



STANDARD GENERAL CONDITIONS

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ARTICLE 1: DEFINITIONS AND INTERPRETATION**1.1 Definitions**

- (1) **Agreement** means the *Agreement* executed by *The City* and the *Contractor* in relation to the provision of the *Work* and includes the following:
- (a) for the request for proposal *Procurement Document*:
 - i. *Contract Letter*;
 - ii. *Schedule 1 – Standard General Conditions*;
 - iii. *Schedule 2 – Delivery Method Requirements*;
 - iv. *Schedule 3 – Special Conditions*;
 - v. *Schedule 4 – Project Schedule*;
 - vi. *Schedule 5 – Technical Specifications*; and
 - vii. *Schedule 6 – Contractor’s proposal document*;
 - (b) for the request for tender *Procurement Document*:
 - i. *Contract Letter*;
 - ii. *Schedule 1 – Standard General Conditions*;
 - iii. *Schedule 2 – Delivery Method Requirements– Fixed Price Construction*;
 - iv. *Schedule 3 – Special Conditions*;
 - v. *Schedule 4 – Project Schedule*;
 - vi. *Schedule 5 – Technical Specifications*; and
 - vii. *Schedule 6 – Contractor’s tender document*;
 - (c) for the request for standing offer *Procurement Document*:
 - i. *Master Agreement*, which includes:
 - A. *Qualified Contractor List*;
 - B. *Standard General Conditions*;
 - C. *Service Level Agreement*;
 - D. *Price Submission Form*; and
 - ii. the *Procurement Documents*.
- (2) **Applicable Law** means:
- (a) any statute or proclamation or any delegated or subordinate legislation including regulations and bylaws;
 - (b) any *Authority Requirement*; and
 - (c) any judgement of a relevant court of law, board, arbitrator or administrative agency;
- in each case, in force in the Province of Alberta, or otherwise binding on the *Parties*.

- (3) **Architect** means either a professional architect that is registered as a member in good standing with the Alberta Association of Architects or an architectural firm employing such professional architects.
- (4) **As-Built Drawings** means drawings prepared by the *Contractor*, which involve marking changes on the *IFC Drawings* to modify the *IFC Drawings* to reflect the *Changes* that occur during construction.
- (5) **Authenticate** means the application of a *Design Professional's* signature, professional title and registration number, or the *Design Professional's* seal and signature, including the date in all cases, carried out in accordance with the requirements of the *Engineering and Geoscience Professions Act* (Alberta) and APEGA Practice Standard for Authenticating Professional Documents or the *Architect's Act* (Alberta), General Regulation Code of Ethics, bylaws and the Documents Authentication Bulletin.
- (6) **Authority Requirement** means an order, direction, directive, request for information, policy, administrative interpretation, guideline, standard specification, or rule of or by any *Governmental Authority*, and includes any requirements specified in *Permits, Licenses and Approvals*.
- (7) **Builders' Lien Fund** means the amount of money required to be held back from all payments due to the *Contractor* under the *Agreement* in accordance with the requirements of the *Prompt Payment and Construction Lien Act*;
- (8) **Building Permit Drawings** means the drawings required in an application to *The City* for a building permit;
- (9) **Business Corporations Act** means the *Business Corporations Act*, R.S.A. 2000, Ch. B-9.
- (10) **Business Day** means any day other than a Saturday, Sunday, statutory holiday in Alberta, or other day on which *The City* has elected to be closed for business.
- (11) **Cash Allowance** means the funds set aside in the *Project Budget* and specified in the *Special Conditions* as the cash Allowance.
- (12) **Certificate of Substantial Performance** means a certificate issued by the *Contractor* affirming that, in the opinion of the *Contractor*, *Substantial Performance* of the *Work* has been achieved.
- (13) **Change** means any modification to, addition to, or deletion from any one or more of the:
- (a) *Scope of the Work*;
 - (b) *Technical Specifications*, or
 - (c) *Project Schedule*.
- (14) **Change Directive** means a written order signed by *The City* and issued to the *Contractor* authorizing the *Contractor* to perform a *Change* notwithstanding that a *Change Quotation* may not have been received or approved by *The City*.
- (15) **Change Order** means a written order approving a *Change* that is authorized in accordance with Section 9.4.
- (16) **Change Quotation** means a written quotation from the *Contractor* for a proposed *Change* that sets out the *Contractor's* proposed adjustment to either the *Project Price* or to the *Project Schedule*, or to both, for carrying out the proposed *Change*.
- (17) **City or The City** means the municipal corporation of The City of Calgary and includes its authorized representatives, agents, employees, officials and designated officers, including *The City's Representative*.

- (18) **City's Own Forces** means *The City's* own employees.
- (19) **City Representative** means the *Person* identified in the *Contract Letter* as the project manager for the *Project* or that *Person's* designate.
- (20) **City Confidential Information** means all material, data, information, or any item in any form, whether oral or written, including in electronic or hard-copy format, supplied by, obtained from or otherwise provided by *The City* in connection with the *Agreement* and performance of the *Work* under the *Agreement*, whether supplied, obtained, or provided before or after the execution of the *Agreement*, but will not include information that:
- (a) is lawfully in the public domain at the time of first disclosure to the *Contractor*, or which, after disclosure to the *Contractor*, becomes part of the public domain other than by a breach of the *Contractor's* confidentiality obligations or by any act or fault of the *Contractor*;
 - (b) was in the *Contractor's* possession prior to its disclosure to the *Contractor* by *The City*, and provided it was not acquired by the *Contractor* under an obligation of confidence; or
 - (c) was lawfully obtained by the *Contractor* from a third party without restriction of disclosure, if at the time of the disclosure, the third party was not under an obligation of secrecy with respect to the information.
- (21) **Community Standards Bylaw** means *The City's* Community Standards Bylaw 5M2004.
- (22) **Construction Completion Certificate** means the document issued by *The City* certifying that performance of all *Work* is completed in accordance with the *Agreement* including the remedy or correction of *Deficiencies*, except for seasonal *Work* and ongoing obligations related to *Warranty Work*.
- (23) **Construction Equipment** means the *Construction Equipment* used for performing or carrying out the *Work*, but does not include any equipment incorporated into the *Work*.
- (24) **Construction Equipment Costs** means the costs:
- (a) for use of rented *Construction Equipment*, including reasonable maintenance of that equipment, required to perform the *Work*;
 - (b) for use of other *Construction Equipment* required to perform the *Work*, as may be approved by *The City*; and
 - (c) for loading, transporting, unloading, erecting, dismantling, and removing *Construction Equipment* required to perform the *Work*.
- (25) **Construction Period** means a period of 30 Days during the *Term*.
- (26) **Construction Period Invoice** means an invoice issued by the *Contractor* for *Work* performed by the *Contractor* during a *Construction Period* and includes an invoice for the *Builders' Lien Fund*.
- (27) **Construction Period Payment** means a payment made by *The City* to the *Contractor* for *Work* performed by the *Contractor* during a *Construction Period*.
- (28) **Contingency Allowance** means funds set aside at the start of the *Project* and specified in the *Special Conditions* for the purpose of paying for additional items of *Work*.
- (29) **Continuing Notice of Default** means a written notification issued by *The City* providing *Notice* that an *Event of Default* has not been rectified in accordance with Subsections 17.1(3) and 17.1(4).

