



**THE CITY OF WINNIPEG**

# **REQUEST FOR QUALIFICATION**

**RFQ NO. 820-2008**

**WINNIPEG WATER TREATMENT PROGRAM - REQUEST FOR QUALIFICATIONS  
FOR THE SUPPLY, INSTALLATION AND PROGRAMMING OF SECURITY  
SYSTEMS**

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## PART B - REQUEST FOR QUALIFICATION INFORMATION

### B1. DEFINITIONS

B1.1 When used in this Request for Qualification:

- (a) “**ACS**” means Access Control System, part of the SMS;
- (b) “**Business Day**” means any Calendar Day, other than a Saturday, Sunday or a Statutory or Civic Holiday;
- (c) “**Calendar Day**” means the period from one midnight to the following midnight;
- (d) “**CCTV**” means closed circuit television, part of the SMS;
- (e) “**City Council**” means the Council of the City of Winnipeg;
- (f) “**Contract**” means a future agreement entered into between the City and a successful Proponent;
- (g) “**Contract Administrator**” means the person authorized to represent the City in respect of the Request for Qualifications unless otherwise specified hereinafter;
- (h) “**FDS**” or “**Functional Design Specification**” means a submittal developed by the Contractor that details the solution he will supply and install to meet the City defined requirements for the WTP security system. The FDS will provide the basis of the software configuration and will be validated during Performance Verification to ensure that all required equipment and functions are present and that they operate correctly;
- (i) “**Maintenance Contract**” means a contract between owner and integrator providing regular visits to the facility to check and maintain the security systems;
- (j) “**may**” indicates an allowable action or feature which will not be evaluated;
- (k) “**must**” or “**shall**” indicates a mandatory requirement which will be evaluated on a pass/fail basis;
- (l) “**NDVMS**” means Networked Digital Video Management System, part of the SMS;
- (m) “**Performance Verification**” means all factory and field tests, demonstrations and other activities required from the Contractor to demonstrate to the Contract Administrator’s satisfaction that the equipment installed under his Contract is performing as specified;
- (n) “**Person**” means an individual, firm, partnership, association or corporation, or any combination thereof, and includes heirs, administrators, executors or legal representatives of a person;
- (o) “**Project**” means the entire process for procurement commenced by issuance of this RFQ including the intended contract award and performance of the Work;
- (p) “**Proponent**” or “**Applicant**” means any Person or consortium submitting a Qualification Submission in response to this Request for Qualifications;
- (q) “**PTZ**” means Pan Tilt Zoom camera, part of the SMS;
- (r) “**Request for Qualifications**” or “**RFQ**” means the Qualification Submission, these Instructions, the Attachments and all addenda;
- (s) “**Site**” means the lands and other places on, under, in or through which the Work is to be performed;
- (t) “**SMS**” means Security Management system – the overall integrated result of the various sub systems applied to the security project;
- (u) “**Submission or Qualification Submission**” means that portion of the Request for Qualification which must be completed or provided and submitted by the Submission Deadline;
- (v) “**Submission Deadline**” means the time and date for final receipt of Submissions;
- (w) “**Substantial Performance**” shall have the meaning attributed to it in The Builders' Liens Act (Manitoba), or any successor legislation thereto;

- (x) **“Work”** or **“Works”** means the carrying out and the doing of all things, whether of a temporary or permanent nature, that are to be done pursuant to the Contract and, without limiting the generality of the foregoing, includes the furnishing of all Plant, Material, labour and services necessary for or incidental to the fulfilment of the requirements of the Contract, including all Changes in Work which may be ordered as herein provided;
- (y) **“WTP Facility”** means the Winnipeg Water Treatment Plant Facility and includes all buildings and areas on the Site that will be protected by the proposed Security System.

Unless otherwise defined above, terms used in this RFQ shall have the meaning attributed to them in the General Conditions For Construction.

## **B2. PURPOSE OF THE REQUEST FOR QUALIFICATIONS DOCUMENT**

- B2.1 The purpose of this RFQ is to identify experienced and capable Proponents to supply and install security elements for the Winnipeg WTP Facility.
- B2.2 The City invites qualified individuals to submit a Qualification Submission in response to this Request for Qualifications (RFQ).
- B2.3 After receiving the Submissions to this RFQ, the City will review all Submissions received and shortlist all qualified Proponents. Only those Proponents on the shortlist will be invited to respond to the Bid Opportunity for the supply and installation of WTP Facility security elements.

## **B3. ENQUIRIES**

- B3.1 All enquiries shall be directed to the Contract Administrator identified in B4.
- B3.2 Any Proponent who has questions as to the meaning or intent of any part of this document or who believes this document contains any error, inconsistency or omission should make an enquiry prior to the Submission Deadline requesting clarification, interpretation or explanation in writing to the Contract Administrator.
- B3.3 If the Proponent finds errors, discrepancies or omissions in the document, or is unsure of the meaning or intent of any provision therein, the Proponent shall promptly notify the Contract Administrator of the error, discrepancy or omission at least five (5) Business Days prior to the Submission Deadline.
- B3.4 If the Proponent is unsure of the meaning or intent of any provision therein, the Proponent should request clarification as to the meaning or intent prior to the Submission Deadline.
- B3.5 Responses to enquiries which, in the sole judgment of the Contract Administrator, require a correction to or a clarification of the Request for Qualification will be provided by the Contract Administrator to all Proponents by issuing an addendum.
- B3.6 Responses to enquiries which, in the sole judgment of the Contract Administrator, do not require a correction to or a clarification of the Request for Qualification will be provided by the Contract Administrator only to the Proponent who made the enquiry.
- B3.7 The Proponent shall not be entitled to rely on any response or interpretation received pursuant to B3 unless that response or interpretation is provided by the Contract Administrator in writing.

## **B4. CONTRACT ADMINISTRATOR**

- B4.1 The Contract Administrator is AECOM Canada Projects (CM) Ltd., represented by:  
Bill Richert, P. Eng.  
AECOM Canada Projects (CM) Ltd.  
1479 Buffalo Place  
Winnipeg, MB  
R3T 1L7

e-mail: [bill.richert@aecom.com](mailto:bill.richert@aecom.com)  
Telephone No. (204) 986-6053  
Facsimile No. (204) 986-8393

**B5. ADDENDA**

- B5.1 The Contract Administrator may, at any time prior to the Submission Deadline, issue addenda correcting errors, discrepancies or omissions in the RFQ, or clarifying the meaning or intent of any provision therein.
- B5.2 The Contract Administrator will issue each addendum at least two (2) Business Days prior to the Submission Deadline, or provide at least two (2) Business Days by extending the Submission Deadline.
- (a) The Addenda will be available on the Bid Opportunities page at the Materials Management Division's website at <http://www.winnipeg.ca/matmgt/bidopp.asp>
- B5.2.1 The Proponent is responsible for ensuring that he has received all addenda and is advised to check the Materials Management Division's website for addenda regularly and shortly before the Submission Deadline, as may be amended by addendum.
- B5.3 The Proponent should acknowledge receipt of each addendum on Form A: Request for Qualification Application.

**B6. CONFLICT OF INTEREST AND GOOD FAITH**

- B6.1 Proponents must not include among their team, any business entity or individual who is, or is associated with, in any way, any consultant retained by the City in relation to the Project, including but not limited to consultants providing engineering, architectural, legal, process, finance or financial capacity advice or any Person likely to create a conflict of interest or a perception of conflict of interest.
- B6.2 If a Proponent considers that a particular relationship or association does not create a conflict of interest and will not create a perception of conflict of interest, but is concerned that the City could arrive at a different conclusion, the Proponent should fully disclose the circumstances to the City at the earliest possible date, and request that the City provide an advance interpretation as to whether the relationship or association will be likely to create a conflict of interest or a perception of conflict of interest.
- B6.3 The Proponent declares that in submitting its response to this RFQ, it does so in good faith and will disclose to the best of its knowledge, whether there are any circumstances whereby any member of Council or any officer or employee of the City would gain any pecuniary interest, direct or indirect, as a result of the Proponents participation in this Project.
- B6.4 Failure to comply with this provision may result in disqualification of your Submission from the RFQ process or, if the City becomes aware of your breach of this provision after the RFP has been issued, disqualification from the RFP process.

**B7. CONFIDENTIALITY AND PRIVACY**

- B7.1 Information provided to a Proponent by the City or acquired by a Proponent by way of further enquiries or through investigation is confidential. Such information shall not be used or disclosed in any way without the prior written authorization of the City. The Proponent shall not make any statement of fact or opinion regarding any aspect of the RFQ and any subsequent Submission to the media or any member of the public without the prior written authorization of the City.
- B7.2 The protection of personal information and privacy will be fundamental aspects of the Project. Proponents shall comply with all applicable privacy legislation, including but not limited to the Personal Information Protection and Electronic Documents Act (Canada) ("PIPEDA"). In

addition, Proponents are advised that the City is subject to The Freedom of Information and Protection of Privacy Act (Manitoba) ("FIPPA") and that the Contractor will be expected to comply with the obligations imposed upon the City pursuant to FIPPA.

B7.3 To the extent permitted, the City shall treat all Submissions as confidential. However, the Proponent is advised that any information contained in any Submission may be released if required by City policy or procedures, by FIPPA, by other authorities having jurisdiction, or by law.

B7.4 All Qualification Submissions submitted to the City will be kept in confidence with the City for the sole purposes of evaluating and developing the best possible strategic option for the City. Qualification Submissions will become the property of the City. The City will have the right to make copies of all Submissions for its internal review process and to provide such copies to its staff and/or external advisors and representatives.

B7.5 All information will become and remain the property of the City; none will be returned. If the application contains any proprietary or trade secret information, said information must be indicated as such.

#### **B8. NON-DISCLOSURE**

B8.1 Proponents must not disclose any details pertaining to their RFQ and the selection process in whole or in part to anyone not specifically involved in their Submission, without the prior written approval of the City. Proponents shall not issue a news release or other public announcement pertaining to details of their Qualification Submission or the selection process without the prior written approval of the City.

B8.2 Proponents are advised that an attempt on the part of any Proponent or any of its employees, agents, contractors or representatives to contact any members of City Council or their staff or any member of City Administration other than the Contract Administrator with respect to this RFQ solicitation, may lead to disqualification.

#### **B9. NO COLLUSION**

B9.1 Upon making a Submission to this RFQ, each Proponent shall declare that they have not participated in any collusive scheme or combine.

B9.2 Proponents must ensure that their participation in this RFQ is conducted without collusion or fraud on their part or any of their team. Proponents and their team members shall not engage in discussions or other communications with any other Proponents or their team members regarding the preparation or submission of their responses to this RFQ. Breach of this provision may result in disqualification from the RFQ process or, if the City becomes aware of your breach of this provision after the RFP has been issued, from the RFP process.

#### **B10. NO LOBBYING**

B10.1 Any form of political or other lobbying whatsoever in relation to the Project or with a view to influencing the outcome of this RFQ process is strictly prohibited. Failure to comply with this provision may result in disqualification from the RFQ process or, if the City becomes aware of your breach of this provision after the RFP has been issued, disqualification from the RFP process.

