

## GENERAL CONDITIONS

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### PART 1. GENERAL

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Project Name:  
Project #:

Section 00 72 00  
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## **1.2 INTENT**

- 1.2.1 Words in the singular include the plural, and words in the plural include the singular where the context so requires.
- 1.2.2 This Contract shall be construed and governed by the laws of the Province of Alberta and the applicable federal laws of Canada.
- 1.2.3 When a provision in this Contract requires something to be done by a certain time of day, the time shall be the time shown on the clock on the switchboard in the offices of Materials Management, City of Edmonton, 8th Floor Chancery Hall, 3 Sir Winston Churchill Square, Edmonton, Alberta.
- 1.2.4 The City is entering into this Contract in its capacity as an owner of property and not in its capacity as a regulatory, statutory or approving body pursuant to any law of the Province of Alberta and nothing in this Contract shall constitute the granting by the City of any approval or permit as may be required pursuant to the *Municipal Government Act*, R.S.A. 2000, c. M-26. The City, as far as it can legally do so, shall only be bound to comply with and carry out the terms and conditions stated in this Contract, and nothing in this Contract restricts the City, its municipal council, its officers, servants or agents in the full exercise of any and all powers and duties vested in them in their respective capacities as a municipal government, as a municipal council and as the officers, servants and agents of a municipal government.

## **1.3 DOCUMENTS**

- 1.3.1 The documents incorporated in the Contract are complementary and what is called for by any one shall be as binding as if called for by all. The intention of the Contract is to include labour, products, equipment, supervision and transportation necessary for the proper execution of the Work. Descriptions of Products or work in words that have well known technical or trade meanings, shall be held to refer to such recognized meanings.
- 1.3.2 In the event of conflict between documents incorporated into the Contract the following shall apply:
  - a) Documents of a later date shall govern.
  - b) Figured dimensions shown on Drawings shall govern over scaled dimensions.
  - c) Drawings of larger scale shall govern over those of smaller scale of the same date.
  - d) Specifications shall govern over Drawings.
  - e) Special Provisions shall govern over Specifications.
  - f) General Conditions shall govern over Special Provisions.

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- g) Supplementary General Conditions shall govern over the General Conditions of the Contract.
- h) The Contract Form shall govern over all other documents.
- 1.3.3 Unless otherwise provided in the Supplementary General Conditions, the City shall provide to the Contractor, without charge, 12 copies of the Drawings and Specifications.
- 1.3.4 The Contractor shall keep one copy of the Contract including Drawings, Specifications, and Shop Drawings on the Work Site, in good order and available to the City.

**1.4 DRAWINGS AND SPECIFICATIONS**

- 1.4.1 The Work is detailed in the Specifications and accompanying Drawings as listed, together with such other working and detailed drawings as may be provided to the Contractor from time to time during the progress of the Work.
- 1.4.2 The Work is intended to be a complete Work in every respect. The Contractor shall abide by and comply with the Drawings and Specifications taken as a whole, as these are intended to comprise everything necessary for the completion of each portion of the Work.
- 1.4.3 Notwithstanding Article 1.3.2, unless expressly excluded, any portion of the Work shown on the Drawings or described in the Specifications or which is reasonably necessary and usually provided for in performance of the Work shall be done or supplied by the Contractor as if it were both shown in the Drawings and specified in the Specifications.
- 1.4.4 Any references to recognized standard specifications, such as C.S.A. or A.S.T.M., shall be to the then current edition as of the closing date of the Tender, unless specifically noted in the reference.
- 1.4.5 The Contractor shall assume full responsibility for the interpretation of the Specifications and Drawings for Subcontractors.
- 1.4.6 Should any dispute arise respecting the Drawings or Specifications or should any portion of the Drawings or Specifications be obscure or capable of more than one interpretation, the dispute shall be decided by the City whose decision shall be final unless the Contractor disputes the decision and refers the disputed decision for resolution in accordance with PART 11 - Disputes.
- 1.4.7 The Contractor shall bring to the attention of the City, in writing and in a timely manner, any inconsistencies or discrepancies the Contractor has discovered in the Drawings or Specifications. Any changes to the Work required as a result of the discrepancies will be addressed as outlined in Section 4.5 – Changes to the Work.
- 1.4.8 Notes on the Drawings shall be considered part of the Specifications.

## **1.5 CLARIFICATIONS**

- 1.5.1 The City may on its own initiative or upon request of the Contractor, provide clarifications by means of drawings, Site Instructions or otherwise which, in the City's opinion, are necessary for the execution of any aspect of the Work. All clarifications shall be consistent with the Contract and the Work shall be executed in conformity with the clarifications. In providing such clarifications, the City shall have authority to make minor changes in the Work, consistent with the Contract.
- 1.5.2 If either the Contractor or the City so requests, they shall jointly prepare a revised schedule incorporating the clarifications. In the event that the clarifications require changes to the Contract Sum or changes to the schedule for completing the Work or portions of the Work, then the Contractor shall provide the information required for the issuance of a Change Order in accordance with Section 4.5 – Changes to the Work within five Working Days of receipt of the clarifications.
- 1.5.3 If a Change Order is not issued there shall be no allowance for changes to the schedule for completing the Work or portions of the Work, or for any change to the Contract Sum.

## **1.6 OWNERSHIP OF SPECIFICATIONS, DRAWINGS AND MODELS**

- 1.6.1 All Drawings, Specifications designs and copies thereof and all models or samples furnished by the City are the City's property. The Contractor shall not use such Drawings, Specifications, designs, copies, models or samples for any other purpose except to complete the Work as required by the Contract.
- 1.6.2 Any models or designs furnished by the Contractor to the City in the performance of the Work shall become the property of the City and provided to the City at the City's request. The Contractor shall not use such models or designs for any other purpose except to complete the Work as required by the Contract.
- 1.6.3 The Contractor represents and warrants that the Contractor has the right to provide the City with such models or designs, and that the Contractor will pay for any required licenses, permits, or fees that might be applicable to the City's use of such models or designs.

## **PART 2. CONTRACTOR**

### **2.1 SUPERINTENDENT**

- 2.1.1 The Contractor shall give efficient supervision to the Work.
- 2.1.2 The Contractor shall ensure that a competent superintendent and any necessary assistants are at the Work Site during the progress of the Work. The superintendent shall be satisfactory to the City and shall not be changed without the written consent of the City, unless the superintendent proves to be unsatisfactory to the Contractor or ceases to be in the Contractor's employ.
- 2.1.3 The superintendent shall represent the Contractor on the Work Site. Any written directions, instructions or orders relating to the Work provided by the City to the

superintendent shall be considered sufficient notice of such written directions, instructions or orders to the Contractor.

## **2.2 SUBCONTRACTORS**

- 2.2.1 The Subcontractors identified on the List of Subcontractors supplied with the Bid are the Subcontractors that the Contractor will use to carry out those parts of the Work noted. The Contractor shall not make any change to the Subcontractors unless approved in writing by the City.
- 2.2.2 The City may object to a Subcontractor if the City is in litigation or arbitration with the Subcontractor or an affiliate or associate of the Subcontractor or if the City determines that a Subcontractor's performance or the performance of an affiliate or associate of a Subcontractor on previous contracts with the City is unsatisfactory. If the City objects to a Subcontractor proposed by a Contractor, the Contractor shall nominate another Subcontractor acceptable to the City.
- 2.2.3 The City may, at the request of a Subcontractor, provide a Subcontractor with information of the amounts certified to that Subcontractor's account.
- 2.2.4 The Contractor shall be responsible to the City for the acts and omissions of Subcontractors and persons directly or indirectly employed by them.
- 2.2.5 Nothing contained in the Contract shall create any contractual relation between any Subcontractor and the City.
- 2.2.6 The Contractor shall bind every Subcontractor to the terms and conditions of the Contract to the extent that those terms and conditions apply to the portion of the Work to be carried out by the Subcontractor.

## **2.3 OTHER CONTRACTORS**

- 2.3.1 The City reserves the right to award separate contracts in connection with the undertaking, of which the Work is a part, and the Contractor shall properly connect and co-ordinate the Work with that of Other Contractors to whom contracts are awarded. Any change in the costs incurred by the Contractor in the planning and performance of the Work that was not shown or included in the Contract shall be evaluated as provided herein under Section 5.3 - Valuation of Change.
- 2.3.2 If any part of the Work to be performed by the Contractor depends for its proper execution or result upon the work of any Other Contractor, as outlined in Article 2.3.1, the Contractor shall promptly report to the City in writing any unfinished work or defects in the work of the Other Contractor that may interfere with the proper execution of the Work. Should the Contractor fail to report the defects, the Contractor shall have no claim against the City by reason of the defective or unfinished work of any Other Contractor except for latent defects not reasonably noticeable at the time of the commencement of the Work.
- 2.3.3 In awarding separate contracts the City shall be responsible for the co-ordination of insurance coverage.

## **PART 3. PRODUCTS**

### **3.1 PRODUCTS AND EQUIPMENT**

- 3.1.1 Unless stipulated otherwise in the Contract, the Contractor shall provide and pay for all Products, labour, light, power, heating, water and everything else necessary for the execution of the Work.
- 3.1.2 Unless specified otherwise in the Contract, Products to be incorporated in the Work shall be new and workmanship and Products shall be of good and merchantable quality, and not less than the quality specified.
- 3.1.3 The Contractor shall, if required by the City, furnish satisfactory evidence of such quality of the Products to be incorporated in the Work. The Contractor shall furnish for the City's approval such samples as the City may reasonably require. The Work shall be in accordance with approved samples.
- 3.1.4 If the Contractor provided the City with a list of its Product manufacturers in its Bid, the Contractor shall not change those Product manufacturers without obtaining the prior written permission of the City.
- 3.1.5 If the Contractor provided the City with a list of equipment in its Bid, the equipment listed shall be used in the Work unless otherwise permitted by the City in writing.