- (30) **Contract Letter** means the document that identifies all parts of the *Agreement* and is signed by all *Parties* to the *Agreement*, binding them to the *Agreement*.
- (31) **Contractor** has the meaning given in the *Contract Letter* and includes, for the purposes of the *Standard General Conditions*, the *Contractor's* employees, officers, agents and authorized representatives.
- (32) **Contractor's Intellectual Property** means *Intellectual Property*:
- (a) owned by the *Contractor* prior to the *Contractor's* performance under the *Agreement*; or
 - (b) created by the *Contractor* independently of the *Contractor's* performance of its obligations under the *Agreement*.
- (33) **Contractor's Representative** means the *Person* identified in the *Contract Letter* as the *Contractor's Representative*, which may include a *Design Professional* or a *Person* designated in control of the *Project Site*, including the construction safety and safe performance of the *Work*.
- (34) **COR or Certificate of Recognition** means the formal acknowledgement of an employer by the Province of Alberta certifying that the employer has developed a health and safety program that meets all health and safety standards of the Province of Alberta.
- (35) **Day** means calendar day.
- (36) **Deficiency** means a defect or deficiency in the *Work* caused by defective performance in workmanship or defective *Materials* incorporated into the *Work*, or a failure of any part of the *Work* to meet all requirements of the *Agreement*.
- (37) **Delivery Method Requirements** means the *Delivery Method Requirements* set out in Schedule 2 of the *Agreement*.
- (38) **Design Costs** means the cost of *Work* provided by a *Design Professional*.
- (39) **Design Professional** means an *Architect* or an *Engineer*, as may be applicable in the circumstances.
- (40) **Direct Labour Costs** means the base wage costs of employees required for performance of the *Work*, including superintendents or foremen or other personnel responsible for supervision of the *Work*:
- (a) as set out in a wage schedule approved by *The City* prior to commencement of the *Work* or prior to the procurement for the *Project*;
 - (b) that are the base wages paid under a collective agreement;
 - (c) that are *Force Account Rates*; or
 - (d) that are the actual cost of salaries or wages;
- whichever is applicable in the circumstances.
- (41) **Draft Construction Period Invoice** has the meaning given in Subsection 10.2(7).
- (42) **Drawings** include *IFC Drawings*, *Shop Drawings*, *As-Built Drawings*, *Record Drawings*, *Supplemental Drawings* and *ESC Drawings*.
- (43) **ECO Plan** means the Environmental Construction Operations Plan, which is a written plan submitted by the *Contractor* to *The City*, that identifies environmental controls specific to the *Project Site*, including those matters described in Article 20.
- (44) **Effective Date** means the effective date set out in the *Contract Letter*.

- (45) **Employment Standards Code** means the *Employment Standards Code (Alberta) Regulation 14/97*.
- (46) **Engineer** means either a professional engineer licensed by the Association of Professional Engineers and Geoscientists of Alberta (APEGA) with a valid permit to practice issued by APEGA, or an engineering firm employing such professional engineers.
- (47) **Environmental Obligations** means all of the obligations of the *Contractor* as described in the:
- (a) *ECO Plan*;
 - (b) “Contractor Environmental Responsibilities Package” provided by *The City*; and
 - (c) *Standard General Conditions*.
- (48) **ESC Drawings** means the drawings forming part of the *ESC Plan*.
- (49) **ESC Plan** means the Erosion and Sediment Control Plan pursuant to *The City’s* current edition “Erosion and Sediment Control Guidelines” and “Standard Specifications Erosion and Sediment Control”.
- (50) **Event of Default** has the meaning given in Subsection 17.1(1).
- (51) **Event of Force Majeure** has the meaning given in Subsection 14.1(1).
- (52) **Facility** means any structure or building located on the *Project Site* that:
- (a) is the primary subject of the *Work*;
 - (b) constitutes a portion of the *Work*; or
 - (c) is in existence at the time of execution of the *Agreement*.
- (53) **Final Acceptance Certificate** means a certificate issued by *The City* to the *Contractor* at the end of the *Warranty Period* certifying that performance of the *Agreement* has been completed, including seasonal *Work* and all *Warranty Work*.
- (54) **Final Document** means any document, *Record*, or *Drawing* that is created and *Authenticated* for the purpose of transmitting information or instructions, which is based on a *Design Professional’s* expertise or judgment and intended to be relied upon for carrying out the *Work*.
- (55) **Final Payment** means the payment of all money due to the *Contractor* under the *Agreement* after *The City* has issued the *Final Acceptance Certificate*.
- (56) **Force Account Rate** means *The City’s* current applicable hourly rate for *Work* as set out in a rate book or schedule, or as otherwise adopted by *The City*.
- (57) **Force Account Work** means *Work* approved by *The City* that is not specified in the *Agreement*, or a class of *Work* not contemplated in the *Agreement*, which is required to achieve the intent and performance of the *Agreement*.
- (58) **FOIP** means the *Freedom of Information and Privacy Act*, R.S.A. 2000, Ch. F-25.
- (59) **Good Industry Practice** means the exercise of a degree of skill and care, diligence, prudence and foresight that can reasonably and ordinarily be expected from a skilled and experienced contractor engaged in Canada in activities of a similar scope and complexity, and under similar circumstances, to those that are the subject of the *Agreement* where the contractor is seeking to comply with its contractual obligations and all *Applicable Law*.

- (60) **Governmental Authority** means any federal, provincial, municipal or other governmental body, regulatory authority, civil or military agency, court, tribunal or other authority having jurisdiction in the Province of Alberta and lawfully empowered to make or impose laws, bylaws, rules or regulations with respect to the obligations of the *Parties* under the *Agreement* or in relation to any *Work* performed under the *Agreement*.
- (61) **GST** means the goods and services tax imposed by the Canada Revenue Agency on goods and services for domestic use.
- (62) **Hazardous Substance** means any solid, liquid, gaseous, thermal, or electromagnetic irritant or contaminant, including all pollutants and hazardous substances or wastes, whether or not defined in any *Applicable Law*.
- (63) **Health and Safety Plan** means a written plan submitted by the *Contractor* to *The City* which complies with *The City's* requirements for the *Project Site* and all *Applicable Law*, including *OH&S Legislation*.
- (64) **Holdback Bond** means a bond issued by a surety company licensed to issue surety bonds in Alberta that guarantees the *Contractor's* obligations under the *Agreement* for the purpose of allowing *The City* to release funds to the *Contractor* that have been held back by *The City* in accordance with the requirements of the *Prompt Payment and Construction Lien Act*.
- (65) **Identified Encumbrances** means all encumbrances and interests as may be identified in the *Special Conditions*, which are registered against the title or titles to the *Project Site*, and includes all unregistered rights-of-way, easements, and other similar interests that have been disclosed to the *Contractor* as of the *Effective Date*, or that would have been known to the *Contractor* through the exercise of reasonable due diligence.
- (66) **Inspection Plan** means the plan for inspections of the *Work*, or parts of it, which will be prepared either by *The City's Design Professional* or the *Contractor*, as specified in the *Special Conditions*.
- (67) **Intellectual Property** means any intellectual, industrial, or other proprietary right of any type in any form protected or protectable under the laws of Canada, any foreign country, or any political subdivision of any country, including, without limitation, any intellectual, industrial, or proprietary rights protected or protectable by legislation, by common law, or at equity.
- (68) **International Financial Reporting Standards** means the set of generally accepted accounting principles and guidelines issued by the International Accounting Standards Board, which set a global standard for the compiling of financial statements.
- (69) **IFC Drawings** or **Issued for Construction Drawings** means the *Authenticated Drawings* for performance of the *Work* prior to commencement of the *Agreement*, which are included in the *Technical Specifications* in the *Procurement Documents*, including (for certainty) any amendments to them that may be approved during the procurement process.
- (70) **Joint Health and Safety Committee** has the meaning given in *OH&S Legislation*.
- (71) **Key Personnel** means the *Contractor's* key employee or employees being proposed to perform the *Work*, or part of the *Work*, that may be identified in the *Procurement Documents* or in the subsequent *Agreement*, or in both of them.
- (72) **Labour and Material Payment Bond** means a bond issued by a surety company licensed to issue surety bonds in Alberta that ensures the *Contractor* will pay for all *Construction Equipment*, *Total Labour Costs*, *Materials*, and all other services required for performance of the *Agreement*.

