

PART C

GENERAL CONDITIONS

PART C - GENERAL CONDITIONS

C1. GENERAL CONDITIONS

C1.1 The *General Conditions for the Supply and Delivery of Goods* (Form 21: 88 03) are applicable to the Work of the Contract.

C1.1.1 The *General Conditions for the Supply and Delivery of Goods* are available in Adobe Acrobat (.pdf) format on the Information Connection page at The City of Winnipeg, Corporate Finance, Materials Management Division internet site at <http://www.winnipeg.ca/matmgt>.

C2. DEFINITIONS

C2.1 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) “**Bidder**” means any person submitting a Proposal for the Work;
- (c) “**Bidding Procedures**” means the portion of the Request for Proposal by that name which sets out the terms and conditions governing the Proposal, and “B” designates a section, clause or subclause in that portion of the Request for Proposal;
- (d) “**Business Day**” means any Calendar Day, other than a Saturday, Sunday, or a statutory or civic holiday;
- (e) “**C**” designates a section, clause or subclause in these General Conditions;
- (f) “**Calendar Day**” means the period from one midnight to the following midnight;
- (g) “**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;
- (h) “**Chief Administrative Officer**” means the City employee holding that office or, if applicable, the successor to the authority or responsibility of such office;
- (i) “**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;
- (j) “**City Solicitor**” means the City employee holding that office or, if applicable, the successor to the authority or responsibility of such office;
- (k) “**Contract**” means the combined documents consisting of the agreement prepared and forwarded to the Contractor or the Purchase Order, as applicable, and all schedules thereto (consisting of the Request for Proposal and any documents and Drawings referred to or incorporated therein) together with any submissions required to be made by the Contractor after award, and all amendments to the foregoing;
- (l) “**Contract Administrator**” means the person designated as such in the Supplemental Conditions;
- (m) “**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;
- (n) “**Contractor**” means the person undertaking the performance of the Work under the terms of the Contract;
- (o) “**Council**” means the Council of The City of Winnipeg;

- (p) “**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;
- (q) “**Manager of Materials**” means the City employee holding that office or, if applicable, the successor to the authority or responsibility of such office;
- (r) “**Material**” means any things, including goods, parts and equipment, which are to form part of the permanent Work;
- (s) “**may**” indicates an allowable action or feature which will not be evaluated;
- (t) “**must**” or “**shall**” indicates a mandatory requirement which will be evaluated on a pass/fail basis;
- (u) “**Person**” means an individual, firm, partnership, association or corporation, or any combination thereof, and includes heirs, administrators, executors or legal representatives of a person;
- (v) “**Plant**” means any things provided 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;
- (w) “**Proposal**” means the offer contained in the Proposal Submission;
- (x) “**Proposal Submission**” means that portion of the Request for Proposal which must be completed or provided and submitted by the Submission Deadline in order to constitute a responsive Proposal;
- (y) “**Request for Proposal**” means the Proposal Submission, the Bidding Procedures, these General Conditions, the Supplemental Conditions, the Specifications, the Drawings and all addenda;
- (z) “**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;
- (aa) “**should**” indicates a desirable action or feature which will be evaluated on a relative scale;
- (bb) “**Specifications**” means the portion of the Request for Proposal 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 “E” designates a section, clause or subclause in that portion of the Request for Proposal;
- (cc) “**Subcontractor**” means a person contracting with the Contractor for the performance of a part or parts of the Work and includes a Subcontractor’s subcontractor;
- (dd) “**Submission Deadline**” means the time and date set out in the Bidding Procedures for final receipt of Proposals;
- (ee) “**Substantial Performance**” shall have the meaning attributed to it in The Builders' Liens Act (Manitoba), or any successor legislation thereto;
- (ff) “**Supplemental Conditions**” means the portion of the Request for Proposal by that name which sets out terms and conditions specific to the Contract, and supplements or modifies the General Conditions, and “D” designates a section, clause or subclause in that portion of the Request for Proposal;
- (gg) “**Total Performance**” means that the entire Work, except those items arising from the provisions of C11.1, have been performed in accordance with the Contract;
- (hh) “**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.