### **SUBMISSION INSTRUCTIONS**

#### **B11. SUBMISSION DEADLINE**

B11.1 The Submission Deadline is 4:00 p.m. Winnipeg time, January 15, 2009.

- B11.2 The Contract Administrator or the Manager of Materials may extend the Submission Deadline by issuing an addendum at any time prior to the time and date specified in B11.1.
- B11.3 Qualification Submissions will not be opened publicly.
- B11.4 Qualification Submissions determined by the Manager of Materials to have been received later than the Submission Deadline will not be accepted and will be returned unopened.
- B11.5 The Qualification Submission should be submitted enclosed and sealed in an envelope clearly marked with the RFQ number and the Proponent's name and address.
- B11.6 Qualification Submissions submitted by facsimile transmission (fax) or internet electronic mail (e-mail) will not be accepted.
- B11.7 Qualification Submissions shall be submitted to:  
The City of Winnipeg  
Corporate Finance Department  
Materials Management Division  
185 King Street, Main Floor  
Winnipeg MB R3B 1J1

## **B12. QUALIFICATION SUBMISSION**

- B12.1 The Qualification Submission should consist of the following components:
- (a) Form A: Request for Qualification Application (Section A);
  - (b) Form B: Qualification Questionnaire.
- B12.2 All requirements of the RFQ should be fully completed or provided, and submitted by the Proponent no later than the Submission Deadline, with all required entries made clearly and completely to constitute a responsive RFQ.
- B12.3 Proponents are advised that inclusion of terms and conditions inconsistent with the RFQ document will be evaluated in accordance with B15.
- B12.4 All Submissions received in response to this RFQ will be kept in confidence with the sole purposes of evaluating and developing the best possible strategic option for the City.
- B12.5 Submissions and the information they contain will be the property of the City upon receipt. No Submissions will be returned.
- B12.6 The City reserves the right to make additional copies of all Submissions for its internal review process and to provide such copies to its staff and external advisors.

## **B13. FORM A: REQUEST FOR QUALIFICATION APPLICATION**

- B13.1 Further to B12.1(a), the Proponent shall complete Form A: Request for Qualifications Application, making all required entries.
- B13.2 Paragraph 2 of Form A: Request for Qualifications Application shall be completed in accordance with the following requirements:
- (a) if the Proponent is a sole proprietor carrying on business in his own name, his name shall be inserted;
  - (b) if the Proponent is a partnership, the full name of the partnership shall be inserted;
  - (c) if the Proponent is a corporation, the full name of the corporation shall be inserted;
  - (d) if the Proponent is carrying on business under a name other than his own, the business name and the name of every partner or corporation who is the owner of such business name shall be inserted.

- B13.2.1 If the Submission is submitted jointly by two or more persons, each and all such persons shall identify themselves in accordance with B13.2.
- B13.3 In Paragraph 3 of Form A: Request for Qualifications Application, the Proponent shall identify a contact person who is authorized to represent the Proponent for purposes of this RFQ.
- B13.4 Paragraph 9 of Form A: Request for Qualification Application should be signed in accordance with the following requirements:
- (a) if the Proponent is sole proprietor carrying of business in his own name, it shall be signed by the Proponent;
  - (b) if the Proponent is a partnership, it shall be signed by the partner or partners who have authority to sign for the partnership;
  - (c) if the Proponent is a corporation, it shall be signed by its duly authorized officer or officers and the corporate seal, if the corporation has one, should be affixed;
  - (d) if the Proponent is carrying on business under a name other than his own, it shall be signed by the registered owner of the business name or by the registered owner's authorized officials if the owner is a partnership or a corporation.
- B13.5 The name and official capacity of all individuals signing Form A: Request for Qualification Application should be printed below such signatures.
- B13.6 All signatures should be original.
- B13.7 If a Submission is submitted jointly by two or more persons, the word "Proponent" shall mean each and all such persons, and the undertakings, covenants and obligations of such joint Proponents in the Submission, shall be both jointly and several.

#### **B14. SUBSTITUTIONS**

- B14.1 If, following your Submission, you become aware that any Persons identified to participate in this Project will be unable or is likely to be unable to participate on this Project, you must immediately advise the Contract Administrator and indicate your proposed substitute Person. Failure to do so may result in disqualification of your Submission from the RFQ process or, if the City becomes aware of your breach of this provision after the Bid Opportunity has been issued, from the Bid Opportunity process.

#### **B15. NON-CONFORMING SUBMISSIONS**

- B15.1 Notwithstanding B12.1, with the exception of B11.4, if a Proponent's Submission is not strictly in accordance with any provision of this RFQ, the City may, at its option:
- (a) waive the non-conformance if, in the City's opinion, the non-conformance is immaterial; or
  - (b) reject the Submission as non-responsive if, in the City's opinion, the non-conformance is material.
- B15.1.1 If the non-conformance is an omission, the City may, at its discretion, give the Proponent up to five (5) Business Days to supply the omitted material.
- B15.2 If the requested information is not submitted by the time specified in B15.1.1, the Submission will be determined to be non-responsive.

#### **B16. CLARIFICATIONS REQUESTED BY THE CITY**

- B16.1 The Proponent shall be prepared to submit, within three (3) Business Days of a request by the Contract Administrator, proof satisfactory to the Contract Administrator of the qualifications of the Proponent and of any proposed Subcontractor.

B16.2 The Proponent shall provide, on the request of the Contract Administrator, full access to any of the Proponent's equipment and facilities to confirm, to the Contract Administrator's satisfaction, that the Proponent's equipment and facilities are adequate to perform the Work.

**B17. QUALIFICATION EVALUATION**

B17.1 The Qualification Submission shall be complete, in the correct format, and in accordance with the requirements contained herein. All applicable portions of the forms shall be completed. If the space provided does not suffice, the Applicant shall provide additional attachments as necessary. Qualification Submissions failing to clearly present all the requested information or failing to be in the format requested shall be considered non-responsive and may be cause for rejection.

B17.2 The Applicant's Qualification Submission will be evaluated based on the information provided by the Applicant in his Qualification Submission and the Applicant's ability to perform work of a similar size, nature and scope as the Work specified in C2 as supported by his Qualification Submission.

B17.3 Only successful Applicants that have submitted a Qualification Submission in response to this RFQ shall be included as pre-qualified bidders for the Winnipeg Water Treatment project for supply, installation, and programming of electronic security systems, (hardware and software), and associated electrical, civil and mechanical work necessary for completion of the installation.

**B18. PROPONENT'S COSTS AND EXPENSES**

B18.1 Proponents are solely responsible for their own costs and expenses in preparing and submitting a Qualification Submission and participating in the RFQ, including the provision of any additional information or attendance at meetings.

**B19. NO CONTRACT**

B19.1 By submitting a Qualification Submission and participating in the process as outlined in this document, Proponents expressly agree that no contract of any kind is formed under, or arises from this RFQ, and that no legal obligations will arise. The City will have no obligation to enter into negotiations or a Contract with a Proponent, even though one or all of the Proponents are determined to be responsible and qualified, and the Submissions are determined to be responsive.

B19.2 The City reserves the right and the full power to give notice in writing of any change to its Contract Administrator, amend any dates, schedules, limits and Scope of Work and any contract awarded, or to reject any and all Submissions, to launch a new or amended procurement process, or to decide that it will not issue the RFP, without incurring any liability in respect of costs or damages incurred by any Proponent or any member of a private sector team.

B19.3 Without limiting the generality of the foregoing, the City reserves the right and the full power to amend or cancel this RFQ, the procurement process or the Project at any time.

B19.4 If the City proceeds to request a more detailed Submission, only to Proponents determined to be qualified under the RFQ process, the City will have no obligation to award a Contract where:

- (a) only one Submission is received; or
- (b) in the judgment of the City, the interests of the City would best be served by not entering into a Contract.

B19.5 The City reserves the right to disqualify any Proponent whose Submission, in the opinion of the City, contains false or misleading information.

B19.6 The Applicant will be notified by mail regarding the acceptability of their Qualification Submission.

## **PART C - TECHNICAL REQUIREMENTS**

### **C1. INTRODUCTION**

C1.1 The Work contemplated consists generally of the supply and installation of security hardware and software, in the form of access control, CCTV, and digital video computer hardware and software, and the programming, configuration, and integration of these systems resulting in a complete, fully functional Security Management System. The SMS will be installed (by the Contractor) at the City's new WTP Facility. The installation of the system will include the necessity for conduit and wiring, as well as some civil and mechanical work required of a fully functional system, such as the installation of poles and pole foundations for cameras, and appropriate locking mechanisms on doors.

### **C2. DESCRIPTION OF SECURITY SYSTEM**

C2.1 The SMS shall be a distributed architecture system that provides fully integrated access control, CCTV, digital video, intrusion detection, and intercom capabilities. The CCTV shall be integrated in such a way that PTZ cameras will respond to commands that emanate from the SMS control panels. The SMS shall additionally provide command and control to the digital video Management System in such a way that video frame rates, storage, resolution, and distribution can be programmed as required by pre-determined business rules. The SMS control panels shall be connected to an existing Site wide fibre optic cable network using Ethernet switches provided by the Contractor, two strands of the fibre cable shall be allocated for use by the SMS system.

C2.2 The SMS will incorporate over 40 card readers located in different buildings, requiring distributed intelligent controllers. There will be over 85 discrete alarm points that are not card reader controlled. CCTV will consist of approximately 40 cameras, including PTZ, fixed, and thermal; the CCTV will additionally require infrared lighting in some areas. The digital video will be carried over fibre to distributed recording devices. Analytics / Intelligent video will be a necessity for many of the cameras. The system shall be administered, monitored, and controlled at several locations within the Site on networked workstations. Servers and other rack mounted head end equipment will be located in a dedicated server room. All systems will be required to have on board battery back up where appropriate, and will be connected to the facility back up generator power.

### **C3. CRITICAL STAGES**

C3.1 If the City awards a contract for the supply and installation of the SMS for the Winnipeg Water Treatment Program, then the critical stages of the Work are expected to be as follows:

- (a) April 1, 2009: Award of the Contract by the City;
- (b) May 31, 2009: Contractor to complete HDS, FDS and SDS;
- (c) June 1, 2009: commence electrical, civil and mechanical work on Site;
- (d) June 30, 2009: Contractor to complete all fabrication and factory testing and to begin the delivery of the HDS components to the WTP Site;
- (e) July 31, 2009: Complete Performance Verification;
- (f) August 31, 2009: Total Performance.

## **PART D - ATTACHMENTS**

### **D1. ATTACHMENTS**

D1.1 The following are attached for the Applicant's information:

Attachments.