- (73) **Lien Letter of Credit** means an irrevocable letter of credit provided to *The City*, in a form satisfactory to *The City* and from a financial institution acceptable to *The City*, in lieu of withholding the ten percent holdback on payments to the *Contractor* as required under the *Prompt Payment and Construction Lien Act*.
- (74) **Lien Period** means, for the purposes of Sections 10.3(3)(a) and 10.3(4), the period of time set out in section 18(1) or 18(1.2), as applicable, of the *Prompt Payment and Construction Lien Act* and, for the purposes of Section 10.3(3)(b), the period of time set out in section 23(1) or 23(1.2), as applicable, of the *Prompt Payment and Construction Lien Act*, as specified in the *Special Conditions*.
- (75) **Manager, Supply** means the Director, Supply Management at The City of Calgary.
- (76) **Materials** means all materials, supplies, machinery, equipment, and fixtures, excluding *Construction Equipment*, which are or will be permanently incorporated into the *Work*, including the *Materials*, supplies, machinery, equipment and fixtures that:
- (a) are specified in the *Technical Specifications* or *Special Conditions*; and
 - (b) are selected and incorporated into the *Work* by the *Contractor* in the normal course of the *Contractor's Work*, but are not specified in the *Technical Specifications* or *Special Conditions*.
- (77) **Materials Costs** means the cost of the *Materials* as set out in the base supplier invoice and includes the transport and upload of the *Materials*.
- (78) **Milestone** means a specific progress point on the critical path for construction of the *Project* as identified in the *Project Schedule*.
- (79) **New Intellectual Property** means *Intellectual Property* created or developed by the *Contractor* or *Subcontractor* in the course of the performance of their obligations under the *Agreement* that is incorporated into the *Project* or is used specifically for the *Project*, whether such *Intellectual Property* is created by the *Contractor* or *Subcontractor* in conjunction with *The City*, or solely by the *Contractor*.
- (80) **Net Cost** means the total documented and verified costs of any one or more of *Construction Equipment Costs*, *Design Costs*, *Total Labour Costs* or *Materials Costs*, and excludes any *Overhead Costs*, profit or *GST*.
- (81) **Notice** means a notice made by a *Party* in writing and delivered to the other *Party* in the method required for delivery and at the address (or any replacement address) as set out in the *Contract Letter*.
- (82) **Notice of Default** means a written notification issued by *The City* providing *Notice of an Event of Default*.
- (83) **Notice of Dispute** means a notice specifying the amount of a *Construction Period Invoice* that is not being paid and detailing all reasons for non-payment in the form of Form 1 as set out in the *Prompt Payment and Construction Lien Forms (Alberta) Regulation 22/2022* made pursuant to the *Prompt Payment and Construction Lien Act*.
- (84) **Notice of Proposed Change** means a written notification issued by *The City* providing *Notice* to the *Contractor* of a proposed *Change*.
- (85) **Notice to Proceed** means a written notification provided by *The City* to the *Contractor* advising the *Contractor* that the *Contractor* may begin the *Work*.
- (86) **OH&S Legislation** means, collectively, the *Occupational Health and Safety Act*, S.A. 2020, Ch. O-2.2, all of its regulations, and the *Occupational Health and Safety Code (Alberta)*.

- (87) **Other Contractor** means any other contractor or consultant that is retained directly by *The City* in connection with the *Project* other than the *Contractor*, but excludes *The City's Design Professional*.
- (88) **Overhead Costs** means the costs of the *Contractor*, *Subcontractors*, and *Sub-Subcontractors* performing the *Work* related to:
- (a) operation and maintenance of head offices and any branch offices;
 - (b) administration at head offices and branch offices, including salaries and other compensation of off-site personnel;
 - (c) general management, legal, audit and accounting services;
 - (d) procurement administration;
 - (e) financing and other bank charges;
 - (f) recruitment and training of on-site staff; and
 - (g) other costs of a similar nature not included with the Total *Materials* and Labour.
- (89) **Party** means either *The City* or the *Contractor* and **Parties** means *The City* and the *Contractor*, collectively, as the case may be.
- (90) **Payroll Burden Costs** means the costs of employer Canada Pension Plan contributions, Alberta health care insurance premiums, workers' compensation benefits, employee pension plan benefits, vacation benefits, health and wellness benefits, apprenticeship and training benefits and employer paid union fees up to a maximum amount equivalent to 40 percent of *Direct Labour Costs*.
- (91) **Performance Bond** means a bond issued by a surety company licensed to issue surety bonds in Alberta that guarantees the *Contractor's* obligation under the *Agreement* for performance of the *Work*.
- (92) **Performance Security** means any one or more of the following, in a form acceptable to *The City* and as may be set out in the *Agreement*:
- (a) *Lien Letter of Credit* or other letter of credit;
 - (b) *Performance Bond*, *Labour and Material Payment Bond*, *Holdback Bond*, *Warranty Bond*, or any other bond including but not limited to a maintenance bond;
 - (c) subcontractor default insurance; and
 - (d) bank draft or certified cheque.
- (93) **Performance Standards** mean those standards of performance described in the *Technical Specifications* that the *Work*, or parts of the *Work* (as may be applicable), must meet or achieve.
- (94) **Performance Tests** means any performance tests set out in the *Technical Specifications* for the purpose of determining achievement of the *Performance Standards* for the *Work*, and any other tests as may be agreed upon between *The City* and the *Contractor* in order to compare the actual performance of the *Work* with the *Performance Standards*.
- (95) **Permits, Licenses, and Approvals** means all permissions, consents, approvals, certificates, permits, licenses, *Agreements*, authorizations, acknowledgements, and notifications required to perform the *Work* in accordance with the *Agreement* or as required by *Applicable Law*.

- (96) **Person** means any one of an individual, partnership, limited liability partnership, limited liability company, corporation, sole proprietorship, trustee, unincorporated organization, association, society, government, or any department or agency of government.
- (97) **Personal Information** means personal information as that phrase is defined in *FOIP*.
- (98) **Prime Contractor for Safety** means the role of “prime contractor” as that term is referenced in the *OH&S Legislation*;
- (99) **Procurement Documents** means the request for proposal, or the request for standing offer and a subsequent *Statement of Requirements* issued under the request for standing offer, or the invitation to tender issued for procurement of the *Work*, all addenda for each of them, and all associated written responses from the *Contractor*.
- (100) **Product Data** means illustrations, schedules, performance charts, instructions, manuals, brochures, diagrams, and other information provided by the *Contractor* to illustrate *Materials* or equipment supplied for the *Work* or some part of the *Work*.
- (101) **Project** has the meaning given in the *Contract Letter*.
- (102) **Project Budget** means *The City's* approved budget for construction of the *Project* as stated in the *Procurement Documents* that represents the estimated *Project Price*.
- (103) **Project Price** means the total sum of money set out in the *Agreement* that is to be paid to the *Contractor* for completing all *Work* and any *Change* to the *Work*, as described in, or approved under, the *Agreement*.
- (104) **Project Schedule** means the detailed construction schedule for the *Work* in critical path form which details and schedules *Milestones* and all other events necessary to achieve the *Scheduled Operational Date*, as initially described in the *Procurement Documents*, and as may be adjusted in accordance with the terms and conditions of the *Agreement*.
- (105) **Project Site** means the land upon which the *Project* is located and where the *Work* will occur and which is legally and municipally described in the *Special Conditions*.
- (106) **Project Site Documents** has the meaning given in Subsection 8.6(1).
- (107) **Prompt Payment and Construction Lien Act** means the *Prompt Payment and Construction Lien Act*, R.S.A. 2000, c. P-26.4.
- (108) **Proper Invoice** has the meaning given in Subsection 10.2(5).
- (109) **Quality Management Plan** means a written plan submitted by the *Contractor* to *The City's Design Professional*, which conforms to the requirements of ISO 9001 and identifies the *Key Personnel*, procedures, instructions, records, and forms to be used in performing the *Work* and the effective quality control and quality assurance procedures to be implemented by the *Contractor* to facilitate meeting all applicable requirements and standards set out in the *Agreement*.
- (110) **Record** means any recorded information, including any *Personal Information*, in any form provided by *The City* to the *Contractor* or provided by the *Contractor* to *The City* for the purposes of the *Agreement* or created by the *Contractor* in the performance of the *Agreement*.
- (111) **Record Drawings** means the *Authenticated Drawings* prepared by *The City's Design Professional* that reflect the changes made to the *IFC Drawings* during performance of the *Work* throughout the *Term*, including changes made by the *Supplemental Drawings*.