C3. INTERPRETATION

- C3.1 Where the Contractor consists of more than one person, the obligations of the Contractor shall be joint and several.
- C3.2 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.
- C3.3 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.
- C3.4 In the event of conflicts between portions of the Contract, the following shall apply:
- (a) the executed agreement between the City and Contractor or the Purchase Order, as applicable, 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 Proposal Submission.
- C3.5 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.
- C3.6 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.
- C3.7 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.

C4. DECLARATIONS

Site Investigation

- C4.1 The Contractor declares that, in bidding for the Work and in entering into the Contract, he:
- (a) has investigated the nature of the Work to be done and all conditions that might affect his Proposal or his performance of the Work; or
 - (b) has not investigated the nature of the Work to be done or conditions that might affect his Proposal or his performance of the Work;
- 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 Proposal or the Contract by the Contract Administrator.

Good Faith

- C4.2 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;
 - (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 C4.2(a) or (b) are shown to be false.

C5. EXECUTION OF CONTRACT

- C5.1 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.
- C5.2 If the Contractor does not execute and return the Contract as set out in C5.1, the Contractor may be deemed by the City to have abandoned the Contract, whereupon the acceptance of the Bid by the City shall be null and void, and the City shall be entitled to retain the bid security accompanying the Bid as liquidated damages.
- C5.3 No payments will be made by the City to the Contractor until the Contractor has executed and returned the Contract as set out in C5.1.

C6. AUTHORITY OF THE CONTRACT ADMINISTRATOR

General

- C6.1 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

- C6.2 The Contract Administrator shall interpret or clarify the Contract or any part thereof which appears indefinite, not clear or contradictory to the Contractor.
- C6.3 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

- C6.4 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

- C6.5 The Contract Administrator may give 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.
- C6.5.1 The Contract Administrator may give orders to the Contractor's supervisor and such orders shall be deemed to have been given to the Contractor.

- C6.6 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.
- C6.7 The Contract Administrator may order the Contractor to alter or improve his means, methods, techniques, sequences and procedures, 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.
- C6.8 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.
- C6.9 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 C7.
- C6.10 The Contract Administrator shall determine if and when Substantial Performance and Total Performance are achieved and shall certify the dates thereof.
- C6.11 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 C19.

C7. RESPONSIBILITIES OF THE CONTRACTOR

General

- C7.1 Except as otherwise provided in the Contract, the Contractor shall be solely responsible for 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.
- C7.2 The Contractor shall direct and supervise the Work so as to ensure conformance with the Contract.
- C7.3 The Contractor shall provide all Plant, Material, labour, services and incidentals necessary for the performance of the Work.
- C7.4 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.
- C7.5 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

- C7.6 The Contractor shall perform, complete and maintain the Work in strict accordance with the Contract.
- C7.7 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.
- C7.8 The Contractor shall be responsible for conveying the interpretation or clarification of the Contract, as given by the Contract Administrator, to Subcontractors.
- C7.9 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.

Laws and Regulations

- C7.10 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.
- C7.11 The Contractor shall procure approvals, clearances, permits, licences and certificates required for the performance of the Work, by law or by any by-laws, ordinances, regulations, codes or orders of the authorities having jurisdiction, but this shall not include the obtaining of permanent easements.
- C7.12 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.
- C7.13 Where required by the Workers Compensation Board of Manitoba, the Contractor shall be registered and shall provide and maintain workers compensation coverage throughout the term of the Contract, and shall provide the Contract Administrator with evidence thereof upon request.
- C7.14 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

- C7.15 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.
- C7.15.1 Upon request of the Contract Administrator, the Contractor shall provide the City with a copy of the said agreement.
- C7.16 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.
- C7.17 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.

