and coordination of the various operations and the estimated time required for the Work and shall provide sufficient detail to permit the City Representative to monitor the progress of the Work. The Contractor shall revise the proposed Construction Schedule as requested by the City Representative, and the Contractor shall perform the Work in strict adherence to the Construction Schedule, including revisions thereto required by the City Representative, unless it is changed in accordance with the terms of this Contract.
- b) If at any time it should appear to the City Representative that the actual progress of the Work does not conform to the Construction Schedule, the Contractor shall produce at the City Representative's request, a revised Construction Schedule showing the modifications necessary to ensure completion of the Work in accordance with the previously approved Construction Schedule and shall promptly adopt acceptable additional means and methods of construction, at no cost to the City, which will make up for the time lost and will ensure completion in accordance with the revised Construction Schedule.

- c) If the Contractor fails or refuses to revise the Construction Schedule as required by this GC, this Contract may be terminated at the City's option, in accordance with GC 10.3.
- d) The City Representative's review, comments, consent, acceptance or approval to the Construction Schedule shall not relieve the Contractor of any of the Contractor's obligations under this Contract.

### **3.7 Superintendent**

- a) The Contractor shall assign a competent superintendent and necessary assistants, one or more of whom shall be in attendance at the Site at all times during the progress of the Work. The superintendent and necessary assistants, if any, shall be designated in writing to the City Representative and shall act as the Contractor's authorized representative at the Site. All written or oral communications to the superintendent shall be deemed to have been given to the Contractor. The superintendent shall only be replaced after the Contractor has received written approval from the City.
- b) The City may order the removal from the Work of any superintendent, supervisor, foreman or other employee who is in the opinion of the City, unfit for the Work, unskilled in the work assigned to him or otherwise unsuitable. Any person so removed shall not be re-employed on the Work by the Contractor or by a Subcontractor.

### **3.8 Subcontractors**

- a) The Contractor shall not employ any Subcontractor without the approval of the City. Once the names of the proposed Subcontractors have been submitted, the Contractor shall not change these Subcontractors without the advance written consent of the City. If any changes are made without consent, this Contract may be terminated at the City's option, in accordance with GC 10.3.
- b) The City, through the City Representative, may, at any time during the performance of the Work, object to the use of a Subcontractor and direct the Contractor in writing to employ a different Subcontractor satisfactory to the City Representative.
- c) The Contractor shall be fully responsible to the City for the acts and omissions of Subcontractors, their agents, employees, and all parties engaged by the Contractor or its Subcontractors for the provision of work or the supply of materials.
- d) The Contractor agrees to incorporate the terms of the Contract Documents into all the Contractor's subcontract agreements.

- e) The Contractor shall maintain good order and discipline among the Contractor's employees and the Subcontractors engaged in the Work. The Contractor shall not employ, or permit Subcontractors to employ, workers who are not skilled in the assigned task. The Contractor shall employ sufficient workers to perform the Work in compliance with the Construction Schedule.

### **3.9 Other Contractors**

- a) The City reserves the right to let separate contracts with other contractors or workers, or to undertake work using the City's own forces to do other work. If other contractors, workers or the City's own forces are sent onto the Site, with or without plant and material, the Contractor shall, to the satisfaction of the City, grant access to and cooperate with such persons and, in accordance with usual construction practice, coordinate the Work with the other work and connect to other work as specified or shown in the Contract Documents.
- b) The Contractor shall at all times remain the Constructor, with regards to the Health and Safety Act requirements. The City and other contractors entering the Contractors site shall be responsible for adhering to the Contractor's Health and Safety policy.
- c) If the sending of other contractors, workers or the City's own forces onto the Site results in a delay in the performance of the Work, which could not have been reasonably foreseen or anticipated by the Contractor when executing the Articles of Agreement, the Contractor may make a claim therefor in accordance with GC 6.2 and 9.1.
- d) If the Contractor discovers any deficiencies in any other work which might affect the Work, the Contractor shall immediately report such deficiencies to the City Representative and then confirm such report in writing.

### **3.10 Use of the Site**

- a) The Contractor shall make every effort to confine the Contractor's equipment and plant, storage of materials and operations to limits indicated by the Contract Documents, by a specific direction of the City Representative or by Applicable Laws and shall not unreasonably occupy the Site. Where the Contractor requires additional land for the erection of temporary facilities and storage of materials, including access to them, the Contractor shall arrange for such and assume all costs and liabilities arising therefrom.
- b) The Contractor shall not load or permit to be loaded on any part of the Work, a weight or load or force that will endanger its safety or exceed the design loads.



- c) The Contractor shall not interfere in any way with the work or scheduling of any other contractor, worker or employee of the City. Subject to GC 3.9(b), in order to avoid or minimize such interference, the City may in its absolute discretion, establish schedules or methods and shall notify the Contractor accordingly.

### **3.11 Survey**

- a) The Contractor shall provide the City Representative with assistance, as required, to make any surveys and measurements, and to establish or check lines and grades.
- b) The Contractor shall safeguard all points, stakes, grade marks and benchmarks made or established on the Work. The Contractor shall bear the expense of re-establishing them and for rectifying Work improperly installed due to the Contractor's failure to safeguard such points, stakes and marks. Additional surveys and staking required by the Contractor to perform the Work, shall be provided by the Contractor at its expense.

### **3.12 Protection of the Work, Property and the Public**

- a) The Contractor shall be responsible for protecting the Work, the City's property at the Site including the Contract Documents and any plant and material, including plant and material supplied by the City to the Contractor, against loss or damage from any cause but subject to GC 3.15(c). In particular, the Contractor shall take necessary precautions, at the Contractor's expense, to ensure that:
  - i. no person, adjacent property, right, easement or privilege is injured, damaged or infringed by reason of the Contractor's activities in performing the Work;
  - ii. 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;
  - iii. fire hazards in or about the Work or the Site are minimized;
  - iv. adequate medical services are available to all persons employed on the Work at all times during the performance of the Work;
  - v. adequate sanitation measures are taken in respect of the Work; and
- b) The City Representative may order the Contractor to do such things and to perform such additional Work as the City Representative considers reasonable and necessary to ensure compliance with or to remedy a breach of GC 3.12(a) and the Contractor shall comply with the directions of the City Representative, at the Contractor's expense.



### 3.13 Permits

- a) The Contractor shall procure and post at the Site all permits, certificates and licenses required for the construction of the Work and shall be responsible for all fees in respect thereof.
- a) The Contractor will be responsible for procuring and coordinating all permits issued by the City's Public Works and Engineering Department. Such permits include:
  - i. Water & Sewer Service Connection/ Disconnection Permit
  - ii. Utility Permit
  - iii. Road Closure Permit

Permit applications must be submitted to the City twenty (20) business days prior to the start of the works.

### 3.14 Applicable Laws

- a) The Contractor shall perform the Work and give any required notices in full compliance with all Applicable Laws, ordinances, rules, regulations, codes and orders of the municipal and other authorities having jurisdiction which are in or come into force during the performance of the Work.
- b) The Contractor shall have due regard for the protection of the environment in the performance of the Work and shall not place any materials, including without limitation, hazardous materials, or dispose of any such materials, or perform any Work in a manner contrary to applicable federal or territorial or municipal environmental laws and regulations, either at the Place of the Work, or at any other place or property.

### 3.15 Material and Plant Supplied by City

- a) The Contractor is liable for any loss or damage to material, plant or real property that is supplied or placed by the City in the care, custody and control of the Contractor for use in connection with the Work, whether or not that loss or damage is attributable to causes beyond the Contractor's control.
- b) The Contractor shall not use any material, plant or real property placed in the Contractor's care, custody and control by the City, except for the purpose of performing the Work.

- c) The Contractor is not liable to the City for any loss or damage to material, plant or real property if that loss or damage results from and is directly attributable to reasonable wear and tear.

### **3.16 Equipment, Plant and Material Supplied by Contractor**

- a) Unless otherwise specified in the Contract Documents, the Contractor shall furnish and assume full responsibility for all materials, equipment, labour, transportation, construction equipment and machinery, tools, appliances, fuel, power, light, heat, telephone, water, sanitary facilities, temporary facilities and all other facilities and incidentals necessary for the performance, testing, finishing, start-up and completion of the Work. All materials, equipment, facilities, etc., furnished by the Contractor shall be maintained in a working, clean and sanitary manner.
- b) Materials provided shall be new unless otherwise specified in the Contract Documents. Products that are not specified shall be of a quality best suited to their purpose and use, as approved by the City Representative.
- c) All equipment, plant and material owned by the Contractor and to be incorporated in the Work, from the time of initial delivery to the Site, shall be deemed to be the property of the City; provided always that the vesting of such property shall not prejudice the right of the Contractor to the sole use of the said equipment, plant and material for the purpose of performing the Work nor shall it affect the Contractor's responsibility to operate and maintain the same in accordance with the Contract Documents. The City shall not at any time be liable for the loss of, damage to or risk of loss of any of the Contractor's equipment, plant or materials.