- (112) **Roadway** means any thoroughfare, highway, road, trail, avenue, parkway, driveway, viaduct, lane, alley, square, bridge, causeway, pathway or designated bicycle pathway, or other place, whether publicly or privately owned, any part of which the public is ordinarily entitled or permitted to use for the passage or parking of vehicles or for pedestrian use.
- (113) **Samples** mean physical examples that illustrate *Materials* or workmanship and will be used by *The City's Design Professional* to establish standards by which the *Work* will be judged.
- (114) **Scheduled Operational Date** means the *Milestone* set out in the *Special Conditions* that is the anticipated date *Substantial Performance* will be achieved.
- (115) **SECOR** or **Small Employer Certificate of Recognition** means formal acknowledgement of an employer with 10 or fewer employees by the Province of Alberta certifying that the employer has developed a health and safety program that meets all health and safety standards of the Province of Alberta.
- (116) **Shop Drawings** means all drawings, diagrams, schedules, technical brochures, and other data prepared for the *Work* by the *Contractor*, *Subcontractor*, manufacturer, supplier, or distributor, and intended to illustrate details of the *Work* or a part of the *Work*.
- (117) **Site Office** means a temporary administrative office located on or near the *Project Site*.
- (118) **Special Conditions** means the terms and conditions for the *Project* set out in the *Agreement* which add to or modify the *Standard General Conditions* or any *Delivery Method Requirements*.
- (119) **SGCs** or **Standard General Conditions** means these *Standard General Conditions*.
- (120) **Statement of Requirements** means a document issued under a request for standing offer that describes the scope of the *Work* and specific terms and conditions relating to the *Contractor's* assignment specific opportunity as described in the request for standing offer and includes any *Special Conditions* and *Technical Specifications* applicable to the *Work*.
- (121) **Subcontractor** means a *Person* who performs part of the *Work*, including the supply of *Materials*, and has a direct contract with the *Contractor*.
- (122) **Substantial Completion Certificate** means the document issued by *The City* when the *City Representative* verifies that *Substantial Performance* of the *Work* has been achieved.
- (123) **Substantial Performance** has the meaning given to that phrase in the *Prompt Payment and Construction Lien Act*, but will not be deemed to have been achieved for the purpose of this *Agreement* until the *Contractor* has issued a *Certificate of Substantial Performance*.
- (124) **Sub-Subcontractor** means a *Person* who performs part of the *Work*, including the supply of *Materials*, and has a direct or indirect contract with a *Subcontractor*.
- (125) **Supplemental Drawings** means the drawings described in Subsection 6.2(1).
- (126) **Supplier Code of Conduct** means *The City's* Supplier Code of Conduct Policy (ALT2020-1056).
- (127) **Surveys Act** means the *Surveys Act*, R.S.A. 2000, Ch. S-26.
- (128) **Survey Mark** means any temporary construction mark, point or stake, placed or established on the *Project Site* that defines the boundaries of the *Project Site* or specific locations of any temporary structures on the *Project Site*.
- (129) **Survey Monument** means a "monument" as defined in the *Surveys Act*, and for the purposes of these *Standard General Conditions*, also includes a "survey control marker" as defined in the *Surveys Act*.

- (130) **Suspended Work** has the meaning given in Subsection 14.3(1).
- (131) **Tangible Capital Asset** means an asset that is, or will be, reported in *The City's* financial statements under requirements set out by the Public Sector Accounting Board of Canada (or its substitute).
- (132) **Technical Specifications** means the *Drawings* and written specifications that are included or referenced in the *Procurement Documents* and in the subsequent *Agreement* that set out *The City's* requirements and standards for *Materials*, systems, workmanship and services necessary for the proper performance of the *Work* or any part of the *Work*.
- (133) **Term** means the period of time between, and including, the day of the *Effective Date* and the day on which the last *Final Acceptance Certificate* is issued.
- (134) **Third Party Intellectual Property** means any *Intellectual Property* owned by a *Person* other than *The City* or the *Contractor*.
- (135) **Total Cost of Materials and Labour** means the sum of costs directly related to and necessarily and properly incurred by the *Contractor*, *Subcontractors* and *Sub-Subcontractors* in performing the *Work*, which are limited to:
- (a) *Materials Costs*;
 - (b) *Total Labour Costs*;
 - (c) *Construction Equipment Costs*; and
 - (d) *Design Costs* (if applicable).
- (136) **Total Labour Costs** means the sum of *Direct Labour Costs* and *Payroll Burden Costs*.
- (137) **Utility Facilities** has the meaning given in Subsection 8.11(1).
- (138) **Utility Owner** has the meaning given in Subsection 8.11(1).
- (139) **Warranty Bond** means a bond issued by a surety company licensed to issue surety bonds in Alberta that guarantees the *Contractor's* obligations to complete all *Warranty Work*.
- (140) **Warranty Item** means any *Deficiency* that is identified after a *Substantial Completion Certificate* has been issued.
- (141) **Warranty Period** means that period of time specified in the *Special Conditions* during which the *Contractor* is obligated to perform *Warranty Work* and which commences at the issuance of the *Substantial Completion Certificate*.
- (142) **Warranty Work** means the work performed by the *Contractor* during the *Warranty Period* to remedy, correct, or rectify any *Deficiencies* or *Warranty Items*, including any *Work*:
- (a) required to access the *Deficiencies*;
 - (b) required to make good the *Deficiencies*; and
 - (c) to make good the work performed by *Other Contractors* that is destroyed, disturbed, or negatively affected as a result of *Work* performed by the *Contractor*.
- (143) **Work** means all work to be performed by the *Contractor* under the *Agreement*, including:
- (a) all construction, including for a *Facility*;
 - (b) all services and work of the *Contractor's Design Professional*;

- (c) the supply of *Materials* and their incorporation into the *Project*;
 - (d) the supply of *Construction Equipment*;
 - (e) operations or maintenance services as may be required under the *Agreement*;
 - (f) temporary services;
 - (g) any additional services required by *The City* under the *Agreement* as may be described in the *Delivery Method Requirements* or in the Service Level Agreement entered into by the *Contractor* and *The City* under a request for standing offer described in 1.1(1)(c);
 - (h) *Warranty Work*; and
 - (i) anything ancillary to (a) through to (h) above that is required for the proper and complete performance of the *Contractor's* obligations under the *Agreement*.
- (144) **Work Plan** means the plan developed by the *Contractor* for completing the *Work*, which will be updated from time to time, and which will include:
- (a) the *ECO Plan*, the *Health and Safety Plan*, the *Inspection Plan*, and the *Quality Management Plan*, as may be specified and required in the *Special Conditions*;
 - (b) the organization to be established by the *Contractor* for carrying out the *Work*, including, but not limited to, the identities and curriculum vitae of *Key Personnel*, or if not yet identified, the titles of the positions that may be held by *Key Personnel*;
 - (c) the sequence of activities, or critical path, and method for performance of the *Work*; and
 - (d) a detailed *Project Schedule*, including dates for completion of *Milestones*.
- (145) **Workers' Compensation Act** means the *Workers' Compensation Act*, R.S.A. 2000, Ch. W-15.
- (146) **Workers' Compensation Board** means the *Workers' Compensation Board* of Alberta created pursuant to the *Workers' Compensation Act*.
- (147) **Workers' Compensation Board Clearance Certificate** means a letter from the *Workers' Compensation Board* stating that the *Contractor's* account is in good standing.

1.2 Interpretation

- (1) If this *Agreement* cites or refers to an Act, regulation, code, bylaw, policy, guideline, standard or procedure, the citation or reference is to the Act, regulation, code, bylaw, policy, guideline, standard or procedure as amended from time to time and includes reference to any Act, regulation, code, bylaw, policy, guideline, standard or procedure that may be substituted in its place.
- (2) Unless the context requires otherwise, if a word is defined in Section 1.1, the word's other grammatical forms have a corresponding meaning and each of the masculine, feminine and neuter genders include all other genders.
- (3) Headings and titles in the *Agreement* are for convenience and ease of reference only and do not define, limit, describe, or interpret the scope or intent of the *Agreement*.
- (4) The Schedules to the *Agreement* are an integral part of the *Agreement* and a reference to the *Agreement* includes a reference to the Schedules.
- (5) All references in the *Agreement* to a Schedule are references to a Schedule of the *Agreement*.

- (6) In the event of any ambiguity, inconsistency, or conflict between the terms and conditions of the *Agreement* and the terms and conditions of any purchase order issued by *The City* in relation to the *Agreement*, the terms and conditions of the *Agreement* prevail.
- (7) Unless context requires otherwise, references to specific Articles, Sections, Subsections, Schedules and other divisions of the *Agreement* followed by a number are references to the whole of the Article, Section, Subsection, or Schedule or other division of the *Agreement*, as applicable, bearing that number, including all subsidiary provisions containing the same number as a prefix.
- (8) Where the *Agreement* states that an obligation must be performed “no later than” or “within” or “by” or “on or before” or “on” a stipulated date or event, the latest time for performance will be 17:00 on the last *Day* or *Business Day* for performance of the obligation concerned, or if the day is not a *Business Day* (as may be stipulated), 17:00 on the next *Business Day*.
- (9) Any reference to time of day or to a date means the local time or date in Calgary, Alberta, Canada.
- (10) Unless otherwise indicated, time periods will be strictly interpreted.
- (11) Reference to a price or an amount of money is a reference to the price or amount of money in Canadian dollars exclusive of *GST*, unless the reference expressly includes *GST*.
- (12) References of “includes” and “including”, whether or not used with the words “without limitation” or “but not limited to” will, in all cases, be deemed to be without limitation and interpreted to mean “includes without limitation” and “including without limitation”.
- (13) References to a *Notice* or information being delivered by one *Party* to another *Party* “in writing” will be deemed to include delivery by electronic means such as by email or facsimile, or through a designated website set up specifically for the *Project*.