### **3.2 DELIVERY AND STORAGE OF PRODUCTS**

- 3.2.1 The Contractor shall be responsible for the delivery and storage of Products.
- 3.2.2 The Contractor shall be liable for the loss or destruction of Products or equipment supplied by the City while they are on the Work Site.
- 3.2.3 The Contractor and the City shall examine the Products and equipment supplied by the City at the time and place of delivery to the site, and shall jointly prepare a statement of acceptance, noting the value of delivered Products and rejecting any product that does not meet the requirements outlined in the Specifications.
- 3.2.4 The City will not pay for Products at the Work Site that have not been incorporated into the Work.

## **PART 4. EXECUTION OF THE WORK**

### **4.1 SURVEYS AND PLANS**

- 4.1.1 The City will provide plans describing the limits of the Work Site, easements and rights-of-way.
- 4.1.2 Surveys required to replace survey pins destroyed or damaged by the Contractor shall be at the Contractor's expense.
- 4.1.3 The Contractor shall provide at its cost all other surveys as required in the execution of the Work, and shall on request furnish to the City copies of plans of those surveys.

## **4.2 UTILITIES**

- 4.2.1 If it is necessary to work on or near any Utilities, the Contractor shall at its own expense support the Utility to maintain uninterrupted service. Any damage caused by the Contractor's operations must be made good at the Contractor's expense and the Contractor shall be liable for all claims against or by the City arising in any way from interference with the Utility by the Contractor.
- 4.2.2 No additional compensation shall be allowed to the Contractor for any delays, inconvenience or damage sustained due to interference from any Utility or the operation of moving a Utility whether temporarily or permanently, and the interference or move shall be given due consideration in the scheduling of the Work and shall be undertaken at the scheduled time unless alternate arrangements are made with the City.
- 4.2.3 The Contractor shall notify the operator of any Utility affected by the Work not less than 48 hours prior to working on or near the Utility. The Contractor shall comply with all directions issued by the Utility operator in relation to the Utility.
- 4.2.4 The City gives no representation or warranty that the location of any Utility line or structure is marked correctly or marked at all on the Drawings. Any changes to the to a marked Utility line that will affect the schedule for completing the Work or the Contract Sum will be addressed as outlined in Section 4.5 – Changes to the Work.
- 4.2.5 The Contractor shall notify all Utility operators and ensure that Utility lines are staked prior to commencement of the Work.

## **4.3 CUTTING AND REMEDIAL WORK**

- 4.3.1 The Contractor shall do cutting and remedial work that may be required to make the several parts of the Work fit together properly.
- 4.3.2 The Contractor shall co-ordinate the schedule for the Work to ensure that the cutting and remedial work and time are kept to a minimum.
- 4.3.3 Should the City or anyone employed by the City be responsible for ill-timed work necessitating cutting or remedial work to be performed, the cost of such cutting or remedial work shall be valued as provided herein and added to the Contract Sum.
- 4.3.4 The Contractor shall not endanger any existing work by cutting, digging or otherwise and shall not cut or alter the work of any Other Contractor unless otherwise directed by the City.

## **4.4 SUBSURFACE CONDITIONS**

- 4.4.1 If the Contractor finds that subsurface conditions at the Work Site are substantially different from those indicated in the Contract or otherwise represented by the City to the Contractor, and such conditions may affect the execution of the Work with respect to time, material, cost or otherwise, then the Contractor shall immediately notify the City and confirm such notification in writing within two Working Days of finding such substantial difference in conditions.



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- 4.4.2 The notice provided by the Contractor must contain a description of the subsurface conditions and the Contractor's initial assessment as to the effect that the conditions will have on the execution of Work with respect to time, material, cost or otherwise.
- 4.4.3 The City will promptly investigate such conditions and if it finds that the subsurface conditions are substantially different from those indicated in the Contract then the City will issue a Site Instruction or a Change Order.
- 4.4.4 If the Contractor fails to notify the City of any substantial difference in site conditions as required in Article 4.4.1, then the City may not authorize a change to the Contract Sum and the Contractor shall be responsible for any increased cost or delay that is associated with the substantial difference in subsurface conditions.

**4.5 CHANGES TO THE WORK**

- 4.5.1 The City may at anytime during the execution of the Work direct that additions, deletions, or changes be made to the Work or amend the completion dates.
- 4.5.2 Except as provided for in Section 7.6 - Emergencies, no change shall be made unless in pursuance of a Change Order or Site Instruction duly signed by the City and no claim for an addition to or deduction from the Contract Sum shall be valid unless confirmed by a Change Order.
- 4.5.3 Before any Change Order is issued, the Contractor shall present a proposal in writing, naming the price together with a complete breakdown consistent with the method of valuation of change as outlined in Section 5.3 – Valuation of Change.
- 4.5.4 The Contractor shall include in its proposal a statement as to the effect the proposed change will have on the schedule for completing the Work or portions of the Work. Failure to provide this information with the proposal will disallow the Contractor from claiming amendments to the schedule for completing the Work or portions of the Work due to the change.
- 4.5.5 The Contract Sum or schedule for completing the Work or portions of the Work shall be adjusted only by a Change Order signed by the City. A Change Order shall not be regarded as conferring an extension to the completion dates unless expressly stipulated.

**4.6 INSPECTION OF WORK**

- 4.6.1 The City shall be entitled to access the Work Site for inspection at all times. The Contractor shall provide to the City or the City's agents proper facilities for such access and inspection.
- 4.6.2 If the Specifications, Site Instructions, Change Order, or an Applicable Law requires any portion of the Work to be specially tested or approved, the Contractor shall give the inspecting authority timely notice when that portion of the Work is ready for inspection. Inspection by the City shall be promptly made. If the inspection is by an authority other than the City, the Contractor shall provide notification to the City of the date and time fixed for the inspection.

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- 4.6.3 If any portion of the Work requiring inspection is covered up without inspection, the Contractor shall, if required by the City, uncover that portion for examination by the City at the Contractor's expense.
- 4.6.4 The Contractor shall furnish promptly to the City two copies of all certificates and inspection reports related to the Work.
- 4.6.5 The City may order the Contractor to uncover any part of the Work for examination as the City shall direct. If such Work is found to be in accordance with the Contract, the City shall pay the cost of uncovering, examination and reinstatement. If such Work is found not to be in accordance with the Contract, the Contractor shall pay the costs of uncovering, examination, replacement and reinstatement.
- 4.6.6 Inspection undertaken by the inspecting authority does not relieve the Contractor of its responsibility to perform the Work in accordance with the Contract.

**4.7 REJECTED WORK**

- 4.7.1 The City will notify the Contractor of any portion of the Work that the City has determined does not conform to the Contract (the "Rejected Work"), regardless of cause.
- 4.7.2 The Contractor shall, at its sole expense, rectify the Rejected Work within the timeline required by the City. The Contractor shall also be responsible for any costs or expenses incurred in repairing or redoing the work of Other Contractors destroyed or damaged by the rectification.
- 4.7.3 If the Contractor does not rectify the Rejected Work within the time required by the City, the City may replace such Work in accordance with Section 10.1 – City's Right to do Work.
- 4.7.4 If, in the opinion of the City, it is not expedient to correct Rejected Work, the City may deduct from the Contract Sum the difference in value between the work as done and that called for in the Contract, the amount of which shall be determined by the City.

**4.8 CLEANING UP**

- 4.8.1 The Contractor shall at all times keep the Work Site free from accumulations of waste material. At the completion of the Work, the Contractor shall remove unwanted material, tools and equipment from the Work Site and leave the Work Site clean. The City may remove unwanted material, tools, equipment left at the Work Site after completion of the Work and charge the cost of removal to the Contractor.

**4.9 DELAYS**

- 4.9.1 If the Contractor is delayed in the completion of the Work by any act or neglect of the City, or any Other Contractor employed by the City, or employee of one of them, then the time of completion shall be extended for such reasonable time as the City may decide.

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- 4.9.2 If the Contractor is delayed in completion of the Work by Force Majeure then the time of completion shall be extended by the City for a period of time equal to the time lost due to such delays. Force Majeure is defined as labour disputes, strikes, lock-outs, fire, unusual delay by common carriers or unavoidable casualties, or such other cause beyond the reasonable control of the Contractor. The Contractor's lack of funds is not a cause beyond the Contractor's control.
- 4.9.3 In addition and without limit to the foregoing, the time of completion may be extended because of any cause whatsoever within the Contractor's control that the City may decide as justifying a delay and for such reasonable time as the City will decide.
- 4.9.4 Notwithstanding the foregoing, no extension shall be made for delay unless the Contractor provides to the City written notice within five Working Days of the commencement of the Force Majeure.
- 4.9.5 No payment shall be made to the Contractor as compensation for damages for delays or hindrances in the progress of the Work resulting from a Force Majeure or any cause whatsoever unless the delay is due to an act or negligence of the City.
- 4.9.6 The Contractor acknowledges that any delays in the schedule for completing the Work or portions of the Work may cause delays in the work of Other Contractors. Without limiting the generality of Articles 8.2.1 and 8.2.2, the Contractor will be responsible for any claims from Other Contractors relating to such delays if they are a result of the Contractor's action or inaction.
- 4.9.7 No changes to the Contract Sum or schedule for completing the Work or portions of the Work shall be made unless such change is confirmed by a Change Order signed by the City.

**4.10 DELAY COSTS**

- 4.10.1 As time is of the essence in this Contract, the City may incur additional administration costs and expenses (the "Administration Costs") if the Contractor has not completed the Work by the scheduled completion date. The Administration Costs will consist of the following:
- a) additional fees payable by the City to the Consultant on a per diem basis according to the Consultant's personnel rates;
  - b) City personnel costs associated with the delay, in an amount determined by the City; and
  - c) any additional costs or loss of revenue incurred by the City due to the delay.
- 4.10.2 The Contractor will be required to pay the Administration Costs if the Contractor fails to complete the Work by the scheduled completion date. The City may set off these Administration Costs from any amounts due to the Contractor. This right is in addition to any other right or remedy that the City may have in law or equity with respect to the Contractor.