### **3.17 Workers' Compensation Act**

- a) The Contractor shall comply with and ensure compliance at time of tender by all Subcontractors, with the requirements of the Workers' Compensation Act, R.S.N.W.T. 1988, c. W-6, as duplicated for Nunavut by s. 29 of the Nunavut Act. The Contractor and its Subcontractors shall maintain accounts in good standing with the Workers' Safety and Compensation Commission. The Contractor shall provide verification from the Workers' Compensation Board that the Contractor's account is in good standing prior to the release of holdbacks, at the end of the warranty period and as requested by the City Representative. The City may refuse to make a payment to the Contractor unless the Contractor furnishes evidence from the Workers' Compensation Board that the Contractor's account is in good standing.
- b) If the City receives a notice from the Workers' Compensation Board that the Contractor's accounts, or any Subcontractors' accounts are not in good standing, or if a demand for payment is received, the City may suspend payments due to the Contractor until a letter of clearance is obtained or the City has paid the amount on behalf of the Contractor.

- c) If the City is required to pay any amount to the Workers' Compensation Board on behalf of the Contractor, or any Subcontractor, the City may deduct the amount from any amount owing to the Contractor under this or any other contract, or may demand a reimbursement by the Contractor to the City for the amount paid by the City.
- d) If at any time the performance of the Work is stopped because the Contractor unreasonably fails or refuses to comply with a regulation or order issued pursuant to the Workers Compensation Act, then such failure or refusal shall be considered a default under this Contract, and this Contract may be terminated at the City's option, in accordance with GC 10.3.

### **3.18 Occupational Health and Safety**

- a) The Contractor shall be solely responsible for construction safety at the Site as and to the extent required by the Safety Act, in effect at time of tender, and any other applicable construction safety legislation, regulations and codes, any City safety Policies, as amended from time to time, and by good construction practice.
- b) In any case where, pursuant to the provisions of the Safety Act, R.S.N.W.T. 1988, c. S-1, as duplicated for Nunavut by s. 29 of the Nunavut Act, the Director of Inspections or a Safety Officer orders the Contractor or any Subcontractor performing the Work, to cease work because of failure to install or adopt safety devices directed by the regulations made under the said Act, or required by it, or because the Director of Inspections or a Safety Officer is of the opinion that conditions of immediate danger exist that would likely result in injury to any person, the City may exercise its right to terminate this Contract or suspend the Work immediately, in accordance with GC 10, until the default or failure is corrected.

### **3.19 Cutting and Patching**

- a) The Contractor shall do all cutting, fitting or patching of the Work that may be required to tie in properly with the work of other contractors shown in, or reasonably inferable from the Contract Documents.
- b) The Contractor shall not endanger any existing Work by cutting, patching or otherwise, and shall not cut or alter the work of any other contractor save with the consent of the City Representative and then only to the extent permitted by the City Representative.
- c) The Contractor shall not unreasonably withhold from the City or a separate contractor the Contractor's consent to cutting or otherwise altering the Work in accordance with any direction given by the City Representative.

### **3.20 Defective Work**

- a) Defective work, whether the result of poor workmanship, use of defective products or damage through carelessness or other act or omission of the Contractor or any Subcontractor, and whether incorporated in the Work or not, which has been rejected by the City Representative as failing to conform to the Contract Documents, shall be removed promptly from the Work and replaced or re-executed by the Contractor in accordance with the Contract Documents, at the Contractor's expense.
- b) Where any part of the Work is damaged by such removals, replacements or re-execution, it shall be made good, promptly, at the Contractor's expense.
- c) Where the Contractor fails to correct defective or rejected work within the time limits specified by the City Representative, the City may correct defective or rejected Work and deduct the cost of same from the Contract Price, or may terminate this Contract in accordance with GC 10.3.
- d) In cases of emergency, the City may take whatever action it deems necessary to correct defective or rejected Work and deduct the cost of same from the Contract Price.
- e) If, in the opinion of the City Representative, it is not expedient to correct defective work or work not done in accordance with the Contract Documents, the City may deduct from the Contract Price the difference in value between the Work as done and that required by this Contract, as determined and certified by the City Representative.

### **3.21 Testing and Inspection**

- a) Unless otherwise specified in the Contract Documents, the Contractor shall not rely on the City's testing program, for the Contractor's own quality control, but shall perform such testing as may be required to ensure that the Work complies in all respects with the Contract Documents.
- b) The Contractor shall promptly provide the City Representative with two copies of all certificates, inspection and testing reports required by the Contract Documents or ordered by the City Representative.
- c) The City Representative may conduct quality control testing regarding the acceptability of materials used in the Work and the Contractor shall furnish for the City Representative's approval such samples as the City Representative may reasonably require, at the Contractor's expense.
- d) The City Representative may order retesting of questioned Work. If such retesting shows the Work to comply with the provisions of this Contract, the City shall pay the

cost of retesting. If the retesting shows that through the fault of the Contractor the Work does not so comply, the Contractor shall pay all associated costs. Testing which is paid for by the City shall not be subject to direction or control by the Contractor.

- e) The City Representative shall at all times have access to the Work and the Contractor shall provide proper facilities for such access and for inspection. If any Work should be covered without the approval or consent of the City Representative, it must, if required by the City Representative, be uncovered for examination and subsequently recovered, both at the Contractor's expense.
- f) Any inspection of the Work by the City Representative or the failure of the City Representative to make any inspection, or:
  - i. the thoroughness or lack of thoroughness of any inspection made by the City Representative;
  - ii. the failure of the City Representative to observe defective workmanship or materials either by the Contractor or a Subcontractor;
  - iii. the failure to direct the attention of the Contractor or Subcontractor, or of any other person, to the inadequacy of the manner in which this Contract is being performed, or
  - iv. the inadequacy or insufficiency of any equipment or material used in the performance of or incorporated in the Work,

shall not relieve the Contractor from the responsibility for any failure to supply materials and complete the Work strictly in accordance with the Contract Documents.

### **3.22 Site Cleanliness**

- a) The Contractor shall maintain the Site in a tidy condition and free from the accumulation of waste material and debris, to the satisfaction of the City Representative.
- b) Before the issuance of a certificate of Substantial Performance, the Contractor shall remove all the Contractor's tools and material not required for the remaining Work, and all waste material and other debris, and shall ensure that the Work and the Site are clean and suitable for occupancy or use by the City, unless otherwise directed by the City Representative.

- c) Before the issuance of a certificate of Final Completion, the Contractor shall remove from the Site all the Contractor's tools and material and any waste material and other debris, to the satisfaction of the City Representative.
- d) If the Contractor fails or refuses to remove all such tools, materials, equipment and waste within a reasonable time after achieving Final Completion then, on written notice from the City Representative to the Contractor specifying a reasonable time to remedy such failure or refusal, the City may do or cause to be done the removal and all reasonable resulting costs incurred by the City may be deducted from any amounts owing by the City to the Contractor.
- e) The Contractor's obligations described above do not extend to waste material and other debris caused by the City's agents or other contractors.

### **3.23 Claims Against and Obligations of the Contractor**

- a) The Contractor shall pay out and discharge all its lawful obligations and shall satisfy all lawful claims against it arising out of the performance of the Work at least as often as this Contract requires the City to pay the Contractor.
- b) The Contractor shall, in accordance with the Contract Documents and whenever requested to do so by the City Representative, make a statutory declaration regarding the existence and condition of any obligations of and claims against the Contractor, any Subcontractors, or Suppliers. Upon request by the City, the Contractor shall provide letters from its Subcontractors and Suppliers regarding the status of any accounts with the Contractor and the details of any claims, if any.
- c) The City may, in its absolute discretion, and at any time prior to the final release of holdbacks, in order to discharge lawful obligations of and satisfy lawful claims against the Contractor, any Subcontractors or Suppliers arising out of the performance of the Work, pay any amount that is due and payable to the Contractor pursuant to this Contract, directly to the obligees of and the claimants against, the Contractor, Subcontractor or Supplier. When the parties involved in the claim are in agreement on the validity and amount of the claim, the City may treat this as a lawful claim.
- d) Where no agreement is reached between the parties as referred to above, the City may withhold payment, without any obligation to pay interest, until the validity and amount of the Claim is established by legal proceeding. The City may, in its absolute discretion, bring the matter before the Nunavut Court of Justice by way of Interpleader, and shall dispose of the funds withheld in accordance with the direction of the Court.