ARTICLE 2: EFFECTIVE DATE AND TERM

2.1 Effective Date

- (1) The *Agreement* will come into force and effect on the *Effective Date*.
- (2) Subject to any early termination of the *Agreement* as set out in Article 17, the *Agreement* will continue from the *Effective Date* until the issuance of the *Final Acceptance Certificate*.

2.2 Survival

- (1) All obligations under the *Agreement* that necessarily extend beyond completion or termination of the *Agreement* in order to achieve their intended purpose will survive completion or termination of the *Agreement*, including the following:
 - (a) obligations concerning any installation of *Non-Compliant Materials* in the *Work* described in Subsection 4.1(3);
 - (b) indemnification obligations, as described in Article 15 or any other parts of the *Agreement* that contain obligations of indemnification, to the degree they arise from events that occurred prior to termination of the *Agreement*;
 - (c) obligations in relation to *Warranty Items* described in Article 16;
 - (d) the *Contractor's* obligations on termination described in Article 17;

- (e) obligations in relation to *City Confidential Information* described in Article 18;
- (f) any obligations in relation to *Intellectual Property* described in Article 19; and
- (g) *Record* and audit obligations described in Article 21.

2.3 Notice to Proceed

- (1) *The City* will issue the *Notice to Proceed* only when all of the following requirements have been satisfied:
 - (a) *The City* has received and approved any *Performance Security* required by *The City* from the *Contractor* in accordance with Subsection 13.5(1);
 - (b) *The City* has received and approved any certificate of insurance required by *The City* from the *Contractor* in accordance with Section 13.1;
 - (c) The *Contractor* has prepared a *Project Schedule* in accordance with Subsection 7.1(1) and provided it to *The City*;
 - (d) *The City* has received the *Contractor's Health and Safety Plan* and *Quality Management Plan* in accordance with Subsection 8.1(1);
 - (e) *The City* has received the *Contractor's ECO Plan* in accordance with Subsection 20.1(1);
 - (f) *The City* has received the *Contractor's tree protection plan* as may be required in accordance with Subsection 20.16(1);
 - (g) *The City* has received a clear *Workers' Compensation Board Clearance Certificate* from the *Contractor*; and
 - (h) *The City* has received any additional documentation or information that is required by the *Procurement Documents*.

ARTICLE 3: REPRESENTATIONS OF THE CONTRACTOR

3.1 Representations of the Contractor

- (1) The *Contractor* represents and warrants that:
 - (a) it has the right, capacity, and *Authority* to enter into the *Agreement*;
 - (b) the *Agreement* does not conflict with any other contracts or obligations that bind the *Contractor*;
 - (c) there is no proceeding in progress or pending or threatened against, relating to, or affecting the *Contractor* that may be expected to have a materially adverse effect on the performance of the *Contractor's* obligations under the *Agreement*;
 - (d) it has or will have the necessary financial resources to complete all *Work*; and
 - (e) it is in compliance with all *Applicable Law* that affects the *Contractor* or its operations.

ARTICLE 4: PERFORMANCE OF THE AGREEMENT – THE CONTRACTOR**4.1 Performance of the Work**

- (1) The *Contractor* must perform all *Work* in accordance with all terms and conditions of the *Agreement*, in accordance with all *Applicable Law*, in accordance with *The City's Supplier Code of Conduct*, and in accordance with the following policies of *The City*: Workplace Violence Prevention Policy (GN-040), Respectful Workplace Policy (HR-LR-001), Substance Use Policy (HR-TR-005) and the Workplace Smoking & Vaping Policy (HR-006).
- (2) Except for those *Materials*, services, or *Construction Equipment* to be provided by *The City* or *The City's Own Forces*, as may be specified in the *Special Conditions*, the *Contractor's* duties and obligations will include:
 - (a) responsibility for all elements of the *Work* and for all means and methods of competently performing the *Work* in accordance with the *Drawings* and *Technical Specifications*;
 - (b) responsibility for developing, updating, and maintaining the *Project Schedule* in a form and manner satisfactory to *The City*;
 - (c) the supply or the cause of the supply of all labour, including technical skill and knowledge, *Materials*, tools, *Construction Equipment*, utilities, transportation and shipping, and any other services necessary to properly perform and complete the *Work*, whether temporary or permanent and whether or not incorporated or to be incorporated in the *Work*;
 - (d) undertaking any maintenance of the *Project* and any *Facility* as *Work* progresses until either the *Substantial Completion Certificate* or the *Final Acceptance Certificate* is issued, as may be specified in the *Special Conditions*;
 - (e) providing the results described in the *Agreement* and detailed in the *Drawings* and *Technical Specifications*;
 - (f) providing a competent executive and administrative organization to arrange the performance of the *Work*;
 - (g) performing all duties normally considered to be those of a general *Contractor*;
 - (h) performing all duties considered to be the responsibility of an employer under *OH&S Legislation* in addition to the duties of the *Prime Contractor for Safety* as described in Article 12; and
 - (i) exercising due diligence in verifying all dimensions, quantities, and details specified in the *Technical Specifications* and in the *Drawings* or in other data received from *The City's Design Professional* or contained in the *Agreement*, and provide *Notice* to the *City Representative* and *The City's Design Professional* of any errors, omissions, conflicts and discrepancies found in them. The *Contractor*, at the *Contractor's* expense, is responsible for rectifying any faulty construction performed by the *Contractor* after an error, omission, conflict or discrepancy in the *Technical Specifications* or *Drawings* has been identified and the faulty construction results from the identified error, omission, conflict or discrepancy.
- (3) Any *Materials* that are not specified in the *Agreement*, but which are selected or supplied (as applicable) and installed by either the *Contractor* or a *Subcontractor* during performance of the *Work* must comply with all requirements of *Applicable Law*. If any *Materials* selected or supplied and subsequently installed in the *Work* by either the *Contractor* or *Subcontractor* do not comply with all

requirements of the *Applicable Law*, the *Materials* will be “*Non-Compliant Materials*” and the *Contractor* will:

- (a) be solely responsible for any *Work* that has been executed that is affected by the *Non-Compliant Materials*; and
- (b) at the *Contractor’s* expense, perform any additional *Work* as may be required to:
 - (i) replace the *Non-Compliant Materials* with *Materials* that are compliant with all requirements of the *Applicable Law*; or
 - (ii) modify the *Non-Compliant Materials* to make them compliant with the *Applicable Law*.

The *Contractor* must immediately provide *Notice* to the *City Representative* at the time the *Contractor* becomes aware of *Non-Compliant Materials* installed in the *Work* performed under the *Agreement*.

- (4) Subject to the *Contractor’s* obligations to exercise ongoing due diligence under Subsection 4.1(2)(i) throughout the *Term*, for the purposes of this Subsection 4.1(3), the *Applicable Law* is the *Applicable Law* in force at the *Effective Date*.
- (5) All *Material* incorporated into the *Project* must be new and undamaged and be of the quality specified in the *Agreement*.

4.2 Permits, Licenses and Approvals

- (1) The *Contractor* must obtain, maintain, and comply with all *Permits, Licenses, and Approvals* required to perform the *Work*.

4.3 Permitted Substitution of Materials

- (1) The *Contractor* must review requirements for *Materials* and anticipate any foreseeable delivery delays relating to all of the *Materials*. If delays in deliveries of *Materials* are foreseeable and will delay performance of the *Work*, the *Contractor* must propose substitutions for the *Materials* or other remedial action in sufficient time to prevent delay in the *Project Schedule*.
- (2) If a proposal for substitution of *Materials* is not given to *The City’s Design Professional* by the *Contractor* in accordance with Subsection 4.3(1), *The City* reserves the right to substitute more readily available *Materials* at any time without additional cost to *The City* in order to prevent delays in the *Project Schedule*.
- (3) Substitution of any *Material* will not be permitted unless:
 - (a) the unavailability of the *Material* will delay the *Project Schedule* and *The City* has issued a *Change Order* for the substitution of the *Material*; or
 - (b) *The City* has issued a *Change Order* for the substitution of the *Material*.
- (4) A substitute *Material* must equal or exceed the quality, finish, and performance of the unavailable *Material* if at all possible, and must not exceed the space requirement of the unavailable *Material* as described in the *Agreement*. The *Contractor*, in the form of certified quotations from *Subcontractors* supplying both the unavailable *Material* and the substituted *Material*, must provide all of the following to *The City’s Design Professional*:
 - (a) documentary proof of the quality, finish, and performance of the *Material*;

- (b) any differences in price between the unavailable *Material* and the substituted *Material*; and
- (c) delivery date(s) of the substituted *Material*.