## **PART 5. PAYMENTS AND CERTIFICATES**

### **5.1 APPLICABLE TAXES**

- 5.1.1 All references to costs, expenses, and payments in this Contract shall be considered to include any GST, other applicable federal, provincial, and municipal taxes, or other taxes associated with such costs, expenses, or payment unless otherwise noted.
- 5.1.2 In each application for payment, the Contractor shall indicate the GST as a separate amount calculated on the net Contract Sum payable on that application, that is, accrued Contract Sum less holdback less the total of previous payments. The GST on the holdback will be payable together with the release of the holdback.

### **5.2 PRIME COST SUM**

- 5.2.1 In the event that the actual cost of the Work relating to a Prime Cost Sum is different from the Prime Cost Sum, then the City will issue a Change Order confirming the change in the Contract Sum in accordance with Section 5.3 - Valuation of Change
- 5.2.2 Without limiting the generality of Article 5.2.1, the unexpended portion of a Prime Cost Sum shall be deducted from the Contract Sum.

### **5.3 VALUATION OF CHANGE**

- 5.3.1 The value of any change in the Work shall be determined by the City in one or more of the following ways:
- a) By unit prices indicated in the Bid Form or as otherwise agreed by the City and the Contractor;
  - b) By estimate and acceptance in a lump sum;
  - c) By cost plus percentage;
  - d) By cost and a fixed fee;
  - e) As provided for in the Supplementary General Conditions; or
  - f) If none of the above methods can be used, by alternative dispute resolution as set out in PART 11 - Disputes.
- 5.3.2 When the City orders a change to the Work requiring extra work and it is performed by the Contractor's own forces and valued under Article 5.3.1(c), the City will pay only for labour, materials and equipment directly used in the extra work plus mark-ups in accordance with the table below:

Labour:	Labour rates accepted by the City plus 10% for profit.
Materials:	Actual cost plus a 10% overhead allowance, plus 10% for profit.
Equipment:	At rental rates provided by the City's Mobile Equipment Services Branch (MES rates) OR rates provided by the Alberta Roadbuilders and Heavy Construction

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	Association or other similar trade association approved by the City, for the time when equipment is in use. There shall be no mark-ups on these rates.
Transport:	Transport of equipment will only be allowed if the equipment is not already present at the Work Site.
Small tools:	Included in the labour rate.
Equipment not owned by the Contractor and not covered by MES rates:	Actual rental cost plus 10% for overhead and 5% for profit.

- 5.3.3 Prior to commencing execution of the Work, the Contractor shall submit to the City both regular and overtime labour hourly rates.
- 5.3.4 For the purpose of Article 5.3.2, the labour rates shall include only the actual wage paid to the employee, plus the payroll burden plus an overhead allowance of 15%. The payroll burden shall consist of the Contractor's required payment for Canada Pension Plan, Employment Insurance, Workers' Compensation, employee pension plans, vacation allowance, medical benefits and any other payments required by law.
- 5.3.5 If requested the Contractor shall provide a detailed breakdown of the proposed labour rates showing clearly how the make up of the rate conforms to Articles 5.3.3 and 5.3.4. The City may audit the rates for compliance.
- 5.3.6 Unless agreed to in writing by the City, all extra work will be valued based on regular labour rates.
- 5.3.7 The City will not pay for vehicles used to transport workers.
- 5.3.8 When a Subcontractor performs the extra work and the payment to the Contractor is on a cost plus percentage basis, the City will pay the Contractor:
- a) an amount equal to the Subcontractor's costs for labour, materials and equipment used for the extra work, provided that the rates, overhead allowance and profits do not exceed those outlined in Article 5.3.2; and
  - b) a mark-up for overhead allowance and profit, not exceeding 10%, on top of the Subcontractor's price. This mark-up shall take account of all additional costs, excluding approved supervision, required to ensure that the Subcontractor undertakes the extra work in accordance with the Contract.

**5.4 APPLICATION FOR PAYMENT**

- 5.4.1 Application for payment may be made monthly, as the Work progresses, for the value of Work performed and Products incorporated in the Work to a date agreed to between the Contractor and the City.
- 5.4.2 Where payment is on the basis of a lump sum price as indicated in the Bid Form, the Contractor shall, before the first application for payment submit to the City a schedule of values and projected cash flow for the various parts of the Work. The schedule shall aggregate the total Contract Sum, divided so as to facilitate

evaluation of progress claims, and be made out in a form and supported by evidence as the City may direct.

5.4.3 Where payment is on the basis of unit prices as indicated in the Bid Form, the Contractor shall, before the first application for payment, submit to the City a projected cash flow aggregating the total Contract Sum.

5.4.4 Each application for payment shall be accompanied by:

- a) a statement of amounts claimed based on the schedule of values, including any authorized change, if payment is on the basis of a lump sum price as indicated in the Bid Form;
- b) a schedule of work units duly measured and accepted by the City and valued at the applicable unit prices, including any authorized change, if payment is on the basis of unit prices as indicated in the Bid Form;
- c) an updated cash flow projection;
- d) such evidence as the City may direct showing the Contractor's entitlement to the payment claimed; and
- e) notification of any liability which may fall upon the City if not paid for by the Contractor.

5.4.5 The City will, within 20 days of receiving an application for payment, approve the payment, or advise the Contractor promptly in writing why it is amended or rejected.

5.4.6 Each application for payment shall become due and payable by the City within ten days of approval.

5.4.7 Each certificate for payment shall be determined as the accrued amount approved less the holdback amount as defined in Section 5.5 - Holdbacks, less the total of previous approved payments.

5.4.8 No payment shall be made if any lien or charge is filed in respect to the Work performed or Products furnished under the Contract. The City shall not be obligated to make further payments until the Contractor provides evidence that the Work is clear of Builders' Liens and any other charges arising out of the Contractor's execution of the Work.

5.4.9 The City may review its records with respect to business licensing, taxation and assessment and other accounts receivables prior to making any payment to the Contractor. The City may set off any overdue accounts owed by the Contractor to the City against any amounts otherwise payable to the Contractor pursuant to the Contract.

## **5.5 HOLDBACKS**

5.5.1 The City shall be entitled to holdback an amount from payments as may be required by the *Builders' Lien Act*, R.S.A. 2000, c. B-7, or any other Applicable Law.

5.5.2 If the Applicable Laws do not require that the City maintain a holdback, the City will maintain a holdback as follows:

- a) 10% of the accrued amount approved will be withheld until 50% of the value of the Work is completed; and
- b) 5% of the accrued amount approved will be withheld until the issuance of a Construction Completion Certificate by the City.

5.5.3 In addition to the foregoing, the City shall have the right to retain an additional holdback to the extent necessary to protect the City from loss on account of one or more of the following:

- a) the Contractor, in the opinion of the City, is not making satisfactory progress toward the scheduled completion date,
- b) Rejected Work has not been remedied,
- c) claims relating to the Work filed, or reasonable evidence in the opinion of the City indicating probable filing of claims,
- d) evidence of failure of the Contractor to make payment to Subcontractors for Products or for labour, or
- e) damage to Other Contractors.

## **5.6 CERTIFICATE OF SUBSTANTIAL PERFORMANCE**

- 5.6.1 If the Contractor is of the opinion that the Contract is substantially performed as defined by the *Builders' Lien Act*, R.S.A. 2000, c. B-7, the Contractor may issue and deliver to the City a Certificate of Substantial Performance with respect to the Contract.
- 5.6.2 Where the Contractor and a Subcontractor are of the opinion that the Subcontractor's contract is substantially performed, the Contractor may issue and deliver to the City a Certificate of Substantial Performance that has been signed by both the Contractor and the subcontractor with respect to the subcontract.
- 5.6.3 The Certificate of Substantial Performance delivered to the City shall also list deficiencies and outstanding items of work to be completed, dates for corrections and a value of the work to be completed.
- 5.6.4 If the Contractor issues a Certificate of Substantial Performance the Contractor shall, within three days from the date of such issuance, post the Certificate as required by the *Builders' Lien Act*, R.S.A. 2000, c. B-7.

## **5.7 CONSTRUCTION COMPLETION CERTIFICATE**

- 5.7.1 Upon Practical Completion of the Work when all deficiencies have been corrected, and the Contractor has delivered to the City all required documents relating to the Work, the City will issue a Construction Completion Certificate to the Contractor.
- 5.7.2 The acceptance by the Contractor of the Construction Completion Certificate, or the payment thereunder shall constitute a waiver of all further claims against the City under this Contract.

## **5.8 RELEASE OF HOLDBACK**

- 5.8.1 At Interim Acceptance of the Work, the Contractor shall submit to the City after the issuance of a Certificate of Substantial Performance or the City's issuance of a Construction Completion Certificate an application for release of holdback accompanied by:
- a) a statement of the amount claimed;
  - b) a certificate dated after the date of the Certificate of Substantial Performance or Construction Completion Certificate, from the Workers' Compensation Board verifying that assessment dues from the Contractor and its Subcontractors have been paid; and
  - c) reasonable evidence as the City may require showing the Contractor's entitlement to the payment claimed.
- 5.8.2 If the *Builders' Lien Act*, R.S.A. 2000, c. B-7 is applicable to the Contract, the Contractor shall also submit statutory declaration in the form provided by the City showing compliance with the Act. The declaration shall be dated after the date of the Certificate of Substantial Performance or Construction Completion Certificate.
- 5.8.3 If the *Builders' Lien Act*, R.S.A. 2000, c. B-7 is applicable to the Contract, the City will commence approval for payment of the holdback 45 days after the date that the City receives the Certificate of Substantial Performance or issues the Construction Completion Certificate.