- e) A payment made pursuant to this provision is, to the extent of the payment, a discharge of the City's liability to the Contractor under this Contract and may be deducted from an amount payable to the Contractor under this Contract.

### **3.24 Patent Rights**

The Contractor shall indemnify the City from and against all claims, liabilities and proceedings for or on account of infringement of any patent rights, design trademark or name or other protected rights in respect of the Contractor's equipment, materials or tools used for or in connection with, or for incorporation into the Work, and from and against all damages, costs, charges and expenses whatsoever relating thereto.

### **3.25 Royalties**

Except where otherwise stated, the Contractor shall pay all tonnage and other royalties, rent and other payments or compensation, if any, for obtaining building materials required for the Work.

### **3.26 Records to be Kept by Contractor**

- a) The Contractor shall maintain complete records of the Contractor's estimated and actual costs of the Work together with all tender calls, quotations, contracts, correspondence, invoices and receipts. In accordance with the terms of this Contract, these documents shall be available for audit and inspection by the City or by persons acting on behalf of the City when requested. The Contractor shall furnish any such person with any information it may require from time to time in connection with these records.
- b) Records maintained by the Contractor shall be kept intact for six years following the end of the warranty period or such other period of time as directed by the City Representative.
- c) The Contractor shall ensure that all of its Subcontractors comply with the above requirements.

### **3.27 Public Ceremonies and Signs**

- a) The Contractor shall not permit any public ceremony in connection with the Work without the prior written consent of the City.
- b) The Contractor shall not erect or permit the erection of any sign or advertising on the Site without the prior written consent of the City.

### **3.28 Non-Compliance by Contractor**



- a) If the Contractor fails to comply, within a reasonable time, with any decision or direction given by the City Representative, the City may employ such methods as the City deems advisable to do that which the Contractor failed to do.
- b) The Contractor shall pay the City the total of all costs, expenses and damages incurred or sustained by the City by reason of the Contractor's failure to comply with any decision or direction referred to above, including the cost of any method employed by the City. Where the amounts owing to the Contractor under this Contract are insufficient to cover such costs, the Contractor shall pay the balance to the City immediately.

#### **4. ADMINISTRATION BY CITY REPRESENTATIVE**

##### **4.1 City Representative's Duties and Authority**

- a) The City Representative will administer this Contract on behalf of the City as provided in the Contract Documents.
- b) The City Representative will be the City's representative until the Work has been completed in accordance with the Contract Documents.
- c) Except as expressly stated in the Contract Documents, the City Representative shall have no authority to relieve the Contractor of any of the Contractor's obligations under this Contract.
- d) The City Representative will be the initial interpreter of the requirements of the Contract Documents and judge of the acceptability of the Work performed and shall deal with Claims as they arise, in accordance with GC 9.1.
- e) If any error, inconsistency, or omission in the Contract Documents is discovered, the City Representative shall provide directions or clarifications to the Contractor.
- f) During the progress of the Work, the City Representative shall have authority to reject Work that, in the City Representative's opinion, does not conform with the requirements of the Contract Documents, or to issue written additional instructions regarding the Work which may, in the opinion of the City Representative, be necessary to supplement or clarify the Contract Documents. Such additional instructions shall be consistent with the intent of the Contract Documents, shall not entitle the Contractor to an Adjustment and shall be binding upon and be carried out promptly by the Contractor.
- g) Wherever, under this Contract, the City Representative is required to exercise discretion by:
  - i. rendering a decision, opinion or consent;



- ii. expressing satisfaction or approval;
- iii. determining value; or
- iv. otherwise taking action which may affect the rights and obligations of the City or the Contractor,  
the City Representative shall do so impartially, consistent with the terms of this Contract and having regard to all of the circumstances. Any such decision, opinion, consent, expression of satisfaction or approval, determination of value or action, may be opened up, reviewed or revised as provided in GC 9.

#### **4.2 Observing the Work**

The City Representative will visit the Site at intervals appropriate to the stage of construction to become generally familiar with the progress and quality of the completed Work and to determine in general if the Work is being performed in a manner indicating that the Work, when completed, will be in accordance with the Contract Documents. However, the City Representative will not be required to make exhaustive or continuous on-site inspections to check the quality or quantity of the Work. On the basis of such on-site observations, the City Representative will keep the City informed of the progress of the Work and will endeavour to guard the City against defects and deficiencies in the Work.

#### **4.3 City Representative's Decision**

Except as provided in GC 4.1(g), neither the City Representative's authority or responsibilities under GC 4 or under any other provision of the Contract Documents nor any decision made by the City Representative in good faith either to exercise or not exercise such authority or responsibility, shall create, impose or give rise to any duty or responsibility owed by the City Representative to the Contractor, any Subcontractor, Supplier, or to any surety for or employee or agent of any of them.

### **5. PAYMENT AND COMPLETION**

#### **5.1 Progress Payments**

- a) At the end of each calendar month, or such other period as is agreed to between the City Representative and the Contractor, the Contractor shall deliver to the City Representative a written progress claim that describes the Work that has been completed and any material that was delivered to the Site but not yet incorporated into the Work since the last progress claim. The Contractor's progress claim shall be submitted on the last day of the month, for the month which progress is being claimed. If the last day coincides on a weekend or holiday, it will be issued on the following business day.

- b) The City Representative shall, within fourteen (14) business days of receipt of the Contractor's progress claim, review the claim and prepare a certificate for payment which may take the form of an endorsement on the progress claim. If the City Representative amends the progress claim, he will promptly notify the Contractor in writing, giving reasons for the amendment.
- c) Where the Contractor does not submit a progress claim or where the City Representative does not endorse the Contractor's progress claim, the City Representative may calculate the progress payment and prepare a certificate for payment by the City. Where unit prices apply, payment will be calculated on the basis of the unit prices specified in the Contract Documents and the units of Work completed as determined by the City Representative. Where a lump sum price applies, payment will be calculated on the basis of the City Representative's estimate of the percentage of the Work completed.
- d) The progress certificate will show, to the end of the period covered by the progress claim, the estimated value of all labour and materials incorporated into the Work, GST monies paid, all materials stored at the Site and all Change Orders certified by the City Representative. The certificate shall also show the aggregate of previous payments and the amounts withheld. The gross amount shown on such certificate, less the aggregate of all payments to date and sums withheld, shall become due and be payable by the City to the Contractor within thirty (30) calendar days following receipt by the City of the progress certificate.
- e) The estimates referred to above shall not bind the City or the City Representative in any manner in the preparation of the final estimate of the Work done, but shall be held to be approximate only and shall in no case be taken as an acceptance of the Work or as a release of the Contractor from the Contractor's responsibilities under this Contract.
- f) If for any reason the City disputes the net amount shown for payment on a progress certificate the City shall, within the time specified in this GC, pay to the Contractor any amount not disputed and also deliver to the Contractor and the City Representative written reasons for any deductions.

## **5.2 Contract Holdbacks**

- a) The City will retain Contract holdbacks in accordance with the following:
  - i. ten percent from each progress payment made prior to the issuance of the first Holdback Payment Certificate by the City Representative (the "Lien Holdback"), and

- ii. five percent Owners Offset from any payments made to the Contractor following the issuance of the first Holdback Payment Certificate, other than from holdback payments.

### **5.3 Substantial Performance**

- a) When the Contractor considers the Work ready to be utilized for its intended purpose, the Contractor may apply in writing to the City Representative to issue a Certificate of Substantial Performance. The Contractor shall prepare and submit with its application a comprehensive list of deficiencies and/or incomplete items to be completed or corrected, a statutory declaration as per GC 3.23(b) and particulars of, or a waiver of, all outstanding claims against the City, arising out of the Work. The Contractor shall proceed promptly to complete and correct the items on the list. Failure to include an item on this list does not alter the Contractor's responsibility to complete the Work in accordance with the Contract Documents.
- b) Following the receipt of an application from the Contractor for a certificate of Substantial Performance, the City Representative shall, with reasonable promptness, make an inspection and assessment of the Work. Within seven (7) calendar days of the inspection, the City Representative shall notify the Contractor of his approval, or reasons for, disapproval of the application. If the City Representative determines that the Work is substantially completed, he shall issue a certificate of Substantial Performance to the City and the Contractor. A list of items to be completed or rectified shall accompany the certificate. If the City Representative does not consider the Work to be substantially completed, he shall notify the Contractor in writing of the reasons why and list the items to be completed or rectified, of which the City Representative is aware.
- c) The City may deduct from the Contract Price, or any amounts due to the Contractor, the costs associated with the City Representative being called upon to perform more than one inspection for the purpose of determining Substantial Performance, when in the opinion of the City Representative, the Work was clearly not yet substantially complete.
- d) The certificate of Substantial Performance shall establish the date of Substantial Performance and shall fix the time within which the Contractor shall complete or correct all items on the list accompanying the certificate. Warranties required by the Contract Documents shall commence on the date of Substantial Performance, unless otherwise provided, in the certificate of Substantial Performance.
- e) Similarly, in accordance with the procedure set out above, the City Representative may in its absolute discretion, issue a Certificate of Substantial Performance in respect of any part of the Work which has been both completed to the satisfaction of the City Representative and which the City has elected to occupy or use prior to completion.