- Sample Form G1: Bid Bond and Agreement to Bond
- Sample Form G2: Irrevocable Standby Letter of Credit and Undertaking
- Sample Form H1: Performance Bond
- Sample Form H2: Irrevocable Standby Letter of Credit
- The City of Winnipeg General Conditions for Construction

**SAMPLE FORM G1: BID BOND AND AGREEMENT TO BOND**  
(Page 1 of 2)

**BID BOND**

KNOW ALL MEN BY THESE PRESENTS THAT

\_\_\_\_\_ (hereinafter called the "Principal") and

\_\_\_\_\_ (hereinafter called the "Surety"), are held and firmly bound unto **THE CITY OF WINNIPEG** (hereinafter called the "Obligee") in the sum of ten percent (10%) of the Total Bid Price set out in the Bid hereinafter described, for the payment of which sum the Principal and Surety bind themselves, their heirs, executors, administrators, successors and assigns, jointly and severally, firmly by these presents.

WHEREAS the Principal has submitted a Bid to the Obligee dated the

\_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_ for

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WINNIPEG WATER TREATMENT PROGRAM - REQUEST FOR QUALIFICATIONS FOR THE SUPPLY AND INSTALLATION OF SECURITY SYSTEMS

as more fully set out in the Request for Qualification.

NOW THEREFORE the condition of this obligation is such that if the Bid of the Principal is not accepted, or if said Bid is accepted and the Principal, in accordance with the terms of the Bid, enters into a Contract with the said Obligee and furnishes the required performance security for guaranteeing the faithful performance of the Contract, this obligation shall be void, but otherwise shall remain in full force and effect.

IN WITNESS WHEREOF the Principal and Surety have signed and sealed this bond the

\_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_ .

SIGNED AND SEALED  
in the presence of:

\_\_\_\_\_  
(Witness)

\_\_\_\_\_  
(Name of Principal)

Per: \_\_\_\_\_ (Seal)

Per: \_\_\_\_\_

\_\_\_\_\_  
(Name of Surety)

By: \_\_\_\_\_ (Seal)  
(Attorney-in-Fact)

**SAMPLE FORM G1: BID BOND AND AGREEMENT TO BOND**  
(Page 2 of 2)

**AGREEMENT TO BOND**  
(to be attached to and to form part of Bid Bond)

The Surety on the attached Bid Bond hereby undertakes and agrees with **THE CITY OF WINNIPEG** to become bound as Surety for the Principal,

\_\_\_\_\_ of  
(Name of Bidder)

\_\_\_\_\_ of  
(Place)

the Bidder to you on \_\_\_\_\_, 20\_\_\_\_ for

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in an amount equal to fifty percent (50%) of the Contract Price for the due and proper performance of the Work shown and described in the Request for Qualifications, if our Principal's Bid is accepted by you, such Performance Bond to be maintained and continue in full force and effect until the expiration of the warranty period. The Performance Bond shall be in the form specified in the Request for Qualifications.

It is a condition that this Agreement to Bond shall become null and void if the Performance Bond mentioned above is not required from our Principal within sixty (60) Calendar Days following the Submission Deadline.

AND IT IS HEREBY DECLARED AND AGREED that the Surety shall be liable as Principal, and that nothing of any kind or matter whatsoever that will not discharge the Principal shall operate as a discharge or release of liability of the Surety, any law or usage relating to the liability of Sureties to the contrary notwithstanding.

SIGNED AND SEALED this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_ .

\_\_\_\_\_  
(Name of Surety)

By: \_\_\_\_\_ (Seal)  
(Attorney-in-Fact)

**SAMPLE FORM G2: IRREVOCABLE STANDBY LETTER OF CREDIT AND UNDERTAKING  
(BID SECURITY)**  
(Page 1 of 2)

\_\_\_\_\_  
(Date)

The City of Winnipeg  
Corporate Finance Department  
Materials Management Branch  
185 King Street, Main Floor  
Winnipeg MB R3B 1J1

RE: BID SECURITY – RFQ NO. 820-2008

WINNIPEG WATER TREATMENT PROGRAM - REQUEST FOR QUALIFICATIONS FOR THE  
SUPPLY AND INSTALLATION OF SECURITY SYSTEMS

Pursuant to the request of and for the account of our customer,

\_\_\_\_\_  
(Name of Bidder)

\_\_\_\_\_  
(Address of Bidder)

WE HEREBY ESTABLISH in your favour our irrevocable Standby Letter of Credit for a sum not exceeding  
in the aggregate

\_\_\_\_\_  
Canadian dollars.

This Standby Letter of Credit may be drawn on by you at any time and from time to time upon written demand for payment made upon us by you. It is understood that we are obligated under this Standby Letter of Credit for the payment of monies only and we hereby agree that we shall honour your demand for payment without inquiring whether you have a right as between yourself and our customer to make such demand and without recognizing any claim of our customer or objection by the customer to payment by us.

The amount of this Standby Letter of Credit may be reduced from time to time only by amounts drawn upon it by you or by formal notice in writing given to us by you if you desire such reduction or are willing that it be made.

Partial drawings are permitted.

We engage with you that all demands for payment made within the terms and currency of this Standby Letter of Credit will be duly honoured if presented to us at:

\_\_\_\_\_  
(Address)

and we confirm and hereby undertake to ensure that all demands for payment will be duly honoured by us.

**SAMPLE FORM G2: IRREVOCABLE STANDBY LETTER OF CREDIT AND UNDERTAKING  
(BID SECURITY)**  
(Page 2 of 2)

All demands for payment shall specifically state that they are drawn under this Standby Letter of Credit.

This Standby Letter of Credit will expire on

if our customer's Bid is not accepted, and if accepted, when our customer has entered into a Contract with you and has furnished the required performance security for guaranteeing the faithful performance of the Contract.

This Standby Letter of Credit may not be revoked or amended without your prior written approval.

WE HEREBY UNDERTAKE and agree to provide in your favour an irrevocable Standby Letter of Credit in an amount equal to fifty percent (50%) of the Contract Price for the due and proper performance of the Work shown and described in the Request for Qualifications, if our customer's Bid is accepted by you. Such Standby Letter of Credit shall be maintained and continue in full force and effect until the expiration of the warranty period. The Standby Letter of Credit shall be in the form specified in the Request for Qualification.

This credit is subject to the Uniform Customs and Practice for Documentary Credit (1993 Revision), International Chamber of Commerce Publication Number 500.

\_\_\_\_\_  
(Name of bank or financial institution)

Per: \_\_\_\_\_  
(Authorized Signing Officer)

Per: \_\_\_\_\_  
(Authorized Signing Officer)

**SAMPLE FORM H1: PERFORMANCE BOND**

KNOW ALL MEN BY THESE PRESENTS THAT

\_\_\_\_\_ ,  
(hereinafter called the "Principal"), and

\_\_\_\_\_ ,  
(hereinafter called the "Surety"), are held and firmly bound unto **THE CITY OF WINNIPEG** (hereinafter called the "Obligee"), in the sum of

\_\_\_\_\_ dollars (\$\_\_\_\_\_)

of lawful money of Canada to be paid to the Obligee, or its successors or assigns, for the payment of which sum the Principal and the Surety bind themselves, their heirs, executors, administrators, successors and assigns, jointly and severally, firmly by these presents.

WHEREAS the Principal has entered into a written contract with the Obligee dated the

\_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, for:

RFQ NO. 820-2008

WINNIPEG WATER TREATMENT PROGRAM – REQUEST FOR QUALIFICATIONS FOR THE SUPPLY AND INSTALLATION OF SECURITY SYSTEMS

which is by reference made part hereof and is hereinafter referred to as the "Contract".

NOW THEREFORE the condition of the above obligation is such that if the Principal shall:

- (a) carry out and perform the Contract and every part thereof in the manner and within the times set forth in the Contract and in accordance with the terms and conditions specified in the Contract;
- (b) perform the Work in a good, proper, workmanlike manner;
- (c) make all the payments whether to the Obligee or to others as therein provided;
- (d) in every other respect comply with the conditions and perform the covenants contained in the Contract; and
- (e) indemnify and save harmless the Obligee against and from all loss, costs, damages, claims, and demands of every description as set forth in the Contract, and from all penalties, assessments, claims, actions for loss, damages or compensation whether arising under "The Workers Compensation Act", or any other Act or otherwise arising out of or in any way connected with the performance or non-performance of the Contract or any part thereof during the term of the Contract and the warranty period provided for therein;

THEN THIS OBLIGATION SHALL BE VOID, but otherwise shall remain in full force and effect. The Surety shall not, however, be liable for a greater sum than the sum specified above.

AND IT IS HEREBY DECLARED AND AGREED that the Surety shall be liable as Principal, and that nothing of any kind or matter whatsoever that will not discharge the Principal shall operate as a discharge or release of liability of the Surety, any law or usage relating to the liability of Sureties to the contrary notwithstanding.

IN WITNESS WHEREOF the Principal and Surety have signed and sealed this bond the

\_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_ .

SIGNED AND SEALED  
in the presence of:

\_\_\_\_\_

(Witness)

\_\_\_\_\_  
(Name of Principal)

Per: \_\_\_\_\_ (Seal)

Per: \_\_\_\_\_

\_\_\_\_\_  
(Name of Surety)

By: \_\_\_\_\_ (Seal)  
(Attorney-in-Fact)

**SAMPLE FORM H2: IRREVOCABLE STANDBY LETTER OF CREDIT  
(PERFORMANCE SECURITY)**

\_\_\_\_\_  
(Date)

The City of Winnipeg  
Corporate Services Department  
Legal Services Division  
185 King Street, 3rd Floor  
Winnipeg MB R3B 1J1

RE: PERFORMANCE SECURITY – RFQ NO. 820-2008

WINNIPEG WATER TREATMENT PROGRAM - REQUEST FOR QUALIFICATIONS FOR THE  
SUPPLY AND INSTALLATION OF SECURITY SYSTEMS

Pursuant to the request of and for the account of our customer,

\_\_\_\_\_  
(Name of Contractor)

\_\_\_\_\_  
(Address of Contractor)

WE HEREBY ESTABLISH in your favour our irrevocable Standby Letter of Credit for a sum not exceeding in the aggregate

\_\_\_\_\_ Canadian dollars.

This Standby Letter of Credit may be drawn on by you at any time and from time to time upon written demand for payment made upon us by you. It is understood that we are obligated under this Standby Letter of Credit for the payment of monies only and we hereby agree that we shall honour your demand for payment without inquiring whether you have a right as between yourself and our customer to make such demand and without recognizing any claim of our customer or objection by the customer to payment by us.

The amount of this Standby Letter of Credit may be reduced from time to time only by amounts drawn upon it by you or by formal notice in writing given to us by you if you desire such reduction or are willing that it be made.

Partial drawings are permitted.

We engage with you that all demands for payment made within the terms and currency of this Standby Letter of Credit will be duly honoured if presented to us at:

\_\_\_\_\_  
(Address)

and we confirm and hereby undertake to ensure that all demands for payment will be duly honoured by us.

All demands for payment shall specifically state that they are drawn under this Standby Letter of Credit.