## **5.9 WARRANTY PERIOD**

- 5.9.1 The Warranty Period for the Work shall commence on the date stated in the Construction Completion Certificate and shall be for:
- a) 24 months if the Contract is for the Transportation and Streets Department;
  - b) 12 months if the Contract is not for the Transportation and Streets Department, except that the Warranty Period for any Work requiring public roadway surfacing shall be 24 months; or
  - c) the time period specified in the Supplementary General Conditions.
- 5.9.2 The City shall give notice to the Contractor of observed defects to the Work within the Warranty Period.
- 5.9.3 The Contractor shall promptly correct, at its expense and to the satisfaction of the City, any defects observed in the Work during the Warranty Period. The Contractor shall pay for any damage to other work resulting from defects that arise during the Warranty Period.
- 5.9.4 Notwithstanding the provisions of Section 5.9 - Warranty Period, if an Applicable Law or Product warranty extends the liability for faulty Products or workmanship beyond the Warranty Period, then the provisions of the Applicable Law or Product warranty shall apply.



## **5.10 LIABILITY FOR LANDSCAPING, TREES AND SHRUBS**

- 5.10.1 In Section 5.10 - Liability for Landscaping, Trees and Shrubs, "Natural Causes" means any cause in which human beings are not the main culprits and includes, but is not limited to, diseases, pests and climatic stress. This Section applies to the soft landscaping portion of the Work of the Contract.
- 5.10.2 If the Work includes soft landscaping the Contractor shall follow the maintenance standards developed by the City's Parks Branch or as otherwise specified in the Contract. The Contractor will maintain soft landscaping including all turf, trees and shrubs during the Warranty Period.
- 5.10.3 The Contractor acknowledges that proper maintenance will reduce, but never eliminate, the chance that a tree or shrub will die or be damaged through Natural Causes.
- 5.10.4 The Contractor acknowledges that, if a tree or shrub dies or is damaged through Natural Causes, it is very difficult to prove whether the result could have been prevented by proper maintenance. In order to avoid problems of proof of causation and to ensure that the Contractor has an incentive to properly maintain the trees and shrubs, the Contractor shall be liable for all death or damage to trees and shrubs due to Natural Causes.
- 5.10.5 The Contractor shall not be liable for the death or damage to trees or shrubs if caused directly by human intervention not resulting from the act or inaction of the Contractor, its employees, agents or Subcontractors. Examples of this kind of damage include:
- a) vandalism,
  - b) car accidents,
  - c) construction accidents,
  - d) flooding caused by human activities on or near the site,
  - e) chemical contamination and
  - f) accidents during maintenance by the City.
- 5.10.6 The onus shall be on the Contractor to prove that the death or damage of a tree or shrub was not as a result of Natural Causes.

## **5.11 FINAL ACCEPTANCE CERTIFICATE**

- 5.11.1 Thirty days prior to the expiration of the Warranty Period the Contractor shall apply to the City for a Final Acceptance Certificate. The City shall issue a Final Acceptance Certificate to the Contractor if Total Completion of the Work has been determined.

## **5.12 NON-WAIVER OF RESPONSIBILITY**

- 5.12.1 Notwithstanding any other term of the Contract, no certificate, payment or waiver of claims shall relieve the Contractor from liability arising out of the Contractor's failure to comply with the Contract.

**GENERAL CONDITIONS**

- 5.12.2 No approval of payment, payment, nor any partial or entire use or occupancy of the Work by the City shall constitute an acceptance of the Work or Product.

**5.13 AUDITS**

- 5.13.1 The City may audit all financial and related records associated with the terms of this Contract including timesheets, reimbursable out of pocket expenses, materials, goods, and equipment claimed by the Contractor.
- 5.13.2 The Contractor shall at all times during the term of the Contract and for a period of six years after the end of the Contract, keep and maintain records of the work performed pursuant to this Contract. This shall include proper records of quotations, contracts, correspondence, invoices, vouchers, timesheets, and other documents that support actions taken by the Contractor. All such records shall be maintained in accordance with generally accepted accounting principles. The Contractor shall at its own expense make such records available for inspection and audit (including copies and extracts of records as required) by the City at all reasonable times and without prior notice.
- 5.13.3 The obligations of this Section shall be explicitly included in any subcontracts or agreements formed between the Contractor and any Subcontractors or suppliers of goods or services to the extent that those subcontracts or agreements relate to fulfilment of the Contractor's obligations to the City.
- 5.13.4 Costs of any audits conducted under the authority of this section and not addressed elsewhere will be borne by the City unless the audit identifies significant findings that would benefit the City. The Contractor shall reimburse the City for the total costs of an audit that identifies significant findings that would benefit the City.
- 5.13.5 This Section shall not be construed to limit, revoke, or abridge any other rights, powers, or obligations relating to audit which the City may have by Federal, Provincial, or Municipal law, whether those rights, powers, or obligations are express or implied.

**5.14 ELECTRONIC PAYMENT**

- 5.14.1 Whenever the City is obligated to make a payment to the Contractor under the Contract, the City may, at its sole discretion, transfer funds electronically from the City directly to the Contractor's account at a financial institution (an "Electronic Payment Method").
- 5.14.2 If the City gives the Contractor notice in writing of its intention to use an Electronic Payment Method, the Contractor shall provide the City with all information that the City may reasonably require to carry out an Electronic Payment Method, including the name and address of the Contractor's financial institution and the appropriate account numbers.
- 5.14.3 The City shall keep all such information confidential and only use it for the purpose of carrying out Electronic Payment Method.

**PART 6. APPLICABLE LAWS**

**6.1 LAWS, NOTICES, PERMITS AND FEES**

- 6.1.1 The Contractor shall apply and pay for necessary permits or licenses required for the execution of the Work. This shall not include the obtaining of permanent easements.
- 6.1.2 The Contractor shall give necessary notices and pay fees required by Applicable Laws and in order to preserve public health and safety. Where there are two or more Applicable Laws governing the Work, the more restrictive shall apply.
- 6.1.3 The Contractor shall be responsible for the safety of workers and equipment on the Work Site in accordance with all Applicable Laws.
- 6.1.4 The Contractor is responsible for performing the Work in compliance with the Applicable Laws. If any modifications to the Work are required as a result of the Contract being at variance with the Applicable Laws or if the Applicable Laws change subsequent to the date of the Contract, any resulting change in the cost shall constitute a corresponding change in the Contract Sum. The Contractor shall notify the City in writing requesting direction immediately of any variance or changes that affect the Contract or the Work.
- 6.1.5 If the Contractor fails to notify the City in writing to obtain direction and performs the Work contrary to the Applicable Laws, the Contractor shall be responsible for and shall correct any violations and shall bear all costs, expenses and damages attributable to its failure to comply with the Applicable Laws.
- 6.1.6 In the event the Contractor fails to comply with the Applicable Laws, and the City is required to take any steps or pay any sums to rectify non-compliance, the City may subtract the cost of rectification from any money owing to the Contractor.
- 6.1.7 The Contractor acknowledges that the City is subject to *the Freedom of Information and Protection of Privacy Act*, R.S.A 2000, c. F-25 ("FOIP"). FOIP applies to all records relating to, or obtained, created or collected under this Agreement which are in the custody or under the control of the City. The Contractor agrees to comply with the provisions of *FOIP*.
- 6.1.8 The Contractor shall comply with all Applicable Laws dealing with environmental issues including, but not limited to, the *Environmental Protection and Enhancement Act*, R.S.A. 2000, c. E-12 and its regulations.
- 6.1.9 Without limiting the generality of Article 6.1.8, the Contractor will be responsible for complying with the City's Environmental Policy. The Contractor will be required to sign an Acknowledgement confirming the Contractor's environmental responsibility in performing the Work.

## **6.2 WORKERS' COMPENSATION**

- 6.2.1 When requested by the City, the Contractor shall provide such evidence of compliance with all requirements of the *Workers' Compensation Act*, R.S.A. 2000, c. W-15, including payments due thereunder by the Contractor or Subcontractors.
- 6.2.2 If directors, partners or owners of the Contractor will be actively providing services under this Contract, then the Contractor must provide WCB coverage for those directors, partners and owners. The Contractor shall provide evidence of such coverage to the City upon request.

## **6.3 OCCUPATIONAL HEALTH AND SAFETY**

- 6.3.1 Without restricting the generality of Article 6.1.3, the Contractor shall comply with the provisions of the *Occupational Health and Safety Act*, R.S.A. 2000, c. O-2 and shall at all times ensure that all Subcontractors at the Work Site comply with the requirements of all Applicable Laws. The Contractor shall be the general representative and agent to the City for the purposes of ensuring compliance with Applicable Laws relating to safety for both itself and Subcontractors. The Contractor shall bring to the attention of Subcontractors the provisions of the *Occupational Health and Safety Act*, R.S.A. 2000, c. O-2.
- 6.3.2 Unless otherwise stated in the Supplementary General Conditions, the Contractor is assigned the role of Prime Contractor pursuant to s. 3 of the *Occupational Health and Safety Act*, R.S.A. 2000, c. O-2 for the Work Site and is responsible for ensuring compliance with all Applicable Laws relating to safety by all employers and employees on the Work Site.

## **6.4 PATENT FEES**

- 6.4.1 The Contractor shall pay all royalties, patent fees and license fees required for the performance of the Work. The Contractor shall indemnify the City for all claims, demands, losses, costs, damages, actions, suits or proceedings arising out of the Contractor's performance of the Work or the City's use of the Work which are attributable to an infringement or an alleged infringement of any patent, copyright, trade secret or invention. If the City is legally prevented from using any Product or any portion of the Work, the Contractor shall substitute an equally suitable Product or portion of the Work, subject to the approval of the City.
- 6.4.2 The City will indemnify the Contractor for all claims, demands, losses, costs, damages, actions, suits or proceedings arising out of the Contractor's performance of the Work which are attributable to an infringement or any alleged infringement of any patent, copyright, trade secret or invention arising from the Contractor's use of models, plans or designs of which were supplied to the Contractor by the City.
- 6.4.3 If the City or the Contractor receives a claim for an infringement or alleged infringement of any patent or invention, the party receiving such claim shall inform the other party in writing within 2 Working Days of receiving such claim.