- f) In addition to other holdbacks as provided by the Contract Documents, when considering Substantial Performance, the City may hold back from payments otherwise due to the Contractor the amount that is two times of the amount of a reasonable estimate, as determined by the City Representative, on account of deficient or defective Work already paid for. This holdback may be held, without interest, until such deficiency or defect is remedied. The items of defect or deficiency and the amounts of related holdback shall be listed separately on the payment certificate.

#### 5.4 Final Completion

- a) Following Final Completion of the Work, including any testing, the Contractor shall provide the City Representative with the following:
- i. a statutory declaration as referred to in GC 3.23(b) that:
    - A. the Work has been completed in accordance with the Contract Documents; and
    - B. no claims exist or alternatively setting out the particulars of any claims relating to personal injury or death or property loss or damage arising out of the Work, and any alleged infringement by the Contractor of a patent or other property right in performing this Contract; and
  - ii. particulars of, or a waiver of, all outstanding claims against the City, arising out of the Work.
- b) Following receipt of the documents referred to in GC 5.4(a), the City Representative shall, with reasonable promptness, conduct an inspection and assessment of the Work to verify that the Work has been completed in accordance with the Contract Documents. Within fourteen (14) calendar days of receipt of the above documents, the City Representative shall either issue a certificate of Final Completion to the City and the Contractor or a list of items to be completed or rectified, of which the City Representative is aware. The City may deduct from monies owed to the Contractor the costs associated with the City Representative being called upon to perform more than one inspection.
- c) Receipt by the Contractor of the certificate of Final Completion shall entitle the Contractor to payment in accordance with GC 5.5.

#### 5.5 Final Progress Payment

- a) The final progress payment certificate will be prepared following the issuance of the certificate of Final Completion. The final progress payment certificate will show the total amount payable to the Contractor, less any amounts retained.
- b) The final progress payment amount shall be paid by the City to the Contractor within thirty (30) calendar days following receipt by the City of the final progress payment certificate.

## **5.6 Holdback Release**

- a) Forty-five (45) calendar days following the date of the issuance of the certificate of Substantial Performance by the City Representative, the Contractor may apply to the City for release of fifty percent of the Lien Holdback. The Contractor shall with such application provide the City Representative with a statutory declaration as referred to in GC 3.23(b), with the content referred to in GC 5.4(a)(i), and the particulars of a waiver of, all outstanding claims against the City, arising out of the Work. The City Representative shall, within fourteen (14) calendar days' receipt of the Contractor's application, issue a Holdback Payment Certificate or a list of items to be rectified prior to payment.
- b) Following the release of fifty percent of the Lien Holdback in accordance with GC 5.6(a), the Contractor may apply in writing for release of the remainder of all Contract lien holdback funds retained by the City, provided an irrevocable letter of credit, in a form acceptable to the City and from a bank and branch acceptable to the City, for the same amount is presented for the City's consideration. The City may, in its absolute discretion, accept or reject the Contractor's irrevocable letter of credit in place of the remainder of all Contract holdback funds.
- c) The irrevocable letter of credit referred to in this provision must be for the same amount as the remainder of all Contract lien holdback funds and must remain in place until expiry of the warranty period referred to in GC 11.4. Should the Contractor's irrevocable letter of credit be scheduled to expire prior to the end of such warranty period, the City may, at any time within the fourteen (14) calendar days prior to the expiry date, call upon and draw down the irrevocable letter of credit, unless the Contractor presents a renewal thereof with an expiry date beyond the warranty period.
- d) One year following the date of the issuance of the Certificate of Substantial Performance by the City Representative, the Contractor may apply to the City for release of the remainder of all Contract holdbacks or the return of irrevocable letters of credit, if any. The City Representative shall, within fourteen (14) calendar days of receipt of the Contractor's application, issue a Holdback Payment Certificate or a list of items to be rectified prior to payment.

- e) The City may withhold from monies owing to the Contractor, an amount equal to the City Representative's estimate of the value of all outstanding deficiencies.
- f) Subject to any applicable lien legislation requirements, holdback payments shall become payable or irrevocable letters of credit shall be returned by the City to the Contractor, within thirty (30) calendar days following receipt by the City of the Holdback Payment Certificate.

## **5.7 Delay in Making Payment**

- a) Delay by the City in making payments when they are due pursuant to this provision shall not be a breach of this Contract by the City.
- b) Unless otherwise stated in this Contract, when the City delays in making a payment that is due pursuant to this clause, the Contractor shall be entitled to receive simple interest on the amount that is overdue, at the prime lending rate of the main banker of the City.

## **5.8 Right of Set-off**

Without limiting any right of set-off or deduction given or implied by law or elsewhere in the Contract Documents, the City may set-off any amount payable to the City by this Contractor against any amount payable to the Contractor under this Contract.

## **6. TIME AND DELAYS**

### **6.1 Time of the Essence**

Time is of the essence of this Contract, including without limitation the dates and time limits stated in the Contract Documents. By executing this Contract, the Contractor confirms that this Contract Time is a reasonable period for performing the Work.

### **6.2 Delays**

- a) Where a delay occurs in the progress of the Work and:
  - i. the delay is attributable to or within the control of the Contractor or its Subcontractors or was reasonably foreseeable by them at the time this Contract was entered into, the Completion Date will not be adjusted. The Contractor will be liable to the City for all costs and expenses incurred by the City, as well as for any losses resulting from the City's inability to utilize the Work for its intended purpose resulting from the delay, and the City may deduct such costs from payments owing to the Contractor under this Contract;

- ii. the delay is due to an act or neglect by the City, the City Representative, or other contractor, or of an employee of any of them, then the Contractor may make a Claim therefor, in accordance with GC 9.1, or
  - iii. the cause for the delay does not fall within the circumstances described in (i) or (ii) above, the Contractor may make a Claim for an Adjustment in the Contract Time (but not for an Adjustments of the Contract Price), in accordance with GC 9.1. This shall be the Contractor's sole and exclusive remedy for such delays.
- b) In no event will adverse weather be considered to be a cause of delay beyond the Contractor's or its Subcontractors' control or not reasonably foreseeable by them at the time this Contract was entered into.

## **7. ASSESSMENTS AND DAMAGES FOR LATE COMPLETION**

### **7.1 Late Completion**

- a) For the purposes of this General Condition, "period of delay" means the number of days commencing on the Completion Date fixed by the Articles of Agreement and ending on the day immediately preceding the day on which the certificate of Substantial Performance is issued but does not include any day within a period of extension granted pursuant to GC 9.1 and 6.2, or any other day on which, in the opinion of the City Representative, completion of the Work was delayed for reasons beyond the control of the Contractor.

## **8. CHANGE ORDERS**

### **8.1 Changes in the Work**

- a) Without invalidating this Contract, the City may, through the City Representative, direct in writing the Contractor to make changes in the Work by adding to, deleting from or revising the Work.
- b) When no Change Order has been issued by the City Representative, and the Contractor claims that any of the Work being performed or proposed constitutes a change in the Work entitling the Contractor to an Adjustment, the Contractor may make a Claim therefore in accordance with GC 9.1.
- c) Changes in the Work directed by the City shall not be initiated, and shall not be carried out by the Contractor, without the prior written authorization of the City through the City Representative.



- d) Upon receipt of a Change Order from the City Representative, the Contractor shall promptly proceed with the Work involved under the applicable provisions of the Contract Documents, except as specifically provided in the Change Order.
- e) The City Representative may in writing direct the Contractor to proceed with the Change notwithstanding that a Change Order has not been prepared or agreed at the time of such direction, and upon receipt of such direction the Contractor shall promptly proceed with the Work as aforesaid. If the parties fail to agree upon the price for such Change, the price therefor shall be as set out in GC 8.2(f) or (i), as applicable.
- f) If notice of any change in the Work is required by the provisions of any bond to be given to a surety, the Contractor will be responsible for giving such notice, and the amount of each applicable bond shall be adjusted accordingly. For the purposes of this provision, the Contractor will be considered to be the surety's agent.