Subject to the condition hereinafter set forth, this Standby Letter of Credit will expire on

\_\_\_\_\_  
(Date)

It is a condition of this Standby Letter of Credit that it shall be deemed to be automatically extended from year to year without amendment from the present or any future expiry date, unless at least 30 days prior to the present or any future expiry date, we notify you in writing that we elect not to consider this Standby Letter of Credit to be renewable for any additional period.

This Standby Letter of Credit may not be revoked or amended without your prior written approval.

This credit is subject to the Uniform Customs and Practice for Documentary Credit (1993 Revision), International Chamber of Commerce Publication Number 500.

\_\_\_\_\_  
(Name of bank or financial institution)

Per: \_\_\_\_\_  
(Authorized Signing Officer)

Per: \_\_\_\_\_  
(Authorized Signing Officer)

# GENERAL CONDITIONS FOR CONSTRUCTION

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## GENERAL CONDITIONS FOR CONSTRUCTION

### C1. DEFINITIONS

- C1.1 Where used in these General Conditions and in the other documents forming part of the Contract:
- (a) “**Award Authority**” means the authority having the jurisdiction to award the Contract according to the City’s by-laws, policies or procedures;
  - (b) “**Bid**” means the documents and other things, including but not limited to forms contained in the Bid Submission, which must be completed or provided and submitted by the Submission Deadline in order to constitute a responsive offer;
  - (c) “**Bid Opportunity**” means the Bid Submission, the Bidding Procedures, these General Conditions, the Supplemental Conditions, the Specifications, the Drawings and all addenda;
  - (d) “**Bid Submission**” means that portion of the Bid Opportunity by that name which contains forms to be included in the Bid;
  - (e) “**Bidder**” means any person submitting a Bid for the Work;
  - (f) “**Bidding Procedures**” means the portion of the Bid Opportunity by that name which sets out the terms and conditions governing the Bid, and a reference to a section, clause or subclause with the prefix “**B**” designates a section, clause or subclause in that portion of the Bid Opportunity;
  - (g) “**Business Day**” means any Calendar Day, other than a Saturday, Sunday, or a statutory or civic holiday;
  - (h) “**C**” designates a section, clause or subclause in these General Conditions;
  - (i) “**Calendar Day**” means the period from one midnight to the following midnight;
  - (j) “**Change in Work**” means an addition, deletion or modification to the Work as described in the Contract at the time that the Contract is awarded and includes modifications in quantity or nature of Plant, Material or labour, methods, location or work schedule;
  - (k) “**Chief Administrative Officer**” means the City employee holding that office or, if applicable, the successor to the authority or responsibility of such office;
  - (l) “**City**” means The City of Winnipeg as continued under The City of Winnipeg Charter, Statutes of Manitoba 2002, c. 39, and any subsequent amendments thereto;
  - (m) “**City Solicitor**” means the City employee holding that office or, if applicable, the successor to the authority or responsibility of such office;
  - (n) “**Contract**” means the combined documents consisting of the agreement prepared and forwarded to the Contractor pursuant to C4 and all schedules thereto (consisting of the Bid Opportunity, and any documents and Drawings referred to and incorporated therein) together with any submissions required to be made by the Contractor after award, and all amendments to the foregoing;
  - (o) “**Contract Administrator**” means the person designated as such in the Supplemental Conditions;
  - (p) “**Contract Price**” means the price agreed upon for the Work and any adjustments thereto which may be required or agreed to pursuant to the Contract;
  - (q) “**Contractor**” means the person undertaking the performance of the Work under the terms of the Contract;
  - (r) “**Council**” means the Council of The City of Winnipeg;

- (s) “**Drawings**” means drawings which show the nature and scope of the Work to be performed and which have been prepared or approved by the Contract Administrator and are referred to in the Contract;
- (t) “**Manager of Materials**” means the City employee holding that office or, if applicable, the successor to the authority or responsibility of such office;
- (u) “**Material**” means any things, including goods, parts and equipment, which are to form part of the permanent Work;
- (v) “**Person**” means an individual, firm, partnership, association or corporation, or any combination thereof, and includes heirs, administrators, executors or legal representatives of a person;
- (w) “**Plant**” means any things brought to or constructed upon the Site by the Contractor for the performance of the Work, including goods, tools, equipment, consumable supplies, fuel, power and utility connections therefor, but does not include Material;
- (x) “**Shop Drawings**” means all drawings, diagrams, illustrations, schedules, performance charts, brochures and other data which are prepared by the Contractor, Subcontractor, manufacturer, supplier or distributor and which illustrate some portion of the Work;
- (y) “**Site**” means the lands and other places, including structures, on, under, in or through which the Work is to be performed;
- (z) “**Specifications**” means the portion of the Bid Opportunity by that name which sets out the written description of the physical or functional characteristics of the Work, or any part thereof, including without limitation any requirement for testing or inspection, and a reference to a section, clause or subclause with the prefix “**E**” designates a section, clause or subclause in that portion of the Bid Opportunity;
- (aa) “**Subcontractor**” means a person contracting with the Contractor for the performance of a part or parts of the Work or for the furnishing of Plant or Material and includes a Subcontractor’s subcontractor;
- (bb) “**Submission Deadline**” means the time and date set out in the Bidding Procedures for final receipt of Bids;
- (cc) “**Substantial Performance**” shall have the meaning attributed to it in The Builders' Liens Act (Manitoba), or any successor legislation thereto;
- (dd) “**Supplemental Conditions**” means the portion of the Bid Opportunity by that name which sets out terms and conditions specific to the Contract, and supplements or modifies the General Conditions, and a reference to a section, clause or subclause with the prefix “**D**” designates a section, clause or subclause in that portion of the Bid Opportunity;
- (ee) “**Total Performance**” means that the entire Work, except those items arising from the provisions of C13, have been performed in accordance with the Contract;
- (ff) “**Work**” means the carrying out and the doing of all things, whether of a temporary or permanent nature, that are to be done by the Contractor pursuant to the Contract and, without limiting the generality of the foregoing, includes the furnishing of all Plant, Material, labour and services necessary for or incidental to the fulfilment of the requirements of the Contract, including all Changes in Work which may be ordered as herein provided;
- (gg) “**Working Day**” means any Calendar Day, other than a Saturday, Sunday, or a statutory or civic holiday, on which the Contract Administrator determines atmospheric and Site conditions are such that the Contractor is able to work at least seven (7) hours during the period between 7:00 a.m. Winnipeg time or the time the Contractor's operations normally commence, whichever is the earlier, and 7:00 p.m. Winnipeg time.

## **C2. INTERPRETATION**

- C2.1 Where the Contractor consists of more than one person, the obligations of the Contractor shall be joint and several.
- C2.2 Wherever the singular or masculine is used, it shall be construed to mean the plural or the feminine or the neuter as the context may reasonably require.
- C2.3 Headings, titles and margin notes in the Contract are inserted for convenience only and shall not be considered in any construction or interpretation of the Contract.
- C2.4 In the event of conflicts between portions of the Contract, the following shall apply:
- (a) the executed agreement between the City and Contractor shall govern over all schedules or other documents forming part of the Contract;
  - (b) the Supplemental Conditions shall govern over the General Conditions;
  - (c) the General Conditions shall govern over Specifications;
  - (d) Specifications of a later date shall govern over Specifications of an earlier date;
  - (e) Specifications shall govern over Drawings;
  - (f) Drawings of a later date shall govern over Drawings of an earlier date;
  - (g) Drawings of larger scale shall govern over those of smaller scale;
  - (h) figured dimensions shown on a Drawing shall govern over scaled or implied dimensions on the same Drawing; and
  - (i) Drawings shall govern over the Bid.
- C2.5 The various portions of the Contract are intended to be read together and complement each other, and what is called for by any one shall be deemed to be called for by all.
- C2.6 The City and the Contractor acknowledge and agree that the Contractor is an independent contractor and neither the Contractor, nor any officer, servant or agent of the Contractor, shall be deemed to be an employee, agent, representative or servant of the City.
- C2.7 The Contract shall constitute the entire agreement between the City and the Contractor. There are no representations, warranties, covenants or agreements other than those contained in the Contract.

## **C3. DECLARATIONS**

### **Site Investigation**

- C3.1 The Contractor declares that, in bidding for the Work and in entering into the Contract, he:
- (a) has investigated the Site, the nature of the Work to be done and all local conditions that might affect his Bid or his performance of the Work, including:
    - (i) the location of any utility which can be determined from the records or other information available at the offices of any public authority or person, including a municipal corporation and any board or commission thereof, having jurisdiction or control over the utility;
    - (ii) the nature of the surface and subsurface conditions at the Site;
    - (iii) the location, nature, quality or quantity of the materials to be removed or to be employed in the performance of the Work;
    - (iv) the nature, quality or quantity of the Plant needed to perform the Work;
    - (v) all matters concerning access to the Site, power supplies, location of existing services, utilities or materials necessary for the completion of the Work; and

- (vi) all other matters which could in any way affect the performance of the Work; or
  - (b) has not investigated the Site, the nature of the Work to be done or local conditions;
- and, in either event, assumes all risk for conditions now existing or arising in the course of the Work which have been or could have been determined through such investigation, and that he did not and does not rely upon information furnished by the City or any of its servants or agents other than information furnished in writing for or in connection with the Bid or the Contract by the Contract Administrator.

**Good Faith**

- C3.2 The Contractor declares that, in bidding for the Work and in entering into the Contract, he:
- (a) does so in good faith and that to the best of his knowledge no member of Council or any officer or employee of the City has any pecuniary interest, direct or indirect, in the Contract which has not been disclosed to and approved by the authority having jurisdiction;
  - (b) has not participated in any collusive scheme or combine;
  - (c) shall forfeit all claims under the Contract as well as refund to the City any monies paid to him, beyond his actual proven expenses for Work done, if C3.2(a) or (b) are shown to be false.

**C4. EXECUTION OF CONTRACT**

- C4.1 The Contractor shall execute the Contract in the manner stipulated by the City Solicitor and return the Contract, within seven (7) Calendar Days of receipt of the Contract, to the City Solicitor at the address indicated in the Supplemental Conditions.
- C4.2 If the Contractor does not execute and return the Contract as set out in C4.1, the Contractor may be deemed by the City to have abandoned the Contract, whereupon the acceptance of the offer by the City shall be null and void, and the City shall be entitled to retain the bid security accompanying the Bid as liquidated damages.
- C4.3 No payments will be made by the City to the Contractor until the Contractor has executed and returned the Contract as set out in C4.1.

**C5. AUTHORITY OF CONTRACT ADMINISTRATOR**

**General**

- C5.1 The Contract Administrator shall be the City's representative throughout the duration of the Contract and shall have authority to act on behalf of the City to the extent expressly provided for in the Contract.

**Contract**

- C5.2 The Contract Administrator shall interpret or clarify the Contract or any part thereof which appears indefinite, not clear or contradictory to the Contractor.
- C5.3 The Contract Administrator may at any time correct errors or omissions in the Contract or issue additional Drawings or Specifications further detailing, explaining or modifying the Work. Such Drawings or Specifications shall either supplement or supersede those forming part of the Contract at the time the Contract was executed.