4.4 Removal of Rejected Material

- (1) The *Contractor* must promptly remove from the *Project Site* all *Material* rejected by *The City's Design Professional* as failing to comply with the terms and conditions of the *Agreement*, whether incorporated into the *Work* or not. The *Contractor* will promptly replace any rejected *Material* and perform any related *Work* and will make good all work of *Other Contractors* destroyed or damaged by the removal and replacement without cost to *The City*.
- (2) If the *Contractor* does not remove the rejected *Material* within the time period set by *The City's Design Professional*, *The City* may remove the *Materials* at the expense of the *Contractor* and set-off the expense of the removal against any amounts owing under the *Agreement*, or otherwise due, to the *Contractor*.

4.5 Coordination with Other Contractors

- (1) If any part of the *Contractor's Work* depends for its proper performance or result on work performed by an *Other Contractor*, the *Contractor* must inspect the work of the *Other Contractor* prior to commencement of the *Contractor's Work*, and within one *Business Day*, report to *The City* any apparent defect or insufficiency in the work completed by the *Other Contractor* that may interfere with either, or both of, the proper execution or performance of the *Contractor's Work*. If, during performance of the *Contractor's Work*, a defect or insufficiency in the *Other Contractor's* work that was not previously apparent becomes apparent, the *Contractor* must report the defect or insufficiency to *The City* within one *Business Day* of the *Contractor's* discovery of the defect or insufficiency.
- (2) If the *Contractor* fails, in accordance with Subsection 4.5(1), to report to *The City* any defect or insufficiency in the work of the *Other Contractor*, the *Contractor* will be solely responsible for any *Work* the *Contractor* executes that is affected or impaired by the defective or insufficient work of the *Other Contractor* and for performing, at its own expense, any additional *Work* as required to replace or repair the affected or impaired *Contractor's Work*.
- (3) Subsection 4.5(2) will not apply if the *Contractor* exercises, and continues to exercise, reasonable diligence in inspecting the *Other Contractor's* work while carrying out the *Contractor's Work*, and the defects or insufficiencies of the *Other Contractor's* work:
 - (a) are not apparent at the time of commencement of the *Contractor's Work*; or
 - (b) do not become apparent during performance of the *Contractor's Work*.

4.6 Minimum Wages

- (1) The *Contractor* must comply with all of the provisions of the *Employment Standards Code*. If *The City* receives a complaint that the *Contractor* is not paying its employees that are providing services for the *Project* in accordance with the *Employment Standards Code*, and it is established to the satisfaction of *The City* that the *Contractor* is not in compliance with the *Employment Standards Code* relating to payment of its employees providing services on the *Project*, *The City* may withhold from any amount owing to the *Contractor* under this or under any other *Agreement* a sufficient amount of money, based

on the information available to *The City*, to pay all of the employees of the *Contractor* the amount or amounts to which the employee or employees are entitled. The amount that *The City* may retain under this Section 4.6 is in addition to, and not in substitution for, any amounts that *The City* is required or allowed to deduct from amounts owing to the *Contractor* under any terms or conditions of this or any other *Agreement* between the *Parties* or of any statute of Canada or of the Province of Alberta or any regulations made under those statutes.

- (2) *The City* may retain the amounts withheld under Subsection 4.6(1) until the *Contractor* has produced written evidence satisfactory to *The City* that all the outstanding amounts due to its employees have been paid. In addition to the amount that is withheld for the benefit of such employees, *The City* may also charge reasonable *Overhead Costs* for the additional accounting and other services incurred by *The City* in connection with the enforcement of this Section 4.6 and may deduct the amount from any amounts due to the *Contractor* under the *Agreement* or under any other agreement. Without limiting the application of any other *Term* or condition of the *Agreement*, the *Contractor* must bind its *Subcontractors* to the provisions of this Section 4.6, and *The City* may, on the same conditions, deduct from any amount due to the *Contractor* any amount owing to employees of the *Subcontractor* engaged by the *Contractor* in the performance of this *Agreement*. The rights granted in this Section 4.6 are in addition to, and not in substitution for:
 - (a) any other provision of the *Agreement* relating to the working conditions that the *Contractor* is obliged to provide for its employees; or
 - (b) any right that the employees may have against the *Contractor* under *Applicable Law*.
- (3) Nothing in this Section 4.6 obligates *The City* to exercise any of the powers conferred on it by this Section 4.6.

4.7 Compliance with Community Standards Bylaw

- (1) The *Contractor* must comply with all requirements of the *Community Standards Bylaw* and any additional requirements as may be specified in the *Special Conditions*, including requirements relating to noise control, while performing *Work* under the *Agreement*.
- (2) The *Contractor* must not work on Sunday or any other day normally observed as a holiday in *The City* of Calgary without the prior approval of the *City Representative*.
- (3) The *Contractor* will not be paid any increase in unit rates or any additional compensation for overtime for providing additional shifts, or for working on weekends or holidays, in order to achieve the *Scheduled Operational Date*.

4.8 Subcontractors and Key Personnel

- (1) *The City* may require the *Contractor* to submit to *The City*, in the *Procurement Documents*, a list of *Key Personnel* or a list of *Subcontractors*, or a list of both of them, which the *Contractor* is proposing for performance of the *Work*.
- (2) *The City*, acting reasonably, may reject any *Key Personnel* or any *Subcontractor* being proposed by the *Contractor* to perform the *Work*, or any part of the *Work*, and require the *Contractor* to substitute a different *Key Personnel* or a different *Subcontractor* in the place of the originally proposed *Key Personnel* or *Subcontractor* at any time during the *Term*. If *The City* requires the *Contractor* to make such a substitution, *The City* may adjust the *Project Schedule* or *Project Price*, or both, in a *Change*

Order if the required substitution results in additional costs to the *Project Price* or creates a delay in the *Project Schedule*.

- (3) If the *Contractor's* list of its proposed *Key Personnel* or list of its proposed *Subcontractors* (or both, as the case may be) has been approved by *The City*, the *Contractor* must not make any substitutions of the approved *Key Personnel* or *Subcontractors* without the prior written consent of *The City*. If the *Contractor*, without *The City's* prior written approval, makes a substitution of any one or more of the *Key Personnel* approved by *The City*, or makes a substitution of a *Subcontractor* approved by *The City*, such substitution will constitute an *Event of Default*. *The City's* written consent for a substitution will not be unreasonably withheld; however, *The City's* refusal to provide consent will not be unreasonable if the *Contractor's* proposed substitution does not have the equivalent experience or the equivalent qualifications, or both, of the approved *Key Personnel* or approved *Subcontractor*. If compensation to *The City* for such substitution is specified in the *Special Conditions*, the *Contractor* must pay to *The City* the amount specified in the *Special Conditions* to compensate *The City* for the additional costs *The City* incurs as a result of the substitution.
- (4) The *Contractor* will be fully responsible to *The City* for the acts and omissions of its *Subcontractors*, and all of its *Subcontractors' employees* and agents.
- (5) The *Contractor* agrees to bind every *Subcontractor* to all terms and conditions of the *Agreement* that apply to the *Subcontractor's* work. The *Contractor* will provide the *Subcontractor* a copy of the *Agreement*, or that part of it that applies to the *Work* to be performed by the *Subcontractor*.
- (6) Nothing contained in the *Agreement* creates any contractual relation between any *Subcontractor* and *The City*.

4.9 Conflict of Interest

- (1) For the purposes of this Section 4.9, a conflict of interest means any perceived, potential, or actual state of affairs or circumstance where, in relation to the *Project* or to *The City*, the *Contractor* has other contractual obligations, commitments, relationships, financial interests, or involvement in ongoing litigation that:
 - (a) could exercise an improper influence over the *Contractor's* objective, unbiased and impartial exercise of independent judgment in carrying out the *Work*; or
 - (b) could or could be seen to compromise, impair or be incompatible with the effective performance of the *Contractor's* obligations under the *Agreement*.
- (2) During the *Term*, the *Contractor* must not engage in or provide to any other *Person* any service or act that would be reasonably perceived by *The City* to be in conflict with the interest of *The City* in respect of the *Work* being provided by the *Contractor* to *The City*.
- (3) The *Contractor* must provide timely disclosure of any perceived, potential, or actual conflict of interest relating to the *Project*.
- (4) Any failure to provide timely disclosure of any perceived, potential, or actual conflict of interest, or failure to avoid engaging in or providing to any other company or entity any service or act that could reasonably be perceived to be in conflict with the interest of *The City* in respect of the *Work* being provided by the *Contractor* to *The City*, or to be in violation of any professional obligations or *Applicable Law* regarding fair competition, will be an *Event of Default* and grounds for terminating the

Agreement with the *Contractor*. Any such failure may also be noted on the performance *Record* of the *Contractor* that is maintained by *The City*.