## **8.2 Valuation of Changes**

- a) When a change results in a decrease in the Work, the Contract Price shall be decreased by an amount to be determined by the City Representative, with such decrease valued in the same manner as if it were an increase.
- b) When a change causes an increase in the Work, the Contract Price shall be increased in accordance with this provision.
- c) If this Contract specifies unit prices for changes to the Work, and the City Representative concurs in their use on a particular change or portion thereof, then the Contractor shall be paid for such change or portion, a sum determined by applying the unit prices to the actual quantum, as measured by the City Representative, determined after completion of the Change.
- d) Where this Contract specifies force account rates for labour, equipment and materials, and the City Representative concurs in their use on a particular change or portion thereof, then the Contractor shall be paid for such change or portion, a sum determined by applying the force account rates to the number of hours of labour and equipment expended and quantities of materials utilized. The Contractor shall present records of the work done to the City Representative for approval, at the times and in the manner specified by the City Representative.
- e) If there are changes, or portions of changes, for which unit prices or force account rates are not applicable or specified, then the Contractor shall propose to the City Representative a fixed price for such changes or portions. Upon agreement by the City on the amount thereof, the proposed fixed price shall become the sum the Contractor shall be paid for such change or portion.



- f) If the Contractor and the City are unable to agree on a fixed price, then the Contractor shall be reimbursed its costs for performing the changes as directed by the City Representative, consistent with the following:
- i. wages, salaries and travelling expenses of the Contractor's employees while actually engaged on the Work, excluding any and all expenses of head office personnel;
  - ii. workers' compensation assessments, unemployment insurance premiums, pension plan payments and paid holidays;
  - iii. rental cost of machinery and equipment that is used in the performance of the Work, or an allowance for depreciation if owned by the Contractor;
  - iv. operation and maintenance costs for machinery and equipment used in the performance of the Work, other than costs of repairs arising out of defects existing before it was brought on to the Site;
  - v. cost of materials necessary for and incorporated into the Work or consumed in the performance of the Work;
  - vi. cost of premiums for all bonds and insurance;
  - vii. other expenses incurred by the Contractor as approved in advance by the City Representative for the proper performance of the Work;
  - viii. Subcontractor costs calculated in accordance with GC 8.2(f) (i to vii) above; and
  - ix. an allowance for profit and all other expenditures or costs, including overhead, general administration costs, financing and interest charges, and every other cost, charge and expense, in an aggregate amount that is equal to twenty percent of the expenses referred to in GC 8.2(f) (i to vii), and equal to ten percent of the expenses referred to in GC 8.2(f) (viii) above.
- g) Whenever the cost of any Work is to be determined in accordance with GC 8.2(f), the Contractor will establish and maintain records in accordance with GC 3.26.
- h) Pending final determination of cost, amounts not in dispute shall be included in progress payments.
- i) If the method of valuation of any increase cannot be promptly agreed upon, the City Representative shall determine the method of valuation and issue a written authorization for the change setting out the method of valuation.

### **8.3 Contingency Allowance**

- a) The Contract Price includes the contingency allowance, if any, stated in the Contract Documents.
- b) Expenditures under the contingency allowance shall be authorized in the same manner as for a Change Order in accordance with GC 8, and the value shall be determined in accordance with GC 8.2.
- c) The unexpended portion of the contingency allowance shall be credited to, and paid to, the City as a condition of achieving Substantial Performance, unless otherwise agreed to by the City.

## **9. DISPUTE RESOLUTION**

### **9.1 City Representative's Decision**

- a) Where a Claim arises out of, or in connection with this Contract or the performance of the Work, whether during the performance of the Work or after its completion and whether before or after termination of this Contract, the Claim shall, in the first place, be referred in writing to the City Representative in accordance with this provision.
- b) A written notice stating the general nature of the Claim shall be delivered by the party making the Claim to the other party and to the City Representative promptly, and in no event later than seven (7) calendar days after the occurrence of the event giving rise to the Claim. Any Work for which a Claim has been made, shall be kept readily accessible and shall not be covered up without the express permission of the City Representative.
- c) Notice of the extent of the Claim with supporting data shall be delivered within fourteen (14) calendar days after such occurrence. The Contractor shall keep contemporaneous records as may reasonably be necessary to support the Contractor's Claim, which may be inspected by the City Representative, as he deems necessary.
- d) The City Representative shall review the information submitted, consult with the parties and make reasonable efforts to obtain agreement between the City and the Contractor regarding the Claim. The parties agree that, both during and after the performance of the Work, each of them shall use their best efforts to resolve any disputes arising between them by amicable negotiations, and shall provide frank, candid and timely disclosure of all relevant facts, information and documents to facilitate those negotiations. The City Representative may request the parties to refer the matter to more senior levels of management within their organizations, in an effort to resolve the Claim.

- e) Where the City and the Contractor reach an agreement on the Claim, the City Representative will, where appropriate, prepare a Change Order for the City's approval, which shall be sufficient to effect a change in this Contract, in accordance with the terms of the Change Order and the Contract Documents.
- f) If the City and the Contractor cannot reach an agreement regarding the Claim, the City Representative shall decide the matter and notify the parties in writing of his decision, within fourteen (14) calendar days of the last submission, and in no event later than thirty (30) calendar days following the date of the occurrence giving rise to the Claim. Valuation of Adjustments in the Contract Price shall be determined by the City Representative in accordance with GC 8.2.
- g) Unless this Contract has already been terminated, the Contractor shall, in every case, proceed with the Work with all due diligence and the City and the Contractor shall give effect forthwith to every such decision of the City Representative unless and until the same shall be revised, as hereinafter provided.
- h) Where either party disputes the decision of the City Representative or where the City Representative fails to notify the parties of his decision in accordance with GC 9.1(f) then either party may, within fourteen (14) calendar days, notify the other party of its intention to refer the matter to the Referee in accordance with GC 9.2 or Arbitrator in accordance with GC 9.3, as application. No referral may be made unless such notice is given. Notices shall be copied to the City Representative for information.
- i) If the City Representative has given notice of his decision as to a matter in dispute to the parties and no notice of intention to refer the matter to the Referee has been given by either the City or the Contractor within thirty (30) calendar days, the City Representative's decision shall become final and binding upon the parties.
- j) No act by the claimant shall be construed as a renunciation or waiver of any of its rights or recourses provided the claimant has given the required notices and carried out the instructions specified. The presentation of a Claim shall not be grounds for delay or interruption of the Work.

## **9.2 Appointment of Referee**

- a) If the City and the Contractor agree to appoint a Referee, the City and the Contractor shall name, within thirty (30) calendar days of the parties signing this Contract, a Referee who may be called upon during the performance of, or after the completion of the Work, to settle any Claims or disputes arising under this Contract. Where the Referee appointed in accordance with this provision refuses to act, is incapable of acting or dies, the parties shall name a new Referee at the earliest opportunity. Should the parties be unable to agree on a Referee within the time

specified, the City Representative whose decision shall be final, shall name a Referee.

- b) Where either party has disputed a decision of the City Representative in accordance with GC 9.1(h), the Referee shall review the decision of the City Representative and may, if he deems it appropriate, require the parties to supply him with further information or documentation, giving each party an opportunity to respond. The Referee may inspect the Work after giving reasonable notice to each party of the time he intends to do so.
- c) Not later than thirty (30) calendar days after receipt of the last documentary submission, where the matter has not been resolved in accordance with GC 9.2(b), the Referee shall issue his written decision with reasons to the parties.
- d) The costs of retaining the Referee shall be shared equally between the City and the Contractor, unless the Referee directs otherwise. The City may deduct such costs assessed against the Contractor by the Referee, from any amount due and payable by the City to the Contractor under this Contract.