### **Inspection**

- C5.4 The Contract Administrator may examine or inspect the Work or any part thereof and determine whether the Work meets the requirements of the Contract. The Contract Administrator may reject the Work or any part thereof which does not meet the requirements of the Contract.

### **Control**

- C5.5 The Contract Administrator may give instructions or orders to the Contractor to the extent necessary to ensure that the Work is performed in an orderly manner and meets the requirements of the Contract.
- C5.5.1 The Contract Administrator may give instructions or orders to the Contractor's supervisor on the Site and such instructions or orders shall be deemed to have been given to the Contractor.
- C5.6 The Contract Administrator may order the Contractor to remove from the Work any person employed or retained by the Contractor or a Subcontractor in the performance of the Work who the Contract Administrator determines is incompetent, negligent or guilty of misconduct.
- C5.7 The Contract Administrator may order the Contractor to alter or improve his methods, to increase or improve his Plant, to furnish additional or more suitable Material, or to employ additional or more qualified labour if, at any time, the Contract Administrator determines that:
- (a) the Work is not being, or will likely not be, constructed satisfactorily; or
  - (b) progress is not being, or will likely not be, maintained in accordance with the work schedule.
- C5.8 The Contract Administrator may order the Contractor to stop work or to take such remedial measures as the Contract Administrator considers necessary, if, at any time, the Contract Administrator determines that:
- (a) a danger to life or to property exists; or
  - (b) such stoppage or remedial measures may be necessary to ensure the performance of the Work in accordance with the requirements of the Contract.
- C5.9 Neither the giving of any orders by the Contract Administrator nor the carrying out of such orders by the Contractor shall entitle the Contractor to any extra payment, nor relieve the Contractor of his responsibilities under C6.
- C5.10 The Contract Administrator shall determine if and when Substantial Performance and Total Performance are achieved and shall certify the dates thereof.
- C5.11 If the Contractor disputes a determination or order of the Contract Administrator on any of the foregoing matters, the Contractor shall act in accordance with the Contract Administrator's determination or order. The Contractor may concurrently appeal the determination or order of the Contract Administrator to the Chief Administrative Officer as provided for in C21.

## **C6. RESPONSIBILITIES OF CONTRACTOR**

### **General**

- C6.1 Except as otherwise provided in the Contract, the Contractor shall be solely responsible for construction means, methods, techniques, sequences and procedures, and for coordinating the various parts of the Work so as to ensure its proper completion in a sound and workmanlike manner, in all respects in strict conformity with the Contract and in accordance with the approved work schedule.

- C6.2 The Contractor shall have complete control over the methods of performing the Work and shall direct and supervise the Work so as to ensure conformance with the Contract.
- C6.3 The Contractor shall provide all Plant, Material, labour, services and incidentals necessary for the performance of the Work.
- C6.4 The Contractor shall be responsible for any Work not explicitly set out in the Contract but which may be reasonably implied for the proper completion of the Work.
- C6.5 Unless otherwise specified in the Specifications, all Material shall be new, fit for the purpose intended and shall meet or exceed the kind, quality and quantity of same specified in the Contract. If required, the Contractor shall provide evidence satisfactory to the Contract Administrator that the foregoing requirements have been met.

### **Contract**

- C6.6 The Contractor shall perform, complete and maintain the Work in strict accordance with the Contract.
- C6.7 If the Contract or any part thereof appears indefinite, not clear or contradictory, the Contractor shall refer such feature or features to the Contract Administrator for interpretation or clarification.
- C6.8 The Contractor shall obey, perform and comply with the Contract Administrator's orders, instructions, rules and procedures with respect to the Work or concerning the conduct thereof, promptly, efficiently and to the satisfaction of the Contract Administrator and he will assist other contractors, their employees and agents to do the same.
- C6.9 The Contractor shall be responsible for conveying the interpretation or clarification of the Contract, as given by the Contract Administrator, to Subcontractors.
- C6.10 The Contractor shall prepare and submit all drawings, schedules, documents or information required by the Contract and such other drawings, schedules, documents or information as may reasonably be required by the Contract Administrator.
- C6.11 The Contractor shall keep one copy of the Contract and any other approved drawings, schedules, documents or other information at the Site, and shall make them available at all reasonable times for the inspection and use of the Contract Administrator.

### **Laws and Regulations**

- C6.12 The Contractor shall comply with all laws, by-laws, ordinances, regulations, codes and orders of authorities having jurisdiction which are or come into force during the performance of the Work and which relate to the Work. Where there are two or more laws, by-laws, ordinances, regulations or codes applicable to the Work, the most restrictive shall apply.
- C6.13 The Contractor shall procure approvals, clearances, permits, licences and certificates required by law or by any by-laws, ordinances, regulations, codes or orders of the authorities having jurisdiction for the performance of the Work, but this shall not include the obtaining of permanent easements or rights of servitude.
- C6.14 The Contractor shall give any notices required by law or by by-laws, ordinances, regulations, codes or orders of the authorities having jurisdiction and which relate to the Work.
- C6.15 The Contractor shall be registered with the Workers Compensation Board of Manitoba, shall provide and maintain workers compensation coverage throughout the term of the Contract, and shall provide the Contract Administrator with evidence thereof upon request.

C6.16 The Contractor shall not be responsible for verifying that the Contract complies with the applicable laws, by-laws, ordinances, regulations, codes and orders relating to the Work.

#### **Patents and Royalties**

C6.17 If the Contract requires or the Contractor desires the use of any design, device, material or process covered by letters patent, copyright, trademark or trade name, the Contractor shall provide for such use by suitable legal agreement with the owner or licensee.

C6.17.1 Upon request of the Contract Administrator, the Contractor shall provide the City with a copy of the said agreement.

C6.18 If the City or the Contractor is served with a claim or notice of an infringement or alleged infringement of any patent, copyright, trademark or trade name, the party so served shall immediately give notice thereof to the other party.

C6.19 If the City or the Contractor is prevented by injunction from using any design, device, material or process covered by letters patent, copyright, trademark or trade name, the Contractor shall, at his own cost, substitute an equally suitable design, device, material or process, all subject to the prior approval of the Contract Administrator.

#### **Personnel**

C6.20 The Contractor shall provide competent, suitably qualified personnel to perform the Work. He shall at all times maintain good discipline and order at the Site.

C6.21 The Contractor shall employ and keep on the Work, at all times during the performance of the Work, a competent supervisor and assistants, if necessary, acceptable to the Contract Administrator. The supervisor shall represent the Contractor on the Site. The supervisor shall not be replaced without the prior consent of the Contract Administrator unless the supervisor proves to be unsatisfactory to the Contractor and ceases to be in his employ.

C6.22 If the Contract Administrator orders a person to be removed from the Work, the Contractor shall comply forthwith. Any person so removed shall not be re-employed on the Work by the Contractor or by a Subcontractor.

#### **Control**

C6.23 The Contractor must arrange and carry on his Work so as not to conflict with the Work being carried on or to be carried on for the City by other contractors or by the City's employees. If the Contractor finds it difficult to work in harmony with such parties, he shall notify the Contract Administrator promptly.

C6.24 The Contractor shall be solely responsible for construction safety at the Site and for compliance with all laws, rules, regulations and practices required by the applicable construction and safety legislation.

C6.25 The Contractor shall be solely responsible for securing the Site, and any existing facility thereon, and for the proper care and protection of the Work already performed.

C6.26 The Contractor shall do whatever is necessary to ensure that:

- (a) no person, property, right, easement or privilege is injured, damaged or infringed by reason of the Contractor's activities in performing the Work;
- (b) pedestrian and other traffic on any public or private road or waterway is not unduly impeded, interrupted or endangered by the performance or existence of the Work or Plant;
- (c) fire hazards in or about the Work or its Site are eliminated;

- (d) the health and safety of all persons employed in the performance of the Work or otherwise is not endangered by the method or means of its performance;
- (e) adequate medical services are available to all persons employed on the Work or its Site at all times during the performance of the Work;
- (f) adequate sanitation measures are taken and facilities provided with respect to the Work and its Site;
- (g) all survey posts, buoys or control monuments are protected and are not removed, defaced, altered or destroyed; and
- (h) all stakes, buoys and marks placed on the Work or its Site by or under the authority of the Contract Administrator are protected and are not removed, defaced, altered or destroyed.

C6.27 The Contractor shall maintain the Site and the Work in a tidy condition and free from the accumulation of waste and debris, other than that caused by the City or by other contractors.

C6.27.1 Upon attaining Substantial Performance, the Contractor shall remove any Plant and Material not required for the performance of the remaining Work. He shall also remove waste and debris other than that caused by the City or other contractors, and leave the Site and the Work clean and suitable for occupancy by the City unless otherwise specified.

C6.27.2 Total Performance shall not be considered to have been achieved until the Contractor has cleaned up the Site and has removed all Plant, surplus Material, waste and debris, other than that left by the City or other contractors.

C6.28 The Contractor shall perform the Work so as to progress continuously with the Work or any part thereof and in such a manner as to ensure the proper completion of the Work or any part thereof, within the time stipulated.

#### **Subcontractors**

C6.29 The Contractor shall not employ any Subcontractor to whom the Contract Administrator may reasonably object.

C6.29.1 The Contractor agrees that the Subcontractors identified in his Bid, or in any subsequent submission, are the Subcontractors to be used to carry out those parts of the Work noted therein.

C6.29.2 The Contractor shall not add, remove or replace any Subcontractor, or change the part of the Work to be performed by a Subcontractor, without the prior approval of the Contract Administrator.

C6.30 The Contractor, with respect to Work to be performed under subcontract, shall:

- (a) enter into contracts or written agreements with his Subcontractors to require them to perform their work in complete conformance with and subject to the terms and conditions of the Contract; and
- (b) be as fully responsible to the City for acts and omissions of his Subcontractors and of persons directly or indirectly employed by them as for acts and omissions of persons directly employed by him.

C6.31 The Contractor shall incorporate the terms and conditions of the Contract into all subcontract agreements he enters into with his Subcontractors.

C6.32 The Contractor shall make prompt payment to his Subcontractors, his employees or on account of the purchase or rental of Plant or Material.

C6.33 The Contractor shall promptly secure a discharge of a lien or trust claim served upon the City pursuant to The Builders' Liens Act (Manitoba).