## **6.5 IMPORTING FEES AND INDEMNITY**

- 6.5.1 The Contractor shall undertake all needed operations, and pay all relevant fees, charges, penalties, or duties levied in importing any equipment, services or Products for the performance of the Work.
- 6.5.2 Without limiting the generality of Article 6.5.1, if the Contractor is required to import equipment, services or Products for the Work, the Contractor must ensure that the Contractor or the Contractor's agent or representative is the "IMPORTER OF RECORD" for Canada Customs and Revenue Agency purposes.
- 6.5.3 The Contractor shall indemnify the City for any fees, charges, penalties, or duties that may be levied by the Federal Government relating to any equipment, services or Products imported by the Contractor for the performance of the Work.
- 6.5.4 If any import duties relating to Products increase or decrease subsequent to the date of Tender closing, any resulting change in the cost shall constitute a corresponding change in the Contract Sum.
- 6.5.5 The Contractor shall co-operate fully with the City and the proper authorities in seeking to obtain all refunds of all fees, charges, penalties or duties to which the City may be entitled.

## **6.6 CREDITS OR GRANTS APPLICABLE TO THE WORK**

- 6.6.1 All credits, grants or incentives of any nature provided by any municipal, provincial, federal or international authority and attributable to the Work shall be the property of the City. Without limiting the generality of the foregoing, if the Work results in the ability to demonstrate reductions in the generation of greenhouse gases, such reductions and any resulting greenhouse gas credits, offsets or other instruments that may exist to measure and value such reductions shall be the property of the City.
- 6.6.2 If required and as may be requested by the City, the Contractor shall provide the City with all information, documents and assistance as may be required to enable the City to obtain all credits, grants or incentives.

## **PART 7. PROTECTION OF WORK, PROPERTY AND LIFE**

### **7.1 USE OF PREMISES AND OVERLOADING**

- 7.1.1 The Contractor shall confine its apparatus, the storage of Products and the operations of its workers to limits indicated by Applicable Laws, permits or by direction of the City and shall not unreasonably encumber the premises with its Products and equipment.
- 7.1.2 The Contractor shall not load or permit to be loaded any part of the Work with a weight that will endanger its safety and, in addition, no part of the Work shall be loaded after the pouring of concrete except with the approval of the City.

- 7.1.3 The Contractor shall comply with the City's instructions regarding signs, advertisements, fires, smoking, sanitation and storage of inflammable products.

## **7.2 PROTECTION OF WORK AND PROPERTY**

- 7.2.1 The Contractor shall maintain, at the Contractors' expense, continuous and adequate protection of the Work from damage and shall protect the City's property from damage arising in connection with the performance of the Work. The Contractor shall, at its expense make good any damage to the Work and to the property of the City arising as a result of the Contractor's performance of the Work.
- 7.2.2 The Contractor shall not be responsible for any damage or injury to the Work or to the property of the City which may be directly caused by the City, its agents or employees, or from any work or risk which the City has agreed to insure, provided the Contractor has taken reasonable protective precautions. Any such damage or injury shall be remedied by the Contractor upon the written direction of the City. The time for completion shall be extended and the costs incurred by the Contractor for such remedial work shall be added to the Contract Sum.
- 7.2.3 The Contractor shall be responsible for the protection of roads and property adjacent to the Work Site.
- 7.2.4 The Contractor shall provide, erect and maintain all necessary hoardings, barricades, covered ways, guardrails, barriers, night lights, sidewalks, curbs, and protection as may be necessary for the preservation of public health and safety, or as may be required by Applicable Laws.
- 7.2.5 The Contractor shall comply with City Policy C456, Corporate Tree Management, which deals with construction near or around ornamental trees and natural tree areas.
- 7.2.6 The Contractor shall supply and keep at the Work Site, facilities and equipment for extinguishing fires of the type and size suitable to give adequate protection.

## **7.3 CONSTRUCTION WORK AT OR NEAR PIPELINES**

- 7.3.1 If the Work involves excavation or other construction activity near underground pipelines, the Contractor shall, in addition to accepting and receiving information supplied by the City, take all measures necessary to locate any pipelines. The Contractor acknowledges that it is aware of all requirements under the *Pipeline Act*, R.S.A. 2000, c. P-15. The Contractor warrants that it will comply with all requirements of the *Pipeline Act*, R.S.A. 2000, c. P-15, the Pipeline Crossing Agreement and any other reasonable direction given to the Contractor by the City.
- 7.3.2 Without restricting the generality of Article 7.3.1, if, while performing the Work, contact is made with a pipeline and results in a puncture of or crack in the pipeline, the Contractor shall:

- a) immediately stop the activity,
  - b) immediately phone 911 and give the name of the pipeline and location of activity,
  - c) immediately advise the pipeline company and
  - d) not recommence any construction activity without the approval of the pipeline company.
- 7.3.3 If the City provides information, inspections, or supervision, this shall not be deemed an assumption of responsibility by the City.
- 7.3.4 Breach of any requirement of Section 7.3 - Construction Work at or Near Pipelines, is a substantial breach of the Contract, and the City may immediately terminate the Contract.

#### **7.4 CONTAMINATION AND HAZARDOUS PRODUCTS**

- 7.4.1 The Contractor shall advise the City of all hazardous products and or chemicals, as defined by the *Occupational Health and Safety Act*, R.S.A. 2000, c. O-2, at the Work Site. The Contractor shall ensure that Material Safety Data Sheets for these products are readily accessible at the Work Site.
- 7.4.2 Before beginning work in any City facility, the Contractor shall meet with the City to discuss potentially hazardous material on the site. This shall include hazards of a physical or chemical nature.
- 7.4.3 Before beginning work, the Contractor shall also conduct an on-site review of existing materials that might contain asbestos and notify the City in writing of its findings. The City will then determine the appropriate course of action.
- 7.4.4 If the Contractor, after commencing the Work, encounters or has reason to believe in the existence of any Contamination in, on or under the Work Site or affecting any portion of the Project, the Contractor shall:
- a) immediately take all reasonable steps, including suspension or stoppage of the Work, as are necessary and appropriate to minimize the risk of any person or property suffering injury, sickness, death, damage or destruction as a result of exposure to, or the presence of, such Contamination;
  - b) report any known release of a Hazardous Substance, or the discovery of the existence of any Contamination, to the City within 24 hours of such knowledge or discovery, and to any relevant governmental authorities in compliance with all Applicable Laws, and thereafter give a comprehensive written report to City describing all remedial measures to be taken; and
  - c) otherwise act in compliance with all Applicable Laws in respect of such Contamination.
- 7.4.5 Any change in cost relating to the Work as a result of the existence of Contamination will be valued in accordance with the articles of Section 5.3 - VALUATION OF CHANGE.

- 7.4.6 The City may request a status report on the Contamination or remedial measures from the Contractor and if so, the Contractor shall promptly provide a written report describing the current status and the effect, if any, on the Work.

## **7.5 SAFETY AND SECURITY**

- 7.5.1 If requested by the City, the Contractor shall meet with the safety representatives of the City for the purpose of reviewing and clarifying City safety procedures.
- 7.5.2 The Contractor shall follow, in the performance of the Work, all security procedures and practices as may be required by the City.

## **7.6 EMERGENCIES**

- 7.6.1 The City has authority in an emergency to stop the progress of the Work whenever, in its opinion, such stoppage may be necessary to ensure the safety of life, or the Work, or neighbouring property. This includes authority to make changes in the Work, and to order, assess and award the cost of such work, extra to the Contract or otherwise, as may in its opinion be necessary. The City will immediately confirm in writing any such instructions. The Contractor shall take such measures as may be specified by the City that the City considers necessary for the purposes of removing any source of danger or to protect any person, property and the Work from danger.
- 7.6.2 The Contractor shall immediately notify the City in the event of any accident resulting in serious injury, death or property damage.

## **7.7 HISTORIC RESOURCES**

- 7.7.1 If the Contractor, after commencing the Work, encounters or has reason to believe in the existence of any Historic Resource in, on or under the Work Site or affecting any portion of the Project, the Contractor shall:
- a) immediately take all reasonable steps, including suspension or stoppage of the Work, as are necessary to minimize damage to such Historic Resource;
  - b) report any finding of such Historic Resource to the City within 24 hours of such finding, and to any relevant governmental authorities in compliance with all Applicable Laws, and thereafter give a comprehensive written report to the City's Consultant describing all measures to be taken by the Contractor in respect of such Historic Resource; and
  - c) otherwise act in compliance with all Applicable Laws in respect of such Historic Resource.
- 7.7.2 Any change in cost relating to the Work as a result of the existence of Historic Resources will be valued in accordance with the articles of Section 5.3 - VALUATION OF CHANGE.
- 7.7.3 The City may request a status report on the Historic Resources or remedial measures from the Contractor and if so, the Contractor shall promptly provide a written report describing the current status and the effect, if any, on the Work.



## **PART 8. DAMAGES AND INDEMNITY**

### **8.1 DAMAGES AND MUTUAL RESPONSIBILITY**

- 8.1.1 If either party to this Contract should suffer damage in any manner because of any wrongful act or neglect of the other party, or anyone employed by a subcontractor, then the injured party shall be reimbursed by the other party for such damage. The party reimbursing the other party shall be subrogated to the rights of that other party in respect of such wrongful act or neglect if such act is that of an employee or a subcontractor.
- 8.1.2 Claims shall be made in writing to the party liable within a reasonable time after the first observance of such damage and not later than the date of the Construction Completion Certificate, except as expressly stipulated otherwise in the Contract, and may be adjusted by agreement or in the manner set out in the Section PART 11 - Disputes.
- 8.1.3 If the Contractor has caused damage to any Other Contractor on the Work, the Contractor upon notice from the City shall settle with the Other Contractor if the Other Contractor will so settle. If the Other Contractor sues the City on account of any damage alleged to have been caused by the Contractor, the City shall notify the Contractor and may require the Contractor to defend the action at the Contractor's expense. If any final order, judgement or award against the City arises therefrom, the Contractor shall pay and satisfy the order, judgement or award, and all costs incurred by the City.
- 8.1.4 If the Contractor becomes liable to pay or satisfy any final order, judgement or award against the City, then the Contractor, upon undertaking to indemnify the City against any and all liability for costs and interest, shall have the right to appeal in the name of the City such final order, judgement or award to any and all courts of competent jurisdiction.