### **9.3 Appointment of Arbitrator**

- a) If the parties agree to appoint a Referee, then within fourteen (14) calendar days after the Referee has rendered his decision, either party may, by written notice to the other party and to the City Representative for information, refer the decision of the Referee to arbitration pursuant to this GC 9.3. If the parties have not agreed to appoint a Referee, then within the fourteen-day period referred to in GC 9.1(h), either party may refer to decision of the City Representative to arbitration pursuant to this 9.3. Upon any such referral, the parties shall appoint a single Arbitrator, for arbitration in accordance with the Arbitration Act, R.S.N.W.T. 1988, c. A-5, as duplicated for Nunavut by s. 29 of the Nunavut Act, subject to the following provisions:
  - i. the Arbitrator shall have the authority to call upon the Referee to give evidence during the arbitration proceedings, including all documentation prepared by the Referee or reviewed by him;
  - ii. the decision of the Arbitrator shall be final and binding upon the parties who covenant that their disputes shall be so decided by arbitration alone and not by recourse to any court by way of action at law;
  - iii. arbitration proceedings may be commenced prior to or after completion of the Work, provided that the obligations of the City, the City Representative and the Contractor shall not be altered by reason of the arbitration being conducted during the progress of the Work;

- iv. before the arbitration proceeds on the substantive issues, a budget for the proceedings shall be established by the Arbitrator and each party shall deposit, as security for costs, a sum equal to half of such budget with the Arbitrator, who shall thereupon deposit such funds in an interest bearing trust account with a chartered bank. Subject to the award and payment of costs as hereinafter provided, the balance of the security deposits and interests shall be properly returned to the respective parties; and
  - v. the cost of arbitration may be awarded against the parties hereto or against any one of them as the Arbitrator may decide.
- b) If a Claim involves the Work of a Subcontractor, either the City or the Contractor may join such Subcontractor as a party to the arbitration between the City and the Contractor. The Contractor shall include in all its subcontracts specific provision whereby its Subcontractors consent to being joined in an arbitration between the City and the Contractor involving the Work of such Subcontractors. Nothing in this provision nor in the provision of such subcontracts consenting to joinder shall create any claim, right or cause of action in favour of the Subcontractors as against the City or the City Representative, that does not otherwise exist.
  - c) If no notice is received within the time limits set out or referred to in GC 9.3(a), the decision of the Referee shall be final and binding on the parties.
  - d) The Contractor agrees that it shall join other arbitration proceedings with respect to the Project, as requested in writing by the City.

#### **9.4 Adherence to Provisions**

- a) The provisions, including without limitation, procedure and sequences, outlined in GC 9.1 to 9.3 for the resolution of disputes shall be strictly adhered to by both parties.

### **10. WITHDRAWAL, SUSPENSION AND TERMINATION**

#### **10.1 Withdrawal of the Work**

- a) After giving the Contractor seven (7) calendar days written notice within which the Contractor may remedy any delay or default specified, the City may, through the City Representative, withdraw the Work from the Contractor where the Contractor is not diligently performing the Work to the satisfaction of the City Representative or has not completed the Work within the time specified in this Contract.
- b) On withdrawal of the Work, the City may:

- i. take possession of all plant, equipment and materials on the Site and ordered by the Contractor for the Work but not yet delivered to the Site; and
  - ii. complete the Work withdrawn from the Contractor.
- c) Withdrawal of the Work by the City does not terminate this Contract and does not relieve the Contractor of its obligation to complete the remainder of the Work.
- d) The Contract Price will be reduced by the value of the Work withdrawn, as determined by the City Representative. The Contractor shall be liable to the City for all extra costs incurred by the City to complete the Work withdrawn from the Contractor, including all amounts set out in GC 10.3(d) notwithstanding that the Contractor may not be in default hereunder, and the City may deduct such costs from payments owing to the Contractor under this Contract.

## **10.2 Suspension of the Work**

- a) The City may through the City Representative suspend the progress of the Work at any time by giving the Contractor a written notice, which shall include the reason for the suspension.
- b) Where such a suspension results in a delay in the progress of the Work, the rights of the parties shall be determined in accordance with GC 6.2(a)(i), (ii) or (iii) as applicable, and shall be based on the reason for the suspension.
- c) During the period of suspension, the Contractor shall protect, preserve and maintain the Work in a manner satisfactory to the City and shall not remove any part of the plant, equipment and materials from the Site without the prior written consent of the City.
- d) Following the suspension, the Construction Schedule shall be revised by the Contractor, for approval by the City, and the Work shall be completed as provided in the revised schedule.
- e) Where the Work or any part thereof is suspended on the written instructions of the City and if permission to resume Work is not given by the City within a period of thirty (30) calendar days from the date of suspension, the Contractor may request permission from the City to proceed with the Work. If the City does not grant permission within fourteen (14) calendar days' receipt of the Contractor's written request, the Contractor may elect to treat the suspension, where it affects only part of the Work, as an omission of such Work by giving a further notice to the City to that effect or, where it affects the whole of the Work, treat this Contract as having been cancelled by the City, in accordance with GC 10.4.

## **10.3 Termination by City**

- a) Without limitation, any or all of the following actions by or circumstances relating to the Contractor shall constitute default on the part of the Contractor:
- i. committing or threatening to commit any act of insolvency or bankruptcy, voluntary or otherwise;
  - ii. having a receiver appointed on account of insolvency or in respect of any property;
  - iii. making a general assignment for the benefit of creditors;
  - iv. failing to comply with or persistently disregarding statutes, regulations, bylaws or directives of competent authorities relating to the Work;
  - v. failing to comply with any requests, instruction or direction of the City Representative;
  - vi. failing to pay accounts relating to the Work as they come due;
  - vii. failing to prosecute the Work with skill and diligence;
  - viii. assigning or subletting this Contract or any portion thereof without the required consent from the City;
  - ix. failing or refusing to correct defective or deficient Work; and
  - x. being otherwise in default in carrying out any of its obligations under this Contract, whether such default is similar or dissimilar in nature to the causes listed previously.
- b) The Contractor shall immediately advise the City in writing of any default listed in GC 10.3(a)
- c) If the Contractor is in default under this Contract, the City shall be entitled to any or all of the following:
- i. take possession of all Work in progress, materials and construction equipment at the Site, at no additional charge for the retention or use of the construction equipment;
  - ii. eject and exclude from the Site all personnel of the Contractor and any Subcontractor;
  - iii. terminate the City's utilization of the Contractor to perform the Work;



- iv. finish the Work by whatever means the City may deem appropriate under the circumstances; and
  - v. withhold any further payments to the Contractor until the Contractor's liability to the City is ascertained.
- d) The Contractor shall be liable to the City for:
- i. the extra expense of finishing the Work, including compensation to the City for additional engineering, managerial and administrative services;
  - ii. the cost of correcting deficiencies in that portion of the Work performed by the Contractor; and
  - iii. all other loss, damage and expense occasioned to the City by reason of the Contractor's default,
- and the City may deduct such amounts from payments owing to the Contractor under this Contract.
- e) Any action by the City under this GC 10.3 shall be without prejudice to the City's other rights or remedies under any security held by the City for performance of this Contract by the Contractor.

#### 10.4 Contract Cancellation

- a) The City shall have the right which may be exercised from time to time, with or without cause, and on fourteen (14) calendar days' written notice to the Contractor, to cancel any uncompleted or unperformed portion of the Work. In the event of such cancellation, the Contractor shall be entitled to the following:
  - i. reimbursement at this Contract rate for all items completed and delivered;
  - ii. reimbursement for the costs to the Contractor for Work in progress and expenses incurred in the course of the Work, plus a reasonable return on such costs and expenses; and
  - iii. reimbursement for costs and expenses directly caused by the cancellation.
- b) Title to all Work for which reimbursement is made shall vest in the City.
- c) The City shall not be liable to the Contractor for indirect loss, consequential loss, loss of business opportunity or loss of anticipated profit on the cancelled portion or portions of the Work.



- d) This section shall not apply to situations in which the City is entitled to terminate this Contract by reason of default by the Contractor.

### **10.5 Termination by Contractor**

- a) If the City should be adjudged bankrupt, or makes a general assignment for the benefit of creditors because of the City's insolvency, or if a receiver is appointed because of the City's insolvency, the Contractor may, without prejudice to any other right or remedy the Contractor may have, by giving the City or receiver or trustee in bankruptcy notice in writing, terminate this Contract.
- b) If the Work should be stopped or otherwise delayed for a period of thirty (30) calendar days or more under an order of 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 of anyone directly or indirectly employed or engaged by the Contractor, the Contractor may, without prejudice to any other right or remedy the Contractor may have, by giving the City notice in writing, terminate this Contract.
- c) If the Contractor terminates this Contract under the conditions set out above, the Contractor shall be entitled to be paid for all work performed including reasonable profit, for loss sustained upon products and construction machinery and equipment, and such other damages as the Contractor may have sustained as a result of the termination of this Contract.

## **11. BONDS AND WARRANTY**

### **11.1 Obligations to Provide Contract Security**

- a) The Contractor shall promptly provide to the City the surety bonds called for in the Contract Documents, not later than ten (10) business days following receipt by the Contractor of the letter of acceptance.
- b) Such bonds shall be issued by a duly licensed surety company authorized to transact the business of suretyship in Nunavut and shall be maintained in good standing until the fulfillment of this Contract.
- c) Prior to or at the time of making a Claim under such bonds, the City shall send written notification to the Contractor, stating the nature of the default for which a Claim is being made.