## **C7. CHANGES IN WORK**

### **General**

- C7.1 The City shall have the right to order a Change in Work at any time after award of the Contract.
- C7.2 If, at any time after award of the Contract, the Contractor is of the opinion that a Change in Work is necessary to accomplish the result intended by the Contract or if the Contractor considers it desirable that a Change in Work be approved, he shall promptly provide notice thereof to the Contract Administrator, including:
- (a) the reason for the proposed Change in Work;
  - (b) a detailed description of the proposed Change in Work;
  - (c) the Contractor's proposed method(s) to determine the adjustment, if any, in Contract Price pursuant to C7.4.
- C7.2.1 Without limiting the generality of C7.2, if the Contractor observes:
- (a) any substantial difference in the nature of the surface or subsurface conditions at the Site, or the location, nature, quality or quantity of the materials to be removed, from those set out in the Contract; or
  - (b) that the Contract is at variance with any laws, ordinances, rules, regulations or codes of authorities having jurisdiction, or if changes are made to any laws, ordinances, rules, regulations and codes subsequent to the Submission Deadline which require modifications to the Contract;
- the Contractor shall immediately notify the Contract Administrator.
- C7.3 The Contract Administrator shall determine whether a Change in Work is necessary or desirable and whether a corresponding adjustment to the Contract Price is required.
- C7.3.1 If the Contract Administrator determines that no Change in Work is necessary or desirable, he will issue a notice stating his determination.
- C7.3.2 If the Contract Administrator determines that a Change in Work is necessary or desirable but no corresponding adjustment to the Contract Price is required, he will issue a notice approving the Change in Work and stating his determination.
- C7.3.3 If the Contract Administrator determines that a Change in Work is necessary or desirable, which requires a corresponding adjustment to the Contract Price, and he is able to determine such adjustment based on the available information, he shall issue a notice approving the Change in Work and stating his determination regarding the method(s) to be used to determine the adjustment in Contract Price pursuant to C7.4.
- C7.3.4 If the Contract Administrator determines that a Change in Work is necessary or desirable, which requires a corresponding adjustment to the Contract Price, and he requires further information to determine such adjustment, he shall issue a notice stating his determination and requiring the Contractor to submit the Contractor's proposed method(s) to determine the adjustment in Contract Price pursuant to C7.4, and upon receipt and evaluation of such information, he shall issue a notice in accordance with C7.3.3.

### **Valuation of a Change in Work**

- C7.4 The adjustment in Contract Price resulting from a Change in Work shall be determined by one or more of the following methods:
- (a) by estimate in a lump sum;
  - (b) by the unit prices and methods of measurement set out in the Contract or subsequently agreed upon;

- (c) by the actual cost of the Change in Work to the Contractor plus a fixed fee;
  - (d) by the actual cost of the Change in Work to the Contractor plus fifteen percent (15%) on any portion of the Change in Work undertaken by the Contractor's own forces or plus ten percent (10%) on any portion of the Change in Work undertaken by a Subcontractor.
- C7.4.1 For the purposes of C7.4(c) or (d), "actual cost" on any portion of the Change in Work undertaken by the Contractor's own forces shall mean the direct cost of labour plus an allowance for direct supervision and payroll burden (including Employment Insurance, Canada Pension, Payroll Tax, Workers Compensation assessments and vacation pay), purchase or rental of Plant and Material and any other payments made by the Contractor with the prior approval of the Contract Administrator that are necessary for the performance of the Change in Work.
- C7.4.2 For the purposes of C7.4(c) or (d), "actual cost" on any portion of the Change in Work undertaken by a Subcontractor shall mean the amount invoiced by the Subcontractor and paid by the Contractor, net of any discounts and excluding any late payment interest or penalties.
- C7.5 If a Change in Work results in a reduction in the Contract Price, no claim may be made for damages on the ground of loss of anticipated profit on Work so diminished or on any other ground provided that the aggregate reduction in the Contract Price does not exceed twenty percent (20%) of the price agreed upon for the Work as of the date of the award of the Contract.
- C7.5.1 Reductions in the Contract Price as a result of:
- (a) Changes in Work requested by the Contractor;
  - (b) a deduction, pursuant to C11.7(d), for defective or deficient Work;
  - (c) a decrease, pursuant to C12.4, due to a change in tax; or
  - (d) the City's application of a remedy for an event of default;
- shall not be considered in calculating the aggregate reduction in the Contract Price for the purposes of C7.5.
- C7.6 If a Change in Work diminishes the Work, or any part thereof, resulting in:
- (a) extra cost to the Contractor, directly attributable to the diminution, for which he would not be entitled to payment on a unit price basis (e.g., loss of volume discounts); or
  - (b) loss to the Contractor in respect of Material required by the City to be purchased by him for the Work but not used thereon as a direct result of the diminution (e.g., restocking charges);
- the Contractor shall be compensated therefor by the City in the sum or sums determined by the Contract Administrator.
- C7.7 If the method of valuation or measurement or the adjustment to the Contract Price cannot be promptly agreed upon and the Contract Administrator requires the Change in Work to proceed, then the Contract Administrator will determine the method of valuation and measurement and the adjustment to the Contract Price. The Contract Administrator shall issue a notice approving the Change in Work and setting out the method of valuation, measurement, and any approved adjustments to the Contract Price.
- C7.8 If the Contractor disputes a determination made by the Contract Administrator, the Contractor shall act in accordance with the Contract Administrator's determination. The Contractor may concurrently appeal the determination of the Contract Administrator to the Chief Administrative Officer as provided for in C21.

### **Cost Records**

- C7.9 If a valuation is required pursuant to C7.4 or C7.6, the Contractor shall provide the Contract Administrator with:
- (a) detailed and accurate statements showing:
    - (i) description, cost (including expenses for operation and maintenance) and time for Plant used by the Contractor;
    - (ii) description, cost and quantity for Material used by the Contractor;
    - (iii) rate of pay and hours of work for each of the persons employed by the Contractor; and
  - (b) access to any cost records (including payroll records, time books and invoices) or other data necessary to verify the accuracy of such statements.

### **C8. RIGHT OF ENTRY**

- C8.1 The Contractor shall not be entitled to exclusive possession of the Site.
- C8.2 The City shall have the right, for itself, its agents, representatives or other persons, to enter, occupy or use any portion of the Site or the Work, at any time and for so long a time as the Contract Administrator may require.
- C8.3 Such entry, occupation or use shall not constitute acceptance of the Work by the City nor shall it relieve the Contractor of responsibility to complete the Work.

### **C9. CONTROL OF PLANT AND MATERIAL**

- C9.1 The Contractor shall not remove any Plant or Material that he has brought to the Site and which is required to complete the Work without the prior consent of the Contract Administrator until the date of Total Performance.
- C9.2 Plant or Material that is the property of the City shall not be removed from the Site, disposed of or used except for the purposes of the Work without the prior consent of the Contract Administrator.
- C9.3 The Contractor shall keep such records of all Plant and Material supplied or placed in the care, custody and control of the Contractor by the City as the Contract Administrator may from time to time require and shall satisfy the Contract Administrator, when requested, that such Plant and Material are at the place and in the condition required by the City.

### **C10. RISK AND RESPONSIBILITY**

- C10.1 Plant or Material brought to the Site or the Work by the Contractor shall remain at the risk and the responsibility of the Contractor from the commencement of the Work until:
- (a) Material is incorporated into the Work; or
  - (b) Plant or Material is removed from the Site or the Work by the Contractor.
- C10.2 The Contractor shall be liable to the City for any loss of or damage to Plant or Material that is supplied to or placed in the care, custody and control of the Contractor by the City in connection with the Contract, whether or not that loss or damage is attributable to causes beyond the Contractor's control, from the commencement of the Work until:
- (a) Material is incorporated into the Work; or
  - (b) Plant or Material is returned, in its original condition, to the City.

- C10.3 The Work shall remain at the risk and the responsibility of the Contractor from the commencement of the Work until the date of Substantial Performance.
- C10.4 That portion of the Work not completed as of the date of Substantial Performance shall remain at the risk and responsibility of the Contractor until the date of Total Performance.
- C10.5 The Contractor shall, at his own cost, be required to maintain the Work, make good all damage thereto and imperfections therein and to deliver the completed Work to the City in accordance with the provisions of the Contract.

## **C11. INSPECTION**

### **General**

- C11.1 The Contractor shall provide the Contract Administrator access, whether at the Site or at the premises of the Contractor or any Subcontractor, to observe and inspect the Work and its progress.
- C11.2 The Contractor shall provide the Contract Administrator any samples required to inspect the Work.
- C11.3 The Contractor shall provide the Contract Administrator any and all assistance which he may require to observe and inspect the Work.
- C11.4 Before beginning or resuming operations upon any portion of the Work, the Contractor shall notify the Contract Administrator so as to enable him to arrange for inspection. If the Contractor fails to notify the Contract Administrator, the Contractor shall, if and when required by the Contract Administrator, forthwith take down or expose and rebuild that portion of the Work required to facilitate inspection. The cost of such taking down or exposure, and rebuilding, if any, shall be borne by the Contractor.
- C11.5 If and when required by the Contract Administrator, the Contractor shall take down or expose forthwith any portion of the Work where the Contract Administrator determines that the Work is not in accordance with the Contract. The cost of such taking down or exposure, and rebuilding, if any, shall fall upon the City if the taking down or exposure indicates that the portion exposed is properly constructed and of satisfactory Material, but if otherwise the cost shall be borne by the Contractor.
- C11.6 The inspection herein provided for shall in no way relieve the Contractor of full responsibility for the quality, proper operation and performance of the Work.

### **Defective Work**

- C11.7 If the Contract Administrator determines that the Work, or any part thereof, is defective or deficient, the City shall have the right to do any one or more of the following in addition to anything permitted elsewhere in the Contract or by law:
- (a) if the Contract Administrator determines that any Plant is defective, deficient or otherwise unfit for the purpose intended, the Contract Administrator may direct the Contractor to remove such Plant from the Site and promptly replace it with Plant which meets the requirements of the Contract and is fit for the purpose intended;
  - (b) if the Contract Administrator determines that any Material which is not yet incorporated into the Work is defective, deficient or otherwise unfit for the purpose intended, the Contract Administrator may direct the Contractor to remove such Material from the Site and promptly replace it with Material which meets the requirements of the Contract and is fit for the purpose intended;

- (c) if the Contract Administrator determines that the Work or any portion thereof, including any Material which is incorporated therein, is defective, deficient or otherwise unfit for the purpose intended, the Contract Administrator may direct the Contractor to repair, rebuild, replace or otherwise remedy the defect or deficiency;
- (d) if the Contract Administrator determines that it is not expedient to correct defective or deficient Work, the City may deduct from the Contract Price the difference between the value of the Work as done and that called for by the Contract, the amount of which shall be determined by the Contract Administrator.

C11.8 The Contractor shall, without delay, carry out the directives of the Contract Administrator pursuant to C11.7. In addition, the Contractor shall be responsible for the cost of any additional inspections necessitated thereby.

C11.9 The City shall be entitled, in its sole discretion, to use the Work or any portion thereof notwithstanding that it may be defective or deficient, and such use shall not constitute acceptance of any defects or deficiencies nor shall it relieve the Contractor of responsibility to complete the Work.

## **C12. MEASUREMENT AND PAYMENT**

### **General**

C12.1 Unless otherwise specified in the Supplemental Conditions, the City shall only be required to pay the Contractor for Material required for the Work upon the installation and total incorporation of same permanently in the Work.