### **8.2 INDEMNIFICATION**

- 8.2.1 The Contractor agrees to indemnify and hold harmless the City, its employees and agents from and against all losses, claims demands, payments, suits, judgments, costs or expenses of every nature and description arising out of or in consequence of the Work. This shall include, but not be limited to, damages because of bodily injury, including death, at anytime arising out of or in connection in anyway with the Work, sustained by any person or persons, or on account of damage to property, including loss of use of the said property.
- 8.2.2 In the event that any action, suit, claim or demand is brought or made against the City, its employees and agents arising out of or in connection in anyway with the Work (the "Claim"), the City will give notice in writing of the Claim to the Contractor and the Contractor shall have the option of contesting or resolving the Claim on behalf of the City.
- 8.2.3 If the Contractor elects to contest or resolve the Claim on behalf of the City, the Contractor will give the City notice of the Contractor's election within seven days of the City's notice. The Contractor shall then bear all costs in relation to contesting or

- compromising the Claim on behalf of the City including any costs that the City incurred or may incur in relation to the Claim. On conclusion of the Claim, by legal proceeding or otherwise, the Contractor shall pay any judgment or order as against the City, its employees and agents or any settlement entered into on behalf of the City, its employees and agents.
- 8.2.4 Subject to subsection 8.2.6, in the event that the Contractor does not elect within seven days of the City's notice or the Contractor elects not to contest or resolve the Claim on behalf of the City, the City, at the City's sole discretion, may compromise the Claim on such terms as the City shall deem as reasonable, and the Contractor shall pay to the City immediately upon demand by the City any sums or costs paid or incurred by the City in relation to the Claim.
- 8.2.5 Without restricting the generality of the foregoing, for the purposes of Section 8.2-Indemnification, costs shall include, but are not limited to solicitor and client costs, whether the City retains in house or external legal counsel.
- 8.2.6 The obligations of the Contractor under Section 8.2 – Indemnification shall not extend to the liability of the City, its employees and agents where such liability arises from the act or omission of the City, its employees and agents and where the Contractor, by the exercise of reasonable diligence, could not have prevented such a course of action from arising.
- 8.2.7 In the event that the Contractor intends to rely on subsection 8.2.6, within seven days of the City's notice of the Claim, the Contractor must provide to the City detailed particulars of the acts or omissions on the part of the City, its employees and agents that the Contractor alleges as excluding the Contractor's indemnification of the City. The Contractor must also give particulars of the Contractor's diligence in relation to the alleged acts or omissions by the City or any of its employees or agents.
- 8.2.8 In the event that the Contractor fails or declines to provide the City with the particulars specified in subsection 8.2.7, the Contractor will be deemed to have admitted that the City bears no liability in relation to the Claim. In such circumstances, the City, at the City's sole discretion, may compromise the Claim on such terms as the City shall deem as reasonable, and the Contractor shall pay to the City immediately upon demand by the City any sums or costs paid or incurred by the City in relation to the Claim.
- 8.2.9 In the event that the Contractor provides the particulars as contemplated in subsection 8.2.7 but the City disputes that those particulars operate to exclude the Contractor's indemnification of the City, any dispute over the Contractor's indemnification of the City as between the Contractor and the City shall be resolved in accordance with Section 11.

## **PART 9. BONDS AND INSURANCE**

### **9.1 PERFORMANCE AND MAINTENANCE BONDS**

- 9.1.1 The Contractor shall provide a Performance Bond to the City. The Performance Bond shall guarantee the Contractor's faithful performance of the Contract, and in default thereof, shall protect the City against any losses or damage arising by reason

of failure of the Contractor to perform the Contract. The Performance Bond shall be in a form acceptable to the City and issued by a Surety Company licensed in the Province of Alberta and satisfactory to the City in the amount of 50% of the Contract Sum.

- 9.1.2 The Performance Bond provided shall remain in full force as a maintenance bond during the Warranty Period.
- 9.1.3 If the Work is with respect to a "project", as defined in the *City Transportation Regulation*, AR 301/80, the Contractor shall provide a Labour and Materials Bond in the amount of 50% of the Contract Sum.
- 9.1.4 The City may consider alternate forms of security.

## **9.2 CONTRACTOR'S LIABILITY INSURANCE**

- 9.2.1 Throughout the term of this Contract, the Contractor shall maintain in full force and effect the following:
- a) General Liability Insurance in an amount not less than Two Million Dollars per occurrence for personal injury and/or property damage. Such policy shall be endorsed to include the following:
- Contractual Liability (including this agreement);
  - Non-Owned Automobiles;
  - Independent Contractors;
  - Products and completed operations;
  - Excavation, collapse, shoring and pile driving (as applicable);
  - Broad form property damage;
  - Employees as Additional Insureds;
  - Property Damage Occurrence;
  - Cross Liability;
  - Contingent Employers Liability; and
  - City as an Additional Insured.
- b) Automobile Liability coverage in an amount not less than Two Million Dollars per accident for bodily injury and/or property damage.
- 9.2.2 The insurance coverages shall be endorsed to provide the City with 30 days prior written notice of cancellation, and shall be in a form acceptable to the City's Director of Risk Management. Evidence of such policies shall be submitted to the City prior to commencement of work on the Certificate of Insurance form provided in the Tender Documents and shall be duly completed by the Contractor's broker and/or insurer. The Contractor's broker shall promptly supply certified copies of such endorsements if required by the City.
- 9.2.3 As an alternative to submitting the Certificate of Insurance, the Contractor may provide full certified copies of the policies and such policies shall be properly endorsed and acceptable to the City. Evidence of renewal of coverage, subject to the provisions hereunder, shall be provided to the City prior to expiry.

- 9.2.4 Upon request by the City, the Contractor shall provide additional insurance, if the City due to changing conditions deems this necessary.
- 9.2.5 The amount of insurance shall not limit the Contractor's obligations under this Contract.
- 9.2.6 The Contractor consents to the City's release of information about the insurance maintained by the Contractor to party whom the City reasonably believes:
- a) has a claim against the Contractor, or
  - b) has a claim against the City for which the Contractor is required to indemnify the City pursuant to Article 8.2.1.

### **9.3 COURSE OF CONSTRUCTION INSURANCE**

- 9.3.1 The City may, at its own expense, provide and maintain Course of Construction Insurance on an "All Risks" basis insuring the property to be incorporated in the Work (the "Insured Property").
- 9.3.2 If the City provides Course of Construction Insurance for the Insured Property, the Contractor will be responsible for payment of a deductible in the amount of \$5,000 for each claim.

## **PART 10. REMEDIES**

### **10.1 CITY'S RIGHT TO DO WORK**

- 10.1.1 If the Contractor neglects to perform the Work properly, or fails to comply with any provision of the Contract, the City may notify the Contractor in writing that it is in default of its contractual obligations. The City will instruct the Contractor to correct the default within five Working Days of receiving the notice.
- 10.1.2 If the correction of the default cannot be completed within the five Working Days specified, the Contractor is considered to be in compliance with the City's instruction if it:
- a) commences the correction of the default within the specified time; and
  - b) provides the City with a schedule acceptable to the City for the correction; and
  - c) completes the correction in accordance with the schedule.
- 10.1.3 If the Contractor fails to correct the default as noted above, the City may, without prejudice to any other right or remedy it may have, correct such default and deduct the cost of the work from any payment due to the Contractor.

### **10.2 CITY'S RIGHT TO STOP WORK OR TERMINATE CONTRACT**

- 10.2.1 If the Contractor should be adjudged bankrupt, or makes a general assignment for the benefit of creditors, or if a receiver is appointed on account of the Contractor's insolvency, the City may, without prejudice to any other right or remedy the City may have, terminate the Contract by giving to the Contractor written notice.

10.2.2 The City may notify the Contractor in writing that the Contractor is in default of its contractual obligations if the Contractor:

- a) refuses or fails to supply sufficient properly skilled workers or proper workmanship, products or construction machinery and equipment for the scheduled performance of the Work; or
- b) changes any Product manufacturer without prior permission of the City; or
- c) fails to make payments due to its Subcontractors, its suppliers or its employees; or
- d) disregards any Applicable Law, or the City's instructions; or
- e) is decertified from the Certificate of Recognition program or the City is otherwise advised that the Contractor's certification under a similar program is to expire; or
- f) is otherwise in breach of a provision of the Contract.

10.2.3 The written notice from the City will instruct the Contractor to correct the default within five Working Days from receipt of the notice.

10.2.4 If the correction of the default cannot be completed within the five Working Days specified, the Contractor shall be considered to be in compliance with the City's instructions if it:

- a) commences the correction of the default within the specified time; and
- b) provides the City with an acceptable schedule for such correction: and
- c) completes the correction in accordance with such schedule.

10.2.5 If the Contractor fails to correct the default as herein required, the City may, without prejudice to any other right or remedy that it may have, stop the Work or terminate the Contract.

10.2.6 If the City terminates the Contract pursuant to Article 10.2.1 or 10.2.5, it is entitled to:

- a) take possession of the Work Site and Products and utilize the construction machinery and equipment, subject to the rights of third parties, and to finish the Work by whatever method it may deem expedient;
- b) withhold any further payments to the Contractor until the Work is finished;
- c) upon final completion of the Work, charge the Contractor the amount by which the full cost of finishing the Work exceeds the unpaid balance of the Contract Sum, or if such cost of finishing the Work is less than the unpaid balance of the Contract Sum, pay the Contractor the difference;
- d) maintain a reasonable holdback during the Warranty Period representing the City's estimate of costs for repair of Work during the Warranty Period; and
- e) on expiry of the Warranty Period, charge the Contractor the amount by which the cost of corrections during the Warranty Period exceeds the allowance, if any, provided for such corrections, or if the cost of such corrections is less than the allowance, pay the Contractor the difference.