### **11.2 Prescription of Acceptable Contract Security**

- a) The Contractor shall deliver to the City:

- i. a performance bond and a labour and material payment bond each in an amount that is equal to and not less than fifty percent of the Contract Price referred to in the Articles of Agreement; or
  - ii. a security deposit in an amount that is equal to ten percent of the Contract Price referred to in the Articles of Agreement.
- b) The performance bond and the labour and material payment bond referred to in GC 11.2(a)(i) shall be in a form as approved by the Federal Treasury Board (Federal Contracts).
- c) A security deposit referred to in GC 11.2(a)(ii) shall be in a form of:
- i. an irrevocable letter of credit in a form acceptable to the City and from a bank and branch acceptable to the City; or
  - ii. a certified cheque or bank draft from a bank acceptable to the City and made payable to the City.
- d) Should the Contractor's irrevocable letter of credit be scheduled to expire prior to the Completion Date set out in the Articles of Agreement, the City may, at any time within the fourteen (14) calendar days prior to the expiry date, call upon and draw down the irrevocable letter of credit, unless the Contractor presents a renewal thereof with an expiry date beyond the anticipated date for Final Completion, as determined by the City Representative.

### **11.3 Return of Security Deposit**

- a) Following issuance of the certificate of Substantial Performance, the City may, in its absolute discretion, release all or part of the security deposit referred to herein.
- b) Following issuance of the certificate of Final Completion, the Contractor shall, subject to the terms of this Contract, be entitled to the remainder of any security deposit.
- c) Interest shall not be paid on security deposits.

### **11.4 Warranty**

- a) The Contractor warrants and guarantees that the Work is and shall be free from all defects or deficiencies in, or arising from, materials or workmanship in any part of the Work for the period of one year from the date of Substantial Performance of the Work, as certified by the City Representative, or such longer period as may be specified in the Contract Documents for certain products or Work.

- b) The Contractor shall promptly correct, at its own expense, defects or deficiencies in the Work which appear prior to and during the warranty described in GC 11.4(a). The Contractor shall correct and pay for all damages resulting from corrections made under this provision.
- c) Work performed to correct defects or deficiencies shall be warranted and guaranteed to be free from defects or deficiencies, on the same basis as the original Work, for a period of one year from the day said work was completed.
- d) The City or the City Representative shall promptly give the Contractor written notice of observed defects and deficiencies.
- e) If any defects or deficiencies in the Work appear at any time prior to the end of the warranty period, the City Representative may instruct the Contractor to search for the cause thereof. If such defect or deficiency is one for which the Contractor is liable, the cost of the Work carried out in searching shall be at the Contractor's expense, and it shall in such case remedy such defect or deficiency at its own cost; otherwise it shall be at the City's expense.
- f) In an emergency or to prevent an emergency or if the Contractor neglects for any reason to correct defects or deficiencies within a reasonable time, the City may perform the Work or direct another party, on the City's behalf, to do the Work. All costs associated with the correction of such defects or deficiencies shall be paid for by the Contractor and the City may deduct such costs from amounts owing to the Contractor.

## **12. INDEMNIFICATION AND INSURANCE**

### **12.1 Indemnification by Contractor**

- a) The Contractor shall defend, indemnify and save harmless the City and the City Representative, their agents and employees from and against all claims, demands, losses, costs, damages, actions, suits, or proceedings arising out of or attributable to the Contractor's performance of the Work, or by reason of any matter or thing done, permitted or omitted to be done, by the Contractor, its Subcontractors, its Suppliers or their agents or employees, whether occasioned by negligence or otherwise. Such indemnity shall survive completion or termination of this Contract.
- b) Nothing contained in the Contract Documents or any approval, express or implied, of the City Representative or City shall relieve the Contractor of any liability for latent defects or any liability which may be imposed by law.

### **12.2 Indemnification by City**

The City shall, subject to any law that affects the City's rights, powers, privileges or obligations, indemnify and save the Contractor harmless from and against all claims, demands, losses, costs, damages, actions, suits or proceedings arising out of his activities under this Contract that are directly attributable to:

- a) lack of or a defect in the City's title to the Site whether real or alleged; or
- b) an infringement or an alleged infringement by the Contractor of any patent of invention or any other kind of intellectual property occurring while the Contractor was performing any act for the purposes of this Contract employing a model, plan or design or anything related to the Work that was supplied by the City to the Contractor.

### 12.3 Policies of Insurance

Without restricting the generality of GC 12.1, the Contractor shall provide and maintain the insurance coverages listed in this provision. Unless otherwise stipulated, the duration of each insurance policy shall be from the date of commencement of the Work until the date of issuance of the certificate of Final Completion. Prior to commencement of the Work, the Contractor shall provide the City with confirmation of coverage in the format attached as Appendix A to these General Conditions, and, if required, a certified true copy of the policies certified by an authorized representative of the Insurer. The Contractor shall ensure that any Subcontractors comply with the insurance requirements outlined in this GC 12. The insurance coverages required are as follows:

#### a) General Liability Insurance

Contractor's comprehensive general or commercial general liability insurance shall have limits of not less than five million dollars (\$5,000,000) per occurrence with a property damage deductible not exceeding two thousand five hundred dollars (\$2,500). The insurance provided shall be no less broad than the insurance provided by IBC Form 2100 or its equivalent replacement and shall include a standard non-owned automobile policy including a blanket contractual liability endorsement. To achieve the required limit, umbrella or excess liability insurance may be used. All liability coverage shall be maintained for completed operations hazards from the date of Final Completion of the Work, as set out in the certificate of Final Completion, on an ongoing basis for a period of not less than six years from the date of such certificate. The City shall be added as an additional insured with respect to liability arising out of the operations of the named insured. The policy shall be endorsed to provide the City with not less than thirty (30) calendar days' written notice in advance of any cancellation, change or amendment restricting coverage.

#### b) Automobile Liability Insurance

Automobile liability insurance in respect of licensed vehicles shall have limits of not less than five million dollars (\$5,000,000) inclusive per occurrence for bodily injury, death, and damage to property and covering all licensed vehicles owned or leased

by the Contractor, endorsed to provide the City with not less than fifteen (15) calendar days' written notice in advance of any cancellation, change or amendment restricting coverage.

**c) Property and Boiler and Machinery Insurance**

- i. "All risks" property insurance shall be in the joint names of the Contractor, the City and the City Representative, insuring not less than the sum of the amount of the Contract Price and the full value of all labour, tools, equipment and materials that are to be provided by the City for incorporation into the Work, with a deductible not exceeding two thousand five hundred dollars (\$2,500). The insurance provided shall be no less broad than the insurance provided by IBC Form 4042 or its equivalent replacement. The policy will contain a waiver of rights of subrogation against all those insured by the policy. Such coverage shall be maintained continuously until the date the certificate of Final Completion is issued or an earlier date specified by the City;
- ii. the policy will allow for partial or total use or occupancy of the Work. If because of such use or occupancy the Contractor is unable to provide coverage, the Contractor shall notify the City in writing prior to such use pay for property and, if necessary, boiler insurance insuring the full value of the Work as in (i) above, including coverage for such use or occupancy and shall provide the Contractor with proof of such insurance. The Contractor shall refund to the City the unearned premium applicable to the Contractor's policy upon termination of coverage;
- iii. where, due to the nature of the Work, the full insurable value of the Work is substantially less than the Contract Price, the City may, at its sole discretion, reduce the amount of insurance required or waive the course of construction insurance requirement;
- iv. where such risks exist, the Contractor shall provide boiler and machinery insurance insuring not less than the replacement value of boilers, pressure vessels and other objects insurable under a boiler & machinery policy and forming part of the Work;
- v. the policies shall provide that, in the event of a loss or damage, payment shall be made to the City and the Contractor as their respective interests may appear. The Contractor shall act on behalf of the City for the purpose of claiming the amount of loss or damage from the Insurers. When the extent of the loss or damage is determined, the Contractor shall proceed to restore the Work. Loss or damage shall not affect the rights and obligations of either party under this Contract except that the Contractor shall be entitled to such reasonable extension of Contract Time relative to the extent of the loss or damage in accordance with the terms of this Contract; and

- vi. the Contractor shall be responsible for deductible amounts under the policies except where such amounts may be excluded from the Contractor's responsibility in accordance with the Contract documents.

**d) Aircraft and Watercraft Liability Insurance**

Where such risks exist, the Contractor shall obtain aircraft and watercraft liability insurance with respect to owned or non-owned aircraft and watercraft if used directly or indirectly in the performance of the Work, including use of additional premises, and shall have limits of not less than two million dollars (\$2,000,000) inclusive per occurrence for bodily injury, death and damage to property including loss of use thereof, and limits of not less than two million dollars for aircraft passenger hazard. Such insurance shall be in a form acceptable to the City. The policies shall be endorsed to provide the City with not less than fifteen (15) calendar days' written notice in advance of any cancellation, change or amendment restricting coverage.