C12.2 The amounts to be paid by the City to the Contractor shall be the sums certified by the Contract Administrator in the interim and final progress estimates.

C12.2.1 For unit price Contracts, such sums shall be determined by the Contract Administrator upon the basis of the unit prices for the various classes of the Work stated on Form B: Prices. The total amount to be paid to the Contractor for the Work will be the amount arrived at by measuring the amount of each class of the Work listed on Form B: Prices and performed in accordance with the Contract, and pricing the same, in accordance with the unit prices stated thereon.

C12.2.2 For lump sum Contracts, such sums shall be determined by the Contract Administrator upon the basis of the lump sum price stated on Form B: Prices.

C12.2.3 Prices stated on Form B: Prices shall be deemed to include:

- (a) duty;
- (b) freight and cartage;
- (c) Federal and Provincial taxes [except the Goods and Services Tax (GST), which shall be extra where applicable] and all charges governmental or otherwise paid;
- (d) profit and all compensation which shall be due to the Contractor for the Work and all details necessarily connected with the completion of the Work and all risks and contingencies connected therewith.

### **Increased or Decreased Costs**

C12.3 The Contract Price shall not be increased or decreased by reason of any increase or decrease in the cost of the Work to the Contractor except as provided for herein.

C12.4 The Contract Price shall be adjusted if any change in a tax imposed under the Excise Act, the Excise Tax Act, the Customs Act, the Customs Tariff, The Mining Tax Act (Manitoba), or The Retail Sales Tax Act (Manitoba):

- (a) occurs after the Submission Deadline;
- (b) applies to Material; and
- (c) affects the cost of that Material to the Contractor.

- C12.5 If a change referred to in C12.4 occurs, the Contract Price shall be increased or decreased by an amount equal to the amount that is established, by an examination of the relevant records of the Contractor, to be the increase or decrease in the cost incurred that is directly attributable to that change.
- C12.6 For the purpose of C12.4, where a tax is changed after the Submission Deadline but public notice of the change has been given by either the Federal or Provincial Minister of Finance before that date, the change shall be deemed to have occurred before the Submission Deadline and the Contractor shall not be entitled to an increase in the Contract Price.

### **Measurement and Payment**

- C12.7 By the fourteenth (14) Calendar Day after the end of each month, or as soon thereafter as possible, the Contract Administrator shall, subject to having received all necessary information from the Contractor by the seventh (7) Calendar Day after the end of that month, prepare a progress estimate setting out the quantity and value of the Work performed during the preceding month.
- C12.8 The Contractor shall sign each progress estimate signifying that he agrees with the Contract Administrator's estimate of the quantity and value of the Work completed.
- C12.9 Approval by the City of payment on account of a progress estimate will make the amount of the progress estimate valid for payment.
- C12.10 Any payment made by the City to the Contractor on account of a progress estimate shall be less any holdback required to be made by The Builders' Liens Act, and such holdbacks or other amounts which the City is entitled to withhold pursuant to the Contract.

### **Final Payment**

- C12.11 Approval by the City of payment on account of the final progress estimate shall be subject to the following conditions:
- (a) issuance by the Contract Administrator of a certificate of Total Performance;
  - (b) receipt by the City of a certificate from the Workers Compensation Board stating that full payment has been made to the Board with respect to all assessments owing.
- C12.12 Payment on account of the final progress estimate, including the holdback made by the City pursuant to The Builders' Liens Act, shall be paid to the Contractor when the time for filing liens or trust claims has elapsed, unless the City is in receipt of a lien or trust claim.
- C12.13 Neither the issuance of a certificate of Total Performance nor the payment of the final progress estimate shall relieve the Contractor from his responsibilities either under C13 or as a result of any breach of the Contract by the Contractor including, but not limited to, defective or deficient Work appearing after Total Performance, nor shall it conclude or prejudice any of the powers of the Contract Administrator or the Chief Administrative Officer hereunder.
- C12.14 Subject to C12.15, acceptance by the Contractor of payment on account of the final progress estimate shall constitute a waiver and release by him of all claims against the City whether for payment for Work done, damages or otherwise arising out of the Contract.
- C12.15 If the Contractor disputes a determination made by the Contract Administrator with respect to an interim or final progress estimate, the Contractor shall be paid in accordance with the Contract

Administrator's determination. The Contractor may concurrently appeal the determination of the Contract Administrator to the Chief Administrative Officer as provided for in C21.

## **C13. WARRANTY**

### **General**

C13.1 The Contractor warrants that the Work will be free of any and all defects or deficiencies during the warranty period.

### **Warranty Period**

C13.2 Unless specifically stated otherwise in the Supplemental Conditions, the warranty period shall begin on the date of Total Performance and shall expire one (1) year thereafter unless extended pursuant to C13.2.1 or C13.2.2, in which case it shall expire when provided for under these sections.

C13.2.1 If a defect or deficiency prevents the full and normal use or operation of the Work or any portion thereof, for purposes of calculating the warranty period, time shall be deemed to cease to elapse for the defective or deficient portion, and for any portion of the Work whose use or operation is prevented by such defect or deficiency, as of the date on which the defect or deficiency is observed or the use or operation is prevented and shall begin to run again when the defect or deficiency has been corrected or the Work may be used or operated to the satisfaction of the Contract Administrator.

C13.2.2 If all outstanding defects or deficiencies have not been corrected to the satisfaction of the Contract Administrator by at least two (2) weeks prior to the date on which the warranty would expire except for this C13.2.2, then the Contract Administrator may require the Contractor to extend the warranty period for a further period of one (1) year for those defects or deficiencies in the Work identified by the Contract Administrator as still outstanding and uncorrected or for any portion of the Work whose use or operation is prevented by such defects or deficiencies.

C13.3 Notwithstanding C13.2, if any law of Manitoba or of the jurisdiction in which the Work was manufactured requires, or if the manufacturer provides, a longer warranty period or a warranty which is more extensive in its nature, then the provisions of such law or manufacturer's warranty shall apply.

### **Warranty Inspection**

C13.4 Within a reasonable time before the warranty expires, the Contract Administrator shall request that the Contractor arrange, attend at and assist the Contract Administrator in carrying out an inspection of the Work.

C13.5 Where the warranty period has been extended pursuant to C13.2.2, a second inspection shall be carried out in accordance with C13.4 before the warranty period, as extended, expires.

### **Warranty Work**

C13.6 The Contract Administrator shall notify the Contractor of observed defects or deficiencies and damage, if any, arising or resulting from such defects or deficiencies, within the warranty period.

C13.7 The Contractor shall correct, to the satisfaction of the Contract Administrator, all defects, deficiencies and damage identified by the Contract Administrator in the manner and within the time period(s) specified in the notice.

C13.8 If the Contractor disagrees with the Contract Administrator's determination under C13.6, he shall nonetheless comply with C13.7. The Contractor may concurrently appeal the determination of the Contract Administrator as provided for in C21.

**Acceptance of the Work**

C13.9 The Contract Administrator shall certify acceptance of the Work upon:

- (a) the satisfactory performance of the Work during the warranty period;
- (b) the Contractor having fully complied with C13.7; and
- (c) the successful conclusion of any tests required under the Contract.

C13.10 Only certification of acceptance of the Work shall constitute:

- (a) acceptance of the Work; or
- (b) acceptance that the Work or any part thereof has been duly performed; or
- (c) acceptance of the accuracy of any claim of the Contractor.

C13.11 Certification of acceptance of the Work shall not, however, relieve the Contractor from his responsibilities for any breach of the Contract including, but not limited to, defective or deficient Work appearing after the date of such certification.

**C14. GOVERNING LAW**

C14.1 The Contract has been entered into in the Province of Manitoba and shall be governed by and construed and enforced in accordance with the laws of the Province of Manitoba and of Canada as applicable therein. The parties hereby irrevocably and unconditionally agree to the exclusive jurisdiction of the Courts in the Province of Manitoba and all courts competent to hear appeals therefrom.

**C15. ASSIGNMENT**

C15.1 The Contractor shall not assign the Contract or any payments thereunder without the prior consent of the City.

C15.2 The Contract shall inure to the benefit of and be binding on the respective heirs, executors, administrators, successors and assigns of the City and the Contractor.

**C16. FORCE MAJEURE**

C16.1 If the Contractor is delayed in the performance of the Work by reason of strikes, lock-outs (including lock-outs decreed for its members by a recognized contractors' association of which the Contractor is a member), an act of God, or any other cause which the Contractor satisfies the Contract Administrator to be totally beyond his control, the work schedule shall be adjusted by a period of time equal to the time lost due to such delays.

C16.2 No extension for delay shall be approved unless a notice of the claim is received by the Contract Administrator from the Contractor within seven (7) Calendar Days of the date on which the cause of delay arose.

C16.3 Any delay or failure by the City to perform its obligations under this Contract shall be excused, to the extent that the delay or failure is caused by an event or occurrence beyond the reasonable control of the City and without its fault or negligence, such as by way of example and not by way of limitation, strikes, lock-outs, or acts of God, provided that written notice of the delay shall be given by the City within seven (7) Calendar Days of the date on which the cause of delay arose.

C16.4 Any notice or claim for extension must state the cause of delay and the length of extension requested.

C16.4.1 In the case of a continuing cause of delay, only one claim for an extension shall be necessary.

## **C17. INDEMNITY**

C17.1 The Contractor shall save harmless and indemnify the City against all costs, damages or expenses arising from actions, claims, demands and proceedings, by whomsoever brought, made or taken as a result of acts or omissions of the Contractor, his Subcontractors, employees or agents in the performance or purported performance of the Work, and more particularly from:

- (a) accidental injury to or death of any person whether retained by or in the employ of the Contractor or not, arising directly or indirectly by reason of the performance of the Work, or by reason of any trespass on or damage to property;
- (b) damage to any property owned in whole or in part by the City, or which the City by duty or custom is obliged, directly or indirectly, in any way or to any degree, to construct, repair or maintain;
- (c) damage to, or trespass or encroachment upon, property owned by persons other than the City;
- (d) any claim for lien or trust claim served upon the City pursuant to The Builders' Liens Act;
- (e) failure to pay a Workers Compensation assessment, or Federal or Provincial taxes;
- (f) unauthorized use of any design, device, material or process covered by letters patent, copyright, trademark or trade name in connection with the Work;
- (g) inaccuracies in any information provided to the City by the Contractor.

C17.2 The City has the right, acting reasonably and upon notice to the Contractor, to settle any such action, proceeding, claim or demand and charge the Contractor with the amount so paid or to be paid in effecting a settlement.

C17.3 The Contractor shall pay to the City the value of all legal fees and disbursements required to settle any such claim or to defend the City against any such claim, action, proceeding, claim or demand notwithstanding that the settlement or defence of the said action, proceeding, claim or demand was undertaken on behalf of the City by a salaried employee of the City.

C17.4 If the Contractor fails to make any payment required to be made to the City pursuant to C17.2 and C17.3, the City shall be entitled to deduct the amount of such payment from any payment required to be made by the City to the Contractor under the Contract or take whatever other remedies against the Contractor that the City may have at law.