### **10.3 CONTRACTOR'S RIGHT TO STOP WORK OR TERMINATE CONTRACT**

- 10.3.1 If the Work should be stopped or otherwise delayed for a period of 45 days or more under an order of any court or other public authority, and providing that such order was not issued as the result of any act or fault of the Contractor or of any one directly or indirectly employed by the Contractor, the Contractor may, without prejudice to any other right or remedy the Contractor may have, terminate the Contract by giving the City written notice.
- 10.3.2 If the City should within 90 days, fail to pay any sum approved by the City or awarded by the Referee or Arbitrator to the Contractor, then the Contractor may upon seven days written notice to the City, stop work or terminate this Contract and recover from the City payment for all Work executed.

## **PART 11. DISPUTES**

### **11.1 NEGOTIATION**

- 11.1.1 The Contractor and the City agree to use their best efforts to resolve any disputes arising between them as efficiently and cost effectively as possible.
- 11.1.2 At all relevant times, the City and the Contractor shall:
- a) make bona fide efforts to resolve all disputes by amicable negotiations, and
  - b) provide frank, candid and timely disclosure of all relevant facts, information and documents to facilitate those negotiations.
- 11.1.3 The Contractor and the City agree that any efforts to resolve their dispute by amicable negotiation or with the assistance of a mediator, at any time during or after the performance of the Work, does not suspend the expiration of any time limitation for taking any act under the Contract unless the parties have specifically agreed in writing to waive or vary that time requirement.
- 11.1.4 Unless otherwise instructed by the City in writing, the Contractor shall continue to carry out the Work and maintain its progress during any proceedings under Part 11 - Disputes.
- 11.1.5 Upon award of a contract or at a later date, the City shall identify three potential referees acceptable to the City. The Contractor shall have ten days from receipt of the City's notice to accept one of those referees or identify another Referee acceptable to the Contractor. If the City is not in agreement with the Contractor's alternate choice of Referee and an agreement cannot be reached on a potential referee, either party may apply to a court to name a Referee.
- 11.1.6 If the services of a Referee are required, the City, the Contractor and the Referee will enter into a contract in the City's standard form "Referee Services Agreement."
- 11.1.7 Where the Referee is unable to perform the duties under the Referee Services Agreement and resigns or is removed by agreement of the parties, a new Referee shall be named in accordance with Article 11.1.5.

- 11.1.8 All disputes arising out of or in connection with this Contract or in respect of any defined legal relationship associated with it or derived from it, shall be referred to and finally resolved in accordance with the provisions of Section 11.3 - Referee's Review, Section 11.5 – Arbitration, and the Rules of Arbitral Procedure, Schedule "A" in Section 00 72 13.

## **11.2 NOTICE OF DISPUTE**

- 11.2.1 If the City provides written notification with reasons of any decision required under the Contract then the Contractor shall be deemed to have accepted the City's decision as final and binding unless the Contractor gives written notice of dispute to the City within five Working Days after receiving the notification.
- 11.2.2 If the Contractor has given notice of a dispute to the City under Article 11.2.1 in respect of any dispute arising under the Contract, the notice of dispute and the City's decision shall be referred to a Referee for review pursuant to Section 11.3 - Referee's Review.

## **11.3 REFEREE'S REVIEW**

- 11.3.1 This article applies only if the Contractor has given notice of a dispute to the City as described in Article 11.2.1. The Referee's decision is final and binding on the parties unless the decision is referred to arbitration within the time permitted in Article 11.5.1.
- 11.3.2 Within ten Working Days after the Referee provides notice to the City and the Contractor that the Referee is prepared to commence the review, the Contractor shall deliver to the Referee and the City:
- a) a written summary of the facts, information and arguments, and
  - b) copies of all the documents, on which the Contractor intends to rely.
- 11.3.3 Within ten Working Days after the City receives the Contractor's submissions referred to in Article 11.3.2, the City shall deliver to the Referee and the Contractor:
- a) a written summary of the facts, information and arguments, and
  - b) copies of all the documents, on which the City intends to rely.
- 11.3.4 Within ten Working Days after receipt of the City's submissions, the Contractor shall have an opportunity to retract its referral to the Referee prior to the Referee giving a determination on the matter. The Contractor then may be responsible for costs and expenses incurred at the Referee's discretion.
- 11.3.5 The Referee may:

- a) require the City or the Contractor to supply further written explanations or documentation considered necessary, giving each party an opportunity to respond to them;
  - b) on written application by the City or the Contractor made before a decision is made, allow the City or the Contractor to submit additional written information or documentation which was not available when the submissions were made under Article 11.3.2 or 11.3.3 and give the other party an opportunity to respond to the additional submission; and
  - c) on written application by the City or the Contractor, extend the time for making a submission under Article 11.3.2 or 11.3.3 in circumstances that the Referee considers appropriate.
- 11.3.6 The Referee shall conduct a review, without oral hearing, of the disputed decision of the City, taking into account:
- a) the City's written decision and reasons given,
  - b) the submissions of the Contractor and the City provided under Articles 11.3.2 and 11.3.3,
  - c) any information obtained under Article 11.3.4, and
  - d) the terms of the Contract.
- 11.3.7 Not later than 30 Working Days after receipt of the last documentary submission, the Referee shall make a decision, and provide the decision in writing, with reasons, which may confirm or vary the decision of the City or substitute another decision.
- 11.3.8 If the City has made a decision which affects the schedule or the time within which various parts of the work are to be completed and the Referee determines that the Contractor ought to have been provided with more time, the Referee shall not make a decision varying or substituting the City's decision respecting the schedule or time but may make a decision respecting compensation required to be paid to the Contractor under the Contract.

#### **11.4 REFEREE COSTS**

- 11.4.1 The City shall bear the costs, if any, of naming and retaining the Referee.
- 11.4.2 The City and the Contractor shall equally bear the costs and expenses of any review by the Referee.
- 11.4.3 Notwithstanding Article 11.4.2, the Referee may order that the costs and expenses of the review, including the costs and expenses of preparation of submissions by the City or the Contractor, be paid by either the City or the Contractor.

#### **11.5 ARBITRATION**

- 11.5.1 By giving written notice to the other party not later than five Working Days after receipt of the Referee's decision, either party may refer the decision of the Referee to arbitration.



11.5.2 Unless otherwise agreed by the City and the Contractor, all disputes under the Contract referred to arbitration under Article 11.5.1 shall be held in abeyance until:

- a) the Work has been completed,
- b) the Contract has been terminated, or
- c) the Contractor has abandoned the Work,
- d) whichever is earlier.

11.5.3 Disputes under the Contract shall then be consolidated into a single arbitration before a single arbitrator under the Rules of Arbitral Procedure, Schedule "A", as outlined in Section 00 72 13.

11.5.4 An arbitral award rendered under Article 11.5.3 is final and binding on the City and the Contractor and there shall be no appeal to the courts.

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**Part I - General**

**1. Interpretation**

- 1.1 In these Rules
- a) the terms and phrases have the same meanings as may be attributed to them under the *Arbitration Act*, R.S.A. 2000, c. A-43,
  - b) "Working Days" means days other than Saturdays, Sundays and statutory holidays.
  - c) "Contract" means a contract containing an agreement to refer disputes to arbitration and appending these Rules, or incorporating them by reference, and
  - d) "Parties" mean the parties to the Contract.
- 1.2 In these Rules, time shall be calculated in the same manner as time is calculated in the Contract.

**2. Application**

- 2.1 These Rules apply to an arbitration conducted under the Contract.
- 2.2 The parties to an arbitration may, by agreement, change or make additions to these Rules.

**3. Communications:**

- 3.1 All communications under these Rules shall be given in the same manner as communications may be given in the Contract.
- 3.2 There shall not be any oral communications with respect to the issues in dispute between a party and the arbitrator unless it is made in the oral presence of both parties or their legal representative.
- 3.3 A copy of all written communications between the arbitrator and a party shall be given to the other party at the same time.

**4. Objections**

- 4.1 A party shall state any objections to any aspect of the arbitral proceedings or to the conduct of the other party or the arbitrator at the earliest possible time.
- 4.2 The arbitrator may refuse to consider an objection if a party fails to comply with Clause 4.1.

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**Part II - Pre-Arbitration Considerations**

**5. Commencement**

- 5.1 Either party ("the Claimant") may submit a dispute to arbitration as permitted under the Contract by giving the other party ("the Respondent") a written notice containing the following:
- a) a description of the Contract;
  - b) a statement of the issue in dispute;
  - c) a request that the dispute be referred to arbitration;
  - d) a description of the claim being made;
  - e) the name or names of proposed arbitrators, along with the resume described in Clause 6.2.
- 5.2 For purposes of the calculation of time under these Rules, the arbitration shall be deemed to have commenced on the date the Respondent receives the notice under Clause 5.1.

**6. Arbitrator**

- 6.1 The arbitration shall be conducted before a single arbitrator appointed under these Rules who possesses the qualifications, if any, agreed to by the parties.
- 6.2 If a party proposes an individual as an arbitrator, that party shall also provide a written resume of that individual's work background, qualifications and arbitration experience.
- 6.3 The parties shall make every reasonable effort to reach agreement on an arbitrator within 15 Working Days after the arbitration commences.
- 6.4 If an agreement is not possible under Clause 6.3, either party may make an application to the court for the appointment of an arbitrator.
- 6.5 Before an arbitrator accepts an appointment, she or he shall provide the parties with a written statement declaring that there are no circumstances likely to give rise to justifiable doubts as to his or her independence or impartiality and that she or he will disclose any such circumstances to the parties if they should arise before the arbitration is concluded.
- 6.6 If, for any reason, the arbitrator resigns, is unable or refuses to act or is removed from office, she or he shall be replaced by another arbitrator under these Rules and any oral hearings previously held shall be rescheduled.
- 6.7 If the parties do not agree that the circumstances specified in Clause 6.5 exist, either party may apply to the Court for an order that the arbitrator should be replaced.