Supervision

- C7.18 The Contractor shall provide competent, suitably qualified personnel to perform the Work.
- C7.19 The Contractor shall obey, perform and comply with the Contract Administrator's orders, 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.
- C7.20 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. 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.
- C7.21 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

- C7.22 The Contractor must arrange and carry on his Work so as not to conflict with 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.
- C7.23 The Contractor shall do whatever is necessary to ensure that no person, property, right, easement or privilege is injured, damaged or infringed by reason of the Contractor's activities in performing the Work.
- C7.24 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

- C7.25 The Contractor agrees that the list of names of Subcontractors included in his Proposal Submission, or in other information required to be submitted pursuant to the Qualification clause in the Bidding Procedures, is the list of Subcontractors proposed to be used to carry out those parts of the Work noted thereon, and he shall not employ any to whom the Contract Administrator may reasonably object. The Contractor shall not make any change to the list of Subcontractors without the prior approval of the Contract Administrator.
- C7.26 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.
- C7.27 The Contractor shall incorporate the terms and conditions of the Contract into all subcontract agreements he enters into with his Subcontractors.
- C7.28 The Contractor shall make prompt payment to his Subcontractors, his employees or on account of the purchase or rental of Plant or Material.

C7.29 The Contractor shall promptly secure a discharge of a lien or trust claim served upon the City pursuant to The Builders' Liens Act (Manitoba).

C8. CHANGES IN WORK

General

C8.1 The City shall have the right to order a Change in Work at any time after award of the Contract.

C8.2 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 C8.4.

C8.2.1 Without limiting the generality of C8.2, if the Contractor observes 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.

C8.3 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.

C8.3.1 If the Contract Administrator determines that no Change in Work is necessary or desirable, he will issue a notice stating his determination.

C8.3.2 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.

C8.3.3 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 C8.4.

C8.3.4 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 C8.4, and upon receipt and evaluation of such information, he shall issue a notice in accordance with C8.3.3.

Valuation of a Change in Work

C8.4 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.
- C8.4.1 For the purposes of C8.4 (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.
- C8.4.2 For the purposes of C8.4 (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.
- C8.5 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.
- C8.5.1 Reductions in the Contract Price as a result of:
- (a) Changes in Work requested by the Contractor;
 - (b) a deduction, pursuant to C10.7(d), for defective or deficient Work;
 - (c) a decrease, pursuant to C11.4, 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 C8.5.
- C8.6 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 therefore by the City in the sum or sums determined by the Contract Administrator.
- C8.7 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.
- C8.8 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 C19.

Cost Records

- C8.9 If a valuation is required pursuant to C8.4 or C8.6, 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) name, 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.

C9. RISK AND RESPONSIBILITY

- C9.1 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.
- C9.2 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.
- C9.3 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.

C10. INSPECTION

General

- C10.1 The Contractor shall provide the Contract Administrator access at the premises of the Contractor or any Subcontractor, to observe and inspect the Work and its progress.
- C10.2 The Contractor shall provide the Contract Administrator any samples required to inspect the Work.
- C10.3 The Contractor shall provide the Contract Administrator any and all assistance which he may require to observe and inspect the Work.
- C10.4 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.
- C10.5 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.
- C10.6 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

- C10.7 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 order 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 order 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, is defective, deficient or otherwise unfit for the purpose intended, the Contract Administrator may order the Contractor to repair, reconstruct, 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.
- C10.8 The Contractor shall, without delay, carry out the orders of the Contract Administrator pursuant to C10.7. In addition, the Contractor shall be responsible for the cost of any additional inspections necessitated thereby.
- C10.9 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.

C11. MEASUREMENT AND PAYMENT

General

- C11.1 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.
- C11.2 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.
- C11.2.1 Prices stated shall be deemed to include:
- (a) duty;
 - (b) freight and cartage;
 - (c) Provincial and Federal 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 risks and contingencies connected therewith.

Increased or Decreased Costs

- C11.3 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.