4.10 Reporting to Surety Company

- (1) The *Contractor* must comply with all requirements of a surety company issuing *Performance Security* for the *Work* or for any part of the *Work* to be performed under the *Agreement*, including obligations to report *Changes* approved in a *Change Order* or in an amendment to the *Agreement*.

ARTICLE 5: PERFORMANCE OF THE AGREEMENT—THE CITY

5.1 Obligations of The City

- (1) *The City's* review of the *Work* will be for the purpose of determining if the *Work* is being carried out in general compliance with the *Agreement*. It is not incumbent upon *The City* to notify the *Contractor* when to begin, to cease, or to resume the *Work*, nor to give notice of the rejection of deficient *Work*, nor in any way to suspend the *Work* so as to relieve the *Contractor* of any responsibility or of any consequences of neglect or carelessness by the *Contractor* or its *Subcontractors*.
- (2) Acceptance of the *Work* may be made only upon the successful conclusion of *Performance Tests* of the *Work*, or any part of it, and compliance of the *Work*, or any part of it, with *Performance Standards*, as applicable. *The City's* approval to proceed to a subsequent stage or phase of *Work* will not constitute approval or a waiver of any *Deficiencies* of any part or portion of the *Work* completed in earlier stages or phases of the *Work*. If the *Work*, or any part of it, fails any *Performance Test*, the *Contractor* will be required to repair or redo the *Work* until it complies with all applicable *Performance Standards*. Any associated costs and expenses related to either repairing or redoing the *Work*, or of any additional testing, will be at the sole cost and expense of the *Contractor*.
- (3) Failure of *The City* to observe or call into question any *Work* or *Materials* that fail to comply with the requirements of the *Agreement* will not prejudice *The City's* right to disapprove of or reject such *Work* or *Materials* at any time prior to *The City's* issuing of the *Final Acceptance Certificate* and to order their repair, or their removal and replacement.

5.2 Non-Exclusivity

- (1) *The City* may enter into other agreements with *Other Contractors* in connection with the *Project*. If *The City* does enter into such additional agreements, the *Contractor* must coordinate the performance of its *Work* with the work of the *Other Contractors* in accordance with Section 4.5.

5.3 City's Right to do Work

- (1) Without limiting any other rights and remedies available to *The City* under the *Agreement*, if the *Contractor* fails to properly perform the *Work* or comply with any part of the *Agreement*, *The City* may, on providing at least five *Business Days' Notice* to the *Contractor*, remedy or repair any *Deficiencies* and deduct the cost of the remediation or repair of the *Deficiency* from the next or a subsequent *Construction Period Payment*.
- (2) The *Contractor* will not, in any manner, be released from any responsibility or liability to *The City* under the *Agreement* as a result of *The City's*:

- (a) involvement or participation in the *Work* under any of the provisions of the *Agreement*;
- (b) issuance or making of any account, statement, estimate, or certificate as may be described in the *Agreement*;
- (c) approval of any such account, statement, estimate, or certificate, described in (b) above;
- (d) payment, whether in part or in full, which may be made to the *Contractor*; or
- (e) acceptance, taking over, using or operating of the *Work* or of any part or parts of the *Work*.

5.4 Security Clearance

- (1) *The City* may require employees and *Subcontractors* of the *Contractor* that will be performing *Work* on the *Project Site* to obtain security clearance from *The City* or from the Calgary Police Service or from another law enforcement agency, as may be specified by *The City* in the *Special Conditions*. If the proper security clearances, as required by *The City*, have not been obtained for the *Contractor's* employees and *Subcontractors*, *The City* may, in its sole discretion, prohibit the affected employees or *Subcontractors* from accessing the *Project Site* or performing the *Work* and the *Contractor* will be required to substitute an employee or *Subcontractor* in their place at the *Contractor's* cost.

5.5 Emergencies

- (1) *The City* has authority to take over the *Work* or stop all *Work* in an emergency when any one or more of the following are affected or threatened:
- (a) public safety;
 - (b) the safety or stability of a temporary structure, or both;
 - (c) the safety or stability of a *Facility*, or both;
 - (d) the stability of property adjacent to the *Project Site*;
- and may, in its sole discretion, make any direction, or order additional work and issue a *Change Order* to facilitate any *Changes* for the additional work as may be required as a result of the emergency.

5.6 Accidents and Failures

- (1) If, by reason of any accident or failure or other event in connection with the *Work*, either during the performance of the *Work* or during the *Warranty Period*, any remedial or other *Work* or repair is urgently required and necessary to the *Work*, and if the *Contractor* is unable or unwilling to perform the *Work* or repair it promptly, *The City* may, by *The City's Own Forces* or with *Other Contractors* perform such *Work* or repair as, in the opinion of *The City*, is necessary. If the *Work* or repair performed by *The City* is *Work* that the *Contractor* was obligated to do at the *Contractor's* expense under the *Agreement*, then all costs and charges properly incurred by *The City* in performing the *Work* must be paid, on demand, by the *Contractor* to *The City*, or may be deducted by *The City* from any monies due or which may become due to the *Contractor*. *The City* will provide *Notice* to the *Contractor* of the occurrence of the accident, failure, or other event, as soon as is reasonably practicable after its occurrence.

5.7 Copies of Construction Documents

- (1) In addition to an executed copy of the *Agreement*, *The City* will provide to the *Contractor*, free of charge, up to five hard copies and one PDF or electronic copy of all *IFC Drawings* and *Technical Specifications*.

5.8 Issuing of Construction Completion Certificate

- (1) *The City* will issue a *Construction Completion Certificate* only when all of the following have occurred:
 - (a) with the exception of any *Warranty Work*, the *Work* is completed in accordance with the *Agreement*;
 - (b) the *Contractor* has delivered *As-Built Drawings* to *The City's Design Professional* in accordance with Section 6.3;
 - (c) the *Work* is free from *Deficiencies*;
 - (d) the *Contractor* is in compliance with Section 20.18;
 - (e) the *Contractor* is in compliance with Subsection 19.2(1);
 - (f) the *Contractor* has provided any operating and maintenance manuals for the *Work* as may be required by the *Agreement*;
 - (g) the *Contractor* is in compliance with Subsection 20.17(2)(b) (if applicable);
 - (h) the *Contractor* has provided to *The City* an executed statutory declaration in *The City's* standard form, as set out in Appendix A, evidencing that payment has been made in full, other than applicable holdbacks or amounts in dispute and disclosed to *The City*, to the *Contractor's* employees and *Subcontractors* for all services and *Materials* relating to the *Work* provided to date;
 - (i) the *Contractor* has provided to *The City* a certificate of title for the *Project Site* showing that no liens are registered or filed against the *Project Site* and *The City* has verified the information, unless the *Work* being carried out by the *Contractor* is on lands held by *The City* as a *Roadway* in respect of which a certificate of title is not issued;
 - (j) the *Contractor* has provided to *The City* a current *Workers' Compensation Board Clearance Certificate*; and
 - (k) any other requirements of *The City* relating to the *Work* are satisfied.
- (2) *The City* may issue a conditional *Construction Completion Certificate* only if:
 - (a) in the sole discretion and opinion of *The City*, the remaining *Deficiencies* are considered minor; and
 - (b) all other requirements of the *Construction Completion Certificate* as specified in Subsection 5.8(1) have been satisfied.

ARTICLE 6: DRAWINGS AND DOCUMENTS

6.1 Drawings and Documents

- (1) The *Contractor* must maintain at the *Project Site* for *The City*:

- (a) One hard copy of all *Drawings, Technical Specifications* and *Change Orders*, and any other modifications in good order and marked to the current date to indicate any changes or revisions and selections made during performance of the *Work*; and
- (b) One copy of *Product Data, Samples* and other similar documentation reflecting the *Work* as constructed;

all of which must be available to *The City* and the *City's Representative* throughout the *Term* and must be delivered to *The City* prior to issuance of the *Construction Completion Certificate*.