## **C18. EVENTS OF DEFAULT**

C18.1 An event of default will be deemed to have occurred if the Contractor:

- (a) abandons the Work; or
- (b) is adjudged bankrupt or files for bankruptcy, becomes insolvent, makes a general assignment for the benefit of his creditors, or has a receiver or liquidator appointed in respect of his assets; or
- (c) is not performing or has not been performing the Work, or any part thereof, in a sound and workmanlike manner and in all respects in strict conformity with the Contract; or
- (d) is not progressing continuously with the Work or any part thereof, and in such a manner as to ensure the completion of the Work or any part thereof, in accordance with the work schedule; or

- (e) fails to take down, repair, rebuild, replace or otherwise remedy any defective or deficient Work, or to remove any defective or deficient Plant or Material; or
- (f) fails to remedy defects or deficiencies during the warranty period in the manner and within the time periods specified by the Contract Administrator; or
- (g) fails to make prompt payment to his Subcontractors, his employees or on account of the purchase or rental of Plant or Material; or
- (h) fails to promptly secure a discharge of a claim for lien or trust claim served upon the City pursuant to The Builders' Liens Act; or
- (i) fails to comply with any laws, by-laws or statutory regulations; or
- (j) fails to provide competent supervision at the Site; or
- (k) fails to submit any schedules, documents or information required by the Contract; or
- (l) refuses or neglects to comply with an order given by the Contract Administrator; or
- (m) commits any other breach of the Contract.

C18.2 Any provision of the Contract may be waived only by express waiver in writing by the Contract Administrator. No express waiver of any provision shall imply the waiver of any other provision.

## **C19. CITY'S RIGHTS AND REMEDIES**

### **General**

C19.1 If an event of default has occurred, the City may do any one or more of the following:

- (a) withhold or retain the whole or part of any payment;
  - (b) take the whole of the Work, or any part or parts thereof out of the hands of the Contractor;
  - (c) demand payment for any amount owed to the City;
- all as more particularly set forth in C19.3 to C19.6 below.

C19.2 The duties and obligations imposed upon the Contractor by the Contract and the rights and remedies available to the City hereunder shall be in addition to and not a limitation of any duties, obligations, rights and remedies otherwise imposed upon the Contractor or available to the City at law.

### **Withholding of Payment**

C19.3 If an event of default has occurred, the City may withhold or retain the whole or part of any payment to the Contractor.

C19.4 The City may apply the amount withheld or retained to:

- (a) pay any person to whom the Contractor is indebted in respect of Material, labour or services furnished for the Work;
- (b) secure the discharge of a lien or trust claim served upon the City pursuant to The Builders' Liens Act;
- (c) indemnify, compensate or reimburse the City for amounts paid or costs incurred by the City in connection with the event of default.

C19.5 Payment of such amounts shall discharge the City's liability to the Contractor to the same extent as payment directly to him.

C19.6 Upon remedy of the event of default, any amount remaining from the amount withheld will be released to the Contractor.

### **Taking the Work out of the Contractor's Control**

- C19.7 If an event of default has occurred, the City may, without process or action at law, upon giving the Contractor notice, take the whole of the Work, or any part or parts thereof out of the hands of the Contractor.
- C19.8 Upon such notice being given to the Contractor, he shall immediately discontinue the Work or any part or parts thereof specified in the said notice.
- C19.9 The taking of the Work or any part thereof out of the Contractor's control pursuant to C19.7 shall not relieve or discharge the Contractor from any obligation under the Contract or imposed upon him by law except the obligation to complete the performance of that part of the Work that was taken out of the Contractor's control.
- C19.10 If the Work or any part thereof is taken out of the Contractor's control pursuant to C19.7, all Plant and Material, and the interest of the Contractor in all licences, powers and privileges acquired, used or provided by the Contractor under the Contract shall be assigned by the Contractor to the City without compensation to the Contractor.
- C19.11 The City shall have the right, subject to C20, to complete, by contract or with its own forces, the Work taken out of the Contractor's control, and the Contractor agrees that the City shall have the right to take possession of and use any of the Contractor's material and property of every kind provided by the Contractor for the purpose of the Work, and to procure other Plant or Material for the completion thereof. The City shall not be required to obtain the lowest price to complete the Work taken out of the Contractor's control.
- C19.12 When the Contract Administrator certifies that any Plant, Material or any interest of the Contractor referred to in C19.10, is no longer required for the purposes of the Work, or that it is not in the best interest of the City to retain that Plant, Material or interest, it shall revert to the Contractor.
- C19.13 If the cost to the City of completing the Work or portion thereof as aforesaid is less than the amount to which the Contractor would have been entitled under the Contract for so doing, the Contractor shall have no claims in respect thereof against the City. If the cost of the Work performed by the City is more than the amount to which the Contractor would have been entitled under the Contract for the same Work, the City shall have a claim against the Contractor for such excess costs.
- C19.14 When any portion of the Work is being carried on by the City, by contract or otherwise, the Contractor shall continue to perform the remainder of the Work in accordance with the Contract, and in such manner as in no way to hinder or interfere with the persons performing the portion of the Work being carried on by the City.

### **Demand for Payment**

- C19.15 If an event of default has occurred, the City may demand payment from the Contractor for amounts paid or costs incurred by the City in connection with the event of default.
- C19.16 The Contractor shall, within seven (7) Calendar Days of receipt of a notice from the City, pay the City the amount set out in the notice.

### **C20. SURETY'S OPTION TO ASSUME THE CONTRACT**

- C20.1 Where the City has given notice to the Contractor that the Work or part thereof has been taken out of the Contractor's control, the City shall promptly provide the Surety with a copy of such notice.

- C20.2 The Surety may, at its option, assume the Contract in respect of the Work specified in the notice and proceed to perform same.
- C20.3 Within fourteen (14) Calendar Days after the date on which the Surety is provided with a copy of the notice given to the Contractor, the Surety shall advise the City whether it intends to exercise such option. The said option shall expire if the Surety fails to so advise the City within the time specified.
- C20.4 If the Surety has exercised its option in accordance with the foregoing, it shall take the Contractor's place in all respects. The Surety shall be bound by all terms and conditions of the Contract and shall be paid in accordance with the terms of the Contract for all Work performed by it.
- C20.5 The Surety may, with the consent of the Chief Administrative Officer, subcontract the Work so taken over or any portion thereof.

## **C21. CONTRACTOR'S RIGHT TO APPEAL**

- C21.1 If the Contractor disagrees with a determination or order of the Contract Administrator he may, within seven (7) Calendar Days after receiving notice of the Contract Administrator's determination or order, notify the Chief Administrative Officer of his contention with respect thereto and request a determination thereon from the Chief Administrative Officer.
- C21.2 If the Contractor disagrees with the Chief Administrative Officer's determination he may request that the dispute be referred to arbitration in accordance with C22, by providing notice to the Chief Administrative Officer within seven (7) Calendar Days after receiving notice of the Chief Administrative Officer's determination.
- C21.3 If the Contractor neglects or fails to observe fully and faithfully the above conditions, he shall be deemed to have accepted the Contract Administrator's determination and to have waived any said claim, at law or otherwise.

## **C22. ARBITRATION**

### **Requests for Arbitration**

- C22.1 If, at any time before the termination of the warranty period, any dispute, difference or question shall arise between the City and the Contractor regarding the Work, then every such dispute, difference or question may, with the consent of both the City Solicitor, on behalf of the City, and the Contractor, be referred to arbitration. Notwithstanding that the parties may have consented to arbitration, no arbitration shall proceed before the date of Substantial Performance.
- C22.2 The party desiring arbitration (the "Requesting Party") shall request the consent of the other party (the "Other Party") to refer a particular dispute, difference or question to arbitration.
- C22.3 The Other Party shall reply to the request within seven (7) Calendar Days of receiving same.

### **Referral to a Single Arbitrator**

- C22.4 If the Other Party has consented to arbitration, the Requesting Party shall nominate an arbitrator (the "Requesting Party's Nominee") within seven (7) Calendar Days of receiving the reply. The Other Party shall have seven (7) Calendar Days after receiving notice of the nomination to accept or reject the Requesting Party's Nominee.
- C22.5 If the Other Party accepts the Requesting Party's Nominee, the dispute, difference or question shall be promptly referred to him or her.

### **Referral to a Panel of Arbitrators**

- C22.6 If the Other Party rejects the Requesting Party's Nominee, it shall, within seven (7) Calendar Days of rejection, appoint its own arbitrator.
- C22.7 The Requesting Party shall, within seven (7) Calendar Days of receiving the Other Party's rejection, appoint its own arbitrator.
- C22.8 The arbitrators appointed under C22.6 and C22.7 shall, within seven (7) Calendar Days of the date on which the last of them was appointed, appoint a third arbitrator (the "Panel Chair") who will act as chair of the arbitration panel.

### **General**

- C22.9 The Arbitration Act (Manitoba) or any successor legislation thereto shall apply to the arbitration in all respects except as expressly otherwise provided in these General Conditions.
- C22.10 The single arbitrator or the Panel Chair, as the case may be, shall determine the procedure to be followed in the arbitration, which shall be consistent with The Arbitration Act (Manitoba) or any successor legislation thereto.
- C22.11 Where the matter proceeds with a single arbitrator, each party shall be responsible for its own legal expenses, expenses to produce expert evidence or other expenses voluntarily incurred, and for an equal share of the fees and expenses of the single arbitrator and of any other expenses related to the arbitration.
- C22.12 Where the matter proceeds with an arbitration panel, each party shall be responsible for its own legal expenses, expenses to produce expert evidence or other expenses voluntarily incurred, for the fees and expenses of the arbitrator appointed by it, and for an equal share of the fees and expenses of the Panel Chair and of any other expenses related to the arbitration.

### **C23. NOTICES**

- C23.1 All notices, requests, nominations, proposals, consents, approvals, statements, authorizations, documents or other communications required or permitted to be given under the Contract shall be in writing and shall be delivered by hand, by facsimile transmission (fax) or by mail.
- C23.2 All notices, requests, nominations, proposals, consents, approvals, statements, authorizations, documents or other communications shall be delivered to the applicable addresses set out in the Supplemental Conditions.
- C23.2.1 Either party may, by giving notice, designate another address or addresses at which it will accept delivery of notices, requests, nominations, proposals, consents, approvals, statements, authorizations, documents or other communications.
- C23.2.2 Delivery to the Contractor's designated supervisor at the Site shall constitute delivery to the Contractor.
- C23.3 Any notices, requests, nominations, proposals, consents, approvals, statements, authorizations, documents or other communications given as provided herein shall:
- (a) if delivered by hand, be deemed to have been received on the day of receipt;
  - (b) if delivered by facsimile transmission, be deemed to have been received on the day of transmission, if a Business Day, or if not a Business Day, on the Business Day next following the day of transmission; and
  - (c) if delivered by mail, be deemed to have been received on the second Business Day on which mail is delivered by Canada Post following the date of mailing.