**e) Contractor's Equipment Insurance**

The Contractor shall give proof of insurance in a form acceptable to the City of "all risks" Contractor's equipment insurance covering construction machinery and equipment used by the Contractor for the performance of the Work, including boiler insurance on temporary boilers and pressure vessels. The insurance shall be in a form acceptable to the City and shall not allow subrogation claims by the insurer against the City. The policies shall be endorsed to provide the City with not less than fifteen (15) calendar days' written notice in advance of cancellation, change or amendment restricting coverage.

**f) Other Insurance**

The Contractor shall provide, maintain and pay for any additional insurance required to be provided by law, or which the Contractor considers necessary to cover risks not otherwise covered by insurance specified in the Contract Documents.

**12.4 Insurance General**

- a) All required insurance policies shall be with insurers licensed to underwrite insurance in Nunavut and signed by representatives licensed to do so for insurance in Nunavut.
- b) The Contractor shall require and ensure that its Subcontractors maintain liability insurance comparable to that required above.
- c) If the Contractor fails to provide or maintain insurance as required by this General Condition or elsewhere in the Contract Documents, then the City shall have the right to provide and maintain such insurance and give evidence to the Contractor and the

City Representative. The Contractor shall pay the cost thereof to the City on demand or the City may deduct the costs from monies which are due or may become due to the Contractor.

- d) Where an insurer fails or refuses to pay any claims under an insurance policy covering the activities of the Contractor or a Subcontractor relating to or arising out of the Work, the Contractor shall not be released from any liability arising under this Contract.

### **13. LOCAL AND INUIT INVOLVEMENT**

#### **13.1 Requirements for Inuit, Local and Nunavut Content**

- a) The Contractor shall, in the performance of the Work, employ Inuit, Local and Nunavut workers and use Inuit, Local and Nunavut content to the greatest extent possible and at a minimum, no less than the amounts tendered by the Contractor in Appendix J-2 “Substantiation of Bid Adjustment” of the tender. Workers shall meet all levels of proficiency, qualification and expertise as dictated by Applicable Laws and/or as defined in the Contract Documents.
- b) The Contractor shall provide to the City Representative a schedule indicating the anticipated total monthly value of all Inuit, Local and Nunavut content and labour to be expended in the execution of the Work. This schedule shall provide the benchmark for ensuring compliance by the Contractor with the requirements for the use of Inuit, Local and Nunavut content during the performance of the Work.

#### **13.2 Requirement for Community Meetings**

- a) If required under this RFT (if the NNI Policy applies), The Contractor shall arrange meetings on a monthly basis, or other basis as may be mutually agreed by the parties to this contract, to monitor the use of Inuit, Local and Nunavut labour and Inuit, Local and Nunavut content. The Contractor shall give the City five (5) business days’ notice of all meetings called under GC 13.2. The Contractor shall take reasonable steps to ensure that these meetings include the following representatives:
  - i. a community representative who has been designated to speak on behalf of the community (if available);
  - ii. a community manpower representative (if available);
  - iii. the Contractor; and
  - iv. the City Representative.



- b) In addition to the community meetings contemplated in GC 13.2(a), the Contractor shall arrange a community meeting prior to the start of the Work which shall be arranged on the same terms as indicated in GC 13.2(a) and at that meeting shall:
- i. provide a schedule referred to in GC 13.1(b) above to the community representative;
  - ii. request from the community manpower representative or from the City if no community manpower representative has been delegated, a list of workers available in the community; and
  - iii. identify specific types of workers required during the project such as plumbers, painters or electricians and how many of those workers are required and when they are required and based on information received in accordance with GC 13.2(b)(ii) maintain a list of community manpower.
- c) At the community meetings contemplated in GC 13.2(a), the Contractor shall:
- i. provide employment reports identifying workers used during the past month (to substantiate information provided on Appendix J-2 “Substantiation of Bid Adjustment”);
  - ii. provide a schedule referred to in GC 13.2(b)(i), or such schedule as amended, if necessary; and
  - iii. provide a consolidated report at the time of Substantial Performance, which shall confirm the total amount of Inuit, Local and Nunavut content used. This report will identify Inuit, Local and Nunavut payroll separately. This consolidated report shall be a condition precedent to the release of payment.
- d) The City shall attend all community meetings organized by the Contractor in accordance with this GC 13.2 and when requested by the Contractor shall identify and contact potential community workers who may be available to be employed on the Work, identify alternate workers if those workers initially identified are not available to work, and assist in confirming the residency of local workers.

### **13.3 Monitoring the Level of Inuit, Local and Nunavut Labour**

- a) The Contractor is responsible to ensure that every worker identified as Local or Nunavut meets the qualifying requirements, which are, for Nunavut, being ordinarily resident in Nunavut for the past 12 months, and for Local being a Nunavut resident ordinarily resident in the subject community for the past 4 months. The Contractor

may be required to provide proof of residency of workers at any time throughout the course of performing the Work.

- b) Reasonable proof of Nunavut and Local residency shall be any of the following:
  - i. being listed on the Nunavut Tunggavik Inc. (NTI) enrolment list and provision of a physical address where residing;
  - ii. if the last 12 months have been spent as ordinarily resident in Nunavut and a physical address of such residence has been provided, then
    - A. provides a valid Nunavut Health Care Card effective at least 9 months prior to start date of employment on the Work; and/or
    - B. provides another accepted proof of residency such as: a Nunavut General Hunting License, a Nunavut Driver's Licence, a lease or rental receipt, or a certified Schedule T222 Income Tax return from the previous year or proof that Income Tax was paid in the Nunavut during the previous tax year; or
  - iii. is included on a list of approved Local or Nunavut residents verified by the municipality of their residence.
- c) The Contractor is responsible to ensure that every worker identified as Inuit is on the NTI Inuit enrolment list or would qualify to be on the list.
- d) If requested by the City to do so, the Contractor shall obtain a signed consent form from workers which verifies their residency and permits the City to obtain any and all information required to support the worker's claim of residency and/or Inuit status. A worker does not need to comply with the requirements of this clause if the worker is on the NTI Inuit enrolment list.

#### **13.4 Requirement for Using Hotels or Bed and Breakfast**

- a) If performance of the Work is undertaken where a Commercial Room and Board Facility (as defined below) exists within a Community (as defined below), the Tenderer is required to use a Commercial Room and Board Facility to house and feed all workers directly employed by the Contractor, any Subcontractor or agent or any other business working on the Project. The Contractor, Subcontractor, agent or other business are not required to use Commercial Room and Board Facilities for workers who are Local Residents.
- b) In this Contract:

- i. “Commercial Room and Board Facility” means a Hotel or a Bed and Breakfast (Tourist Home) that holds a Tourist Establishment Licence issued by the Government of Nunavut under the *Travel and Tourism Act*.
  - ii. “Community” means a community in which the Work (as defined in the Contract) is being performed and includes the entire area within a 20- kilometer radius of that community.
- c) The Commercial Room and Board Facility must:
- i. meet the applicable requirements under the *Public Health Act*, and of the *Eating or Drinking Place Regulations*; and
  - ii. meet all applicable requirements of the *Public Health Act* the *Fire Prevention Act* and applicable regulations thereunder, and any other applicable Government of Nunavut or federal legislation.

## **14. TRANSPORTATION OF MATERIALS**

### **14.1 Marine Transport Resources**

- a) Whenever marine (water) transport is to be utilized, the Contractor may use, and space may be booked directly with the following carrier:
- i. Nunavut Sealink and Supply (NSSI),  
By ships loading at the Montreal area Port of Ste-Catherine
  - ii. Nunavut Eastern Arctic Shipping (NEAS)  
By ships loading at the Port of Valleyfield, Salaberry-de-Valleyfield
- b) The annual shipping rates offered by marine carriers are dependent upon anticipated cargo quantities including the materials for construction projects; therefore, Contractors may tender using the published sailing schedules and rates available from the above marine carriers.
- c) In exceptional or extraordinary circumstances, where the specified marine carrier’s sailing schedule is in substantial conflict with the Construction Schedule, the City will review the circumstances, taking into account the adverse impact on the project and the specified marine carrier’s interests, and the City may provide authorization to allow the relevant cargo to be shipped with a marine carrier other than the specified marine carrier, depending upon the circumstances; and such authorization must be writing.
- d) If a Contractor uses a marine carrier other than the City contracted marine carrier without the City’s written authorization to do so, the Contractor shall be responsible for extra freight cost, administrative costs or any other costs, incurred by the City



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which result directly or indirectly from the Contractor's failure to use the City specified marine carrier as set out in this GC 14. The Contractor shall also be responsible to refund to the City any monies saved by the Contractor by using a marine carrier other than the specified marine carrier as set out in this GC 14.

**END OF SECTION**