- (2) The *Contractor* must:
 - (a) arrange for the preparation of *Shop Drawings* as required by the *Agreement* and in a form acceptable to *The City's Design Professional*; and
 - (b) deliver the *Shop Drawings* to *The City's Design Professional* for their review in an orderly sequence on or before a date to be agreed on by the *Parties*.
- (3) By delivering the *Shop Drawings* or *Final Documents*, or both (as may be required), to *The City's Design Professional*, the *Contractor* represents to *The City* that the *Contractor* has:
 - (a) carried out a duly diligent review of each and every *Shop Drawing* and confirmed the review by affixing a review stamp to each *Shop Drawing* that includes the individual name, signature, company name, and date of either the *Contractor's* signing officer or the *Contractor's Design Professional*;
 - (b) determined and verified the field measurements, field construction criteria, *Materials* and related criteria such as catalogue numbers or similar data; and
 - (c) coordinated the *Shop Drawings* or *Final Documents*, or both (as may be required), with all aspects of the *Work* required under the *Agreement*.
- (4) At the time the *Contractor* delivers the *Shop Drawings* or any other *Final Documents* to *The City's Design Professional* (as may be required), the *Contractor* must notify the *City Representative* and *The City's Design Professional* in writing of any deviations in the *Shop Drawings* or in the *Final Documents* from the requirements of the *Agreement*.
- (5) On receipt of the *Shop Drawings*, *The City's Design Professional* will review the *Shop Drawings* for conformity to the design concept and for general arrangement only and will return the *Shop Drawings* to the *Contractor* on or before a date agreed to by the *Parties*. The review by *The City's Design Professional* will not relieve the *Contractor* of the *Contractor's* responsibility for errors or omissions in the *Shop Drawings* or for meeting all requirements of the *Agreement* unless and to the extent a deviation in the *Shop Drawings*, as identified by the *Contractor* in Subsection 6.1(4), is approved in writing by *The City's Design Professional*.

6.2 Supplemental Drawings

- (1) When, in the opinion of *The City's Design Professional*, it becomes necessary to illustrate the *Work* in more detail, or to illustrate a *Change*, additional *Drawings* and instructions (within this Section 6.2 referred to as "*Supplemental Drawings*") will be prepared by *The City's Design Professional* and given to the *Contractor*. The *Supplemental Drawings* will be binding upon the *Contractor* with the same force as the *IFC Drawings*.

- (2) The *Supplemental Drawings* will be deemed to have been duly given and received if delivery in writing was provided to the *Contractor* at the address for *Notice* specified in the *Contract Letter*.
- (3) The *Contractor* will provide *The City's Design Professional* with any information as may be required to facilitate *The City's Design Professional's* development of the *Supplemental Drawings* and will not perform the *Work* affected by the *Supplemental Drawings* until the *Supplemental Drawings* have been approved in writing by *The City's Design Professional*.
- (4) The *Contractor* and *The City's Design Professional*, if either *Party* requests, will jointly prepare a schedule, subject to change from time to time in accordance with the progress of the *Work*, fixing the dates at which the *Supplemental Drawings* will be required and *The City's Design Professional* will provide the *Supplemental Drawings* in accordance with the jointly prepared schedule.
- (5) If the *Project Schedule* cannot be finalized because *The City's Design Professional* has not provided the *Supplemental Drawings* as agreed upon in Subsection 6.2(4), a request by the *Contractor* for an extension of time to the *Project Schedule* for completion of the *Work* will not be considered unless the delay by *The City's Design Professional* in providing the *Supplemental Drawings* is more than 14 Days.

6.3 As-Built Drawings

- (1) The *Contractor* must provide *As-Built Drawings* to *The City's Design Professional* within four weeks of issuing the final *Certificate of Substantial Performance*.

6.4 Authentication of Drawings

- (1) (1) If the *Contractor* is required to provide the services of a *Design Professional* under the terms and conditions of the *Agreement*, the *Contractor's Design Professional* must provide *Final Documents* as required.

6.5 Inconsistencies within the Technical Specifications

- (1) Inconsistencies or conflicts among different forms of *Drawings* will be resolved as follows:
 - (a) figured dimensions on a *Drawing* will take precedence over measurements scaled from the *Drawing*;
 - (b) large scale *Drawings* will take precedence over smaller scale *Drawings*;
 - (c) the dimensions of a specified Material will take precedence over the figured dimensions on a *Drawing* if there is a conflict between them.
- (2) Inconsistencies or conflicts among the *Drawings* and the written specifications within the *Technical Specifications* will be resolved as follows:
 - (a) *Supplemental Drawings* and any associated written specifications will take precedence over their antecedents within the *Technical Specifications*;
 - (b) If there is any inconsistency or conflict within the *Technical Specifications* between the *IFC Drawings* and the written specifications, the written specifications will take precedence over the *IFC Drawings*; and

- (c) Notwithstanding Subsection 6.5(2)(b), *Materials* or *Work* shown on the *Drawings*, but not included in any written specifications of the *Technical Specifications*, is *Work* to be performed by the *Contractor* under the *Agreement* unless specifically noted.
- (3) Descriptions of *Materials* or *Work* with words that express well known technical or trade meanings that are associated with recognized standards will be deemed to incorporate reference to the recognized standards.

6.6 Digital Drawings

- (1) If any *Drawings* are required in digital form, as may be specified in the *Special Conditions*, the *Drawings* must be provided in AutoCAD DWG or DXF format and must:
- (a) be in metric measurements and referenced to the 3TM mapping projection and the 1983 North American Datum (NAD83), with the reference meridian being 114° West; and
- (b) reference elevation information to the 1928 Canadian Geodetic Vertical Datum (CGVD28).
- (2) If changes are made to any *Drawings* provided to *The City's Design Professional* by the *Contractor* under Subsection 6.6(1), the *Contractor* must provide an updated set of hard copy *Drawings* to *The City's Design Professional* that reflect the changes.
- (3) The *Contractor* must ensure that any *Drawing* in digital form and the hard copy format of the same *Drawing* are in alignment.

6.7 Ownership of Drawings

- (1) All originals and copies of models, including models from building information modeling, and *Drawings* are the *Intellectual Property* of *The City* and if requested by *The City*, must be returned by the *Contractor* to *The City* on completion of the *Work* performed under the *Agreement*. As part of this *Agreement*, the *Contractor* assigns to *The City* (subject to any third party's proprietary rights) all its right, title and interest, including copyright and proprietary rights, to any models or *Drawings* developed or prepared by the *Contractor* for *The City* in relation to the *Agreement*. The *Contractor* may retain one copy of any model, including models from building information modeling, and one copy of any *Drawings*, which are relied on or used in performance of the *Work*, for its own records or for use solely in relation to the *Agreement*.

ARTICLE 7: PROJECT SCHEDULE

7.1 Project Schedule

- (1) Within 15 Days of the *Effective Date*, the *Contractor* must finalize or complete and submit to *The City* for acceptance a *Project Schedule* that achieves *Substantial Performance* of the *Work* by the *Scheduled Operational Date*, or, alternatively, the *City Representative* and the *Contractor* must agree on a date by which an initial *Project Schedule* will be finalized or completed and submitted to *The City* for acceptance that achieves *Substantial Performance* of the *Work* by the *Scheduled Operational Date*.
- (2) Compliance with the *Scheduled Operational Date* is critical to the performance of the *Work* and completion of the *Project*. The *Project Schedule* will set out key *Milestones* for achievement of the *Scheduled Operational Date* and issuing of the *Construction Completion Certificate*. The *Scheduled Operational Date* may be adjusted in writing only by a *Change Order*.

- (3) Subject to any adjustment of the *Scheduled Operational Date* in accordance with Subsection 7.1(2), the *Contractor* must commence performance of the *Work* not later than 10 *Business Days* following the issuance of the *Notice to Proceed* and achieve *Substantial Performance* on or before the *Scheduled Operational Date* as set out in the *Project Schedule*.

7.2 Recovery and Mitigation Plan

- (1) If *The City* considers and advises the *Contractor* that the rate of progress of the *Work* is insufficient to enable the *Contractor* to meet a key *Milestone* on the critical path, or complete the *Work* or any part of it within the timeframes set out in the *Project Schedule*, *The City* may require the *Contractor* to submit a recovery and mitigation plan to *The City* that will describe in detail the *Contractor's* plan for bringing the progress of the *Work* back to compliance with the *Project Schedule* to mitigate or eliminate any delay in the achievement of the *Scheduled Operational Date*.
- (2) If the *Contractor* cannot bring the progress of the *