- C11.4 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.
- C11.5 If a change referred to in C11.4 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.
- C11.6 For the purpose of C11.4, 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

- C11.7 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.
- C11.8 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.
- C11.9 Approval by the City of payment on account of a progress estimate will make the amount of the progress estimate valid for payment.
- C11.10 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

- C11.11 Approval by the City of payment on account of the final progress estimate shall be subject to the following conditions:
- (a) issuance by the Contact 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.
- C11.12 Payment on account of the final progress estimate, including the holdback made by the City in compliance with 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.
- C11.13 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 C12 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.

- C11.14 Subject to C11.15, 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.
- C11.15 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 C19.

C12. WARRANTY

General

- C12.1 The Contractor warrants that the Work will be free of any and all defects or deficiencies during the warranty period.

Warranty Period

- C12.2 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 C12.2.1 or C12.2.2, in which case it shall expire when provided for under these sections.
- C12.2.1 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.
- C12.2.2 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 C12.2.2, 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.
- C12.3 Notwithstanding C12.2, 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

- C12.4 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.
- C12.5 Where the warranty period has been extended pursuant to C12.2.2, a second inspection shall be carried out in accordance with C12.4 before the warranty period, as extended, expires.

Warranty Work

- C12.6 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.

C12.7 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.

C12.8 If the Contractor disagrees with the Contract Administrator's determination under C12.6, he shall nonetheless comply with C12.7. The Contractor may concurrently appeal the determination of the Contract Administrator as provided for in C19.

Acceptance of the Work

C12.9 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 C12.7; and
- (c) the successful conclusion of any tests required under the Contract.

C12.10 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.

C12.11 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.

C13. GOVERNING LAW

C13.1 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 irrevocably attorn to the jurisdiction of the courts of the Province of Manitoba with respect to any matters arising out of this Contract.

C14. ASSIGNMENT

C14.1 The Contractor shall not assign the Contract or any payments thereunder without the prior approval of the City.

C14.2 The Contract shall inure to the benefit of and be binding on the respective heirs, executors, administrators, and successors and permitted assigns of the City and the Contractor.

C15. FORCE MAJEURE

C15.1 Either Party shall not be liable to the other Party for any loss, damage or other claim whatsoever, including direct or indirect losses, loss of profits, or compensation for any inconvenience, nuisance or discomfort, arising out of a force majeure as defined below, or if either Party is prevented from having access to and/or from the site arising out of a force majeure as defined below, provided that the Party claiming a force majeure hereunder shall promptly notify the other specifying the cause and probable duration of the delay.

C15.2 "Force majeure" means any circumstances beyond the reasonable control of the affected Party and not caused by its default or act of commission or omission and not avoidable by the exercise of reasonable effort or foresight by such Party. Without restricting the generality of the foregoing, force majeure shall include any one or more of the following: any act of God; embargo, confiscation, acts or restraints of governments or public authorities; wars, sabotage, act of public enemy or riot; strikes, slow-downs, lockouts or other labour or employee

interruptions or disturbances, whether involving employees of that Party or of any other person over which that Party has no reasonable control; explosion, fire, radioactive contamination, flood or natural disaster. Lack of finances shall in no event be deemed to be a cause beyond a Party's reasonable control.

- C15.3 The performance of any obligation suspended or delayed due to force majeure shall resume as soon as reasonably possible after the force majeure ends and any work schedule shall be adjusted by a period of time equal to the time lost due to such delays.
- C15.4 No extension for delay by the Contractor 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.
- C15.5 Any notice or claim for extension must state the cause of delay and the length of extension requested.
- C15.6 In the case of a continuing cause of delay, only one claim for an extension shall be necessary.

C16. INDEMNITY

- C16.1 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) failure to promptly secure a discharge of a 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.
- C16.2 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.
- C16.3 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.
- C16.4 If the Contractor fails to make any payment required to be made to the City pursuant to C16.2 and C16.3, 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.

C17. EVENTS OF DEFAULT

C17.1 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, rebuild, repair, alter or amend any defective or deficient Work, or to remove any defective or deficient 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 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.