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**7. Scheduling a Meeting**

- 7.1 Within 20 Working Days after the arbitrator is appointed, the arbitrator shall convene a meeting of the parties to reach a consensus, if possible, and to make orders, if necessary, on:
- a) the procedure to be followed in the arbitration,
  - b) the time periods for taking steps in the proceedings,
  - c) the scheduling of any oral hearings or meetings,
  - d) any preliminary applications or objections a party may have and
  - e) any other matter which will assist the arbitration to proceed in an efficient and expeditious manner.

**8. Powers of the Arbitrator**

- 8.1 Subject to any limitations in these Rules or any agreement reached by the parties, the arbitrator may conduct the arbitration in any manner she or he considers appropriate but each party shall be treated fairly and shall be given full opportunity to present its case.
- 8.2 The arbitrator may:
- a) order an adjournment of the proceedings from time to time,
  - b) make an interim order on any matter with respect to which the arbitrator may make a final award, including an interim order for preservation of property which is subject matter of the dispute,
  - c) order inspection of documents, exhibits or other property at any location,
  - d) order the recording of any oral hearing or meeting and
  - e) extend or abridge a period of time required in these Rules or fixed or determined by the arbitrator where she or he considers it just and appropriate in the circumstances.
- 8.3 The arbitrator may adjourn the proceedings from time to time if the arbitrator considers that it would facilitate settlement discussions between the parties.

**Part III - Proceedings**

**9. Exchange of Statements**

- 9.1 The parties shall exchange written statements of their respective positions in the dispute in the following manner:

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- a) the Claimant shall give a statement outlining the facts, the matters in issue and the relief or remedy requested no later than ten Working Days after the scheduling meeting is held in Clause 7.1,
- b) the Respondent shall give a statement outlining its response to the Claimant's statement and its counterclaim, if any, no later than ten Working Days after receiving the Claimant's statement and
- c) the Respondent, by counterclaim, shall give a statement outlining its defence to the counterclaim no later than ten Working Days after receiving the counterclaim.

9.2 The parties shall provide the arbitrator with copies of the statements exchanged in Clause 9.1.

**10. Disclosure**

10.1 Within 20 Working Days after providing the statement required by Clause 9.1, each party shall provide a list of documents:

- a) upon which it intends to rely and
- b) which describes each document by kind, date, author, addressee and subject matter.

10.2 During the arbitration proceedings the arbitrator may allow a party to amend or add to any statement made in Clause 9.1 unless:

- a) the amendment or addition goes beyond the terms of the arbitration agreement in the Contract, or
- b) the other party would be prejudiced by the delay in making the amendment or addition.

10.3 The arbitrator may order a party to produce any documents not disclosed under Clause 10.1 and 10.2 that it has in its care, custody or control and that the arbitrator considers to be relevant, within the time the arbitrator specifies.

10.4 Each party shall allow the other party the necessary access at reasonable times to inspect and take copies of all documents that the former party has listed in Clause 10.1 or 10.2 or that the arbitrator has ordered to be produced in Clause 10.3.

10.5 The parties shall prepare and send to the arbitrator an agreed statement of facts within the time specified by the arbitrator.

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- 10.6 Each party shall, not later than 15 Working Days before the oral hearing commences, provide the other party with the name and address of any witnesses to be called and a written summary of their evidence.
- 10.7 In the case of an expert witness, notwithstanding Clause 10.6, each party shall, not later than 40 Working Days before the oral hearing commences, provide the other party with, a written statement or report prepared by the expert witness.
- 10.8 In the case of an expert witness called by a party to rebut the written statement of an expert called by the other party, that party shall, not later than 20 Working Days before the oral hearing commences, provide the other party with a written statement or report prepared by the expert witness.
- 10.9 Each party shall, not later than 20 Working Days before the oral hearing commences, give to the other party and the arbitrator an assembly of all documents to be introduced at the hearing.

**11. Hearings and Meetings**

- 11.1 The arbitrator shall give the parties written notice of not less than:
  - a) five Working Days of any oral hearings, or
  - b) three Working Days of any meetings,which have not been previously scheduled under Clause 7.1.
- 11.2 All oral hearings and meetings in the arbitrations shall be conducted in private and the arbitrator and the parties shall keep all written communications and documents in respect of these proceedings strictly confidential.
- 11.3 All oral hearings shall be conducted in the City of Edmonton, Alberta, Canada.

**12. Evidence**

- 12.1 The arbitrator shall not be required to apply the legal rules of evidence and shall determine the relevance and materiality of the evidence presented.
- 12.2 All oral evidence shall be taken in the presence of the arbitrator and all the parties unless a party is absent by default or has waived the right to be present.
- 12.3 The arbitrator may order any individual to be examined under oath or on affirmation in relation to the issues in dispute and to produce before the arbitrator all relevant documents within the individual's care, custody and control.
- 12.4 The document assemblies delivered under Clause 10.5 shall be deemed to have been entered into evidence at the oral hearing without further proof and without being readout at the hearing but a party may challenge the admissibility of any document so introduced.
- 12.5 The arbitrator may permit a document to be introduced at the oral hearing which was not previously disclosed under Clause 9.3 or provided as required under

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Clause 10.4 (b) or 10.5. However, the arbitrator may take that default into account when determining the costs to be awarded in the arbitration.

- 12.6 If the arbitrator permits the evidence of a witness to be presented as a written statement, the other party may require that witness to be made available for cross examination at the oral hearing.
- 12.7 The arbitrator may order a witness to appear and give evidence, and in that event, the parties may cross examine that witness and call evidence in rebuttal.

**13. Arbitrator Retained Experts**

- 13.1 The arbitrator may:
- a) retain one or more experts to give a written report on specific issues and
  - b) for that purpose, require a party to make available relevant documents, goods or other property for the expert's inspection.
- 13.2 The arbitrator shall give a copy of the expert's report to the parties who shall have the opportunity to reply to it.
- 13.3 On a request of a party, an expert retained under Clause 13.1 shall:
- a) make available to the party for examination all documents, goods or other property in the expert's possession with which she or he was provided in order to prepare a report, and
  - b) provide the party with a list of all documents, goods or other property not in the expert's possession, but with which was provided in order to prepare a report, and a description of the location of those documents, goods or other property.
- 13.4 The parties may cross examine an expert on the report and may call evidence in rebuttal.

**14. Default**

- 14.1 Where a Claimant, without sufficient cause and after five Working Days notice from the arbitrator, fails to provide the statement required in Clause 9.1(a) within the required time, the arbitrator can terminate the arbitration with respect to that claim.
- 14.2 Where a Respondent, without sufficient cause and after five Working Days notice from the arbitrator, fails to provide the statement required in Clause 9.1(b) within the required time, the arbitrator shall:
- a) continue the arbitration, and
  - b) require the Claimant to submit such evidence to support the claim as the arbitrator may require before making an award.
- 14.3 Where a party without sufficient cause, fails to appear at a scheduled oral hearing, or fails to produce any evidence, the arbitrator may continue the arbitration and make an award based upon the evidence before the arbitrator.

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**15. Close of Hearings**

- 15.1 The arbitrator shall close the oral hearings when:
- a) the parties advise they have no further evidence to give or submissions to make, or
  - b) the arbitrator considers further hearings to be unnecessary or inappropriate.
- 15.2 Where the arbitrator considers it to be just and appropriate to do so, the arbitrator may reopen the oral hearings at any time before making the final award.

**Part IV - The Award**

**16. Award**

- 16.1 An arbitrator shall decide the dispute in accordance with the law.
- 16.2 The arbitrator shall, not later than 20 Working Days after the hearings have been closed:
- a) advise the parties as to when the arbitrator will make a final award. or
  - b) make a final award not later than 20 Working Days after the hearings have been closed and give a signed copy of the award to each party.
- 16.3 The final award of the arbitrator shall be dated, be in writing and state the reasons upon which it is based.
- 16.4 The arbitrator may order interest to be paid in the final award.
- 16.5 The final award is final and binding on the parties and the parties agree to comply with it as soon as possible.

**17. Costs**

- 17.1 The arbitrator shall fix the costs of the arbitration in the final award, which costs may include, but are not limited to, the following:
- a) the fees of the arbitrator,
  - b) any necessary expenses incurred by the arbitrator,
  - c) the fees, travel costs and other expenses of witnesses approved by the arbitrator,
  - d) any fees, charges or expenses for providing services to the arbitrator or the parties in connection with the arbitration.
- 17.2 Except for the costs of legal fees and legal expenses of the successful party, The costs of the arbitration shall be apportioned between the parties unless the arbitrator considers it appropriate in the circumstances that the costs be borne by the unsuccessful party.



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- 17.3 With respect to the costs of legal fees and legal expenses of the successful party, the arbitrator
- a) may decide which party shall bear those costs if they were claimed during the arbitration,
  - b) may apportion those costs if she or he considers it just and is reasonable to do so and
  - c) in either event, shall specify the amounts of those cost and the manner of determining those costs.
- 17.4 In making a decision under Clause 17.3, the arbitrator is not limited to awarding the legal fees and expenses that the Court of Queen's Bench may award to a successful party in a civil action.
- 17.5 The fees of the arbitrator shall be reasonable in amount, taking into account the amount in the dispute, the complexity of the subject matter, the time spent by the arbitrator and any other relevant circumstances.

**18. Amendments and Corrections to the Award**

- 18.1 Upon application by a party, an arbitrator may amend or vary a final award to correct:
- a) a clerical or typographical error, or
  - b) an arithmetical error made in a computation.
- 18.2 An application by a party to the arbitrator pursuant to Clause 18.1 shall be made within ten Working Days after that party receives the final award.