C17.2 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 nor shall it be held or deemed to be a waiver of any subsequent failure to observe or perform the same or any other provision of this Contract.

C18. CITY'S RIGHTS AND REMEDIES

General

C18.1 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 C18.3 to C18.15 below.

C18.2 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

- C18.3 If an event of default has occurred, the Chief Administrative Officer may withhold or retain the whole or part of any payment to the Contractor in an amount determined by the Chief Administrative Officer.
- C18.4 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.
- C18.5 Payment of such amounts shall discharge the City's liability to the Contractor to the same extent as payment directly to him.
- C18.6 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

- C18.7 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.
- C18.8 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.
- C18.9 The taking of the Work or any part thereof out of the Contractor's control pursuant to C18.7 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.
- C18.10 The City shall have the right, subject to C19, 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 Plant and Material 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.
- C18.11 When the Contract Administrator certifies that any Plant, Material or any interest of the Contractor referred to in C18.10, 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.
- C18.12 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.
- C18.13 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

- C18.14 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.
- C18.15 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.

C19. SURETY'S OPTION TO ASSUME THE CONTRACT

- C19.1 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.
- C19.2 The Surety may, at its option, assume the Contract in respect of the Work specified in the notice and proceed to perform same.
- C19.3 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.
- C19.4 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.
- C19.5 The Surety may, with the consent of the Chief Administrative Officer, subcontract the Work so taken over or any portion thereof.

C20. CONTRACTOR'S RIGHT TO APPEAL

- C20.1 If the Contractor disagrees with an instruction or order of the Contract Administrator he may, within seven (7) Calendar Days after receiving notice of the Contract Administrator's instruction or order, notify the Chief Administrative Officer of his contention with respect thereto and request a determination thereon from the Chief Administrative Officer.
- C20.2 If the Contractor disagrees with the Chief Administrative Officer's determination he may request that the dispute be referred to arbitration in accordance with C21, by providing notice to the Chief Administrative Officer within seven (7) Calendar Days after receiving notice of the Chief Administrative Officer's determination.
- C20.3 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 or the Chief Administrative Officer's determination and to have waived any said claim, at law or otherwise.

C21. ARBITRATION

Requests for Arbitration

- C21.1 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.

C21.2 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.

C21.3 The Other Party shall reply to the request within seven (7) Calendar Days of receiving same.

Referral to a Single Arbitrator

C21.4 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.

C21.5 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

C21.6 If the Other Party rejects the Requesting Party's Nominee, it shall, within seven (7) Calendar Days of rejection, appoint its own arbitrator.

C21.7 The Requesting Party shall, within seven (7) Calendar Days of receiving the Other Party's rejection, appoint its own arbitrator.

C21.8 The arbitrators appointed under C21.6 and C21.7 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

C21.9 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.

C21.10 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.

C21.11 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.

C21.12 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.

C22. NOTICES

C22.1 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.

C22.2 All notices, consents, approvals, statements, authorizations, documents or other communications to the City, except as expressly otherwise required in C22.3 or C22.4, or

elsewhere in the Contract, shall be sent to the attention of the Contract Administrator at the address or facsimile number identified in D4.1.

- C22.3 All notices of appeal to the Chief Administrative Officer shall be sent to the attention of the Chief Financial Officer at the following address or facsimile number:

The City of Winnipeg
Chief Administrative Officer Secretariat
Administration Building, 3rd Floor
510 Main Street
Winnipeg MB R3B 1B9
Facsimile No.: (204) 949-1174

- C22.4 All notices, requests, nominations, proposals, consents, approvals, statements, authorizations, documents or other communications required to be submitted or returned to the City Solicitor shall be sent to the following address or facsimile number:

The City of Winnipeg
Corporate Services Department
Legal Services Division
185 King Street, 3rd Floor
Winnipeg MB R3B 1J1
Facsimile No.: (204) 947-9155

- C22.5 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.

- C22.6 Delivery to the Contractor's designated supervisor at the Site shall constitute delivery to the Contractor.

- C22.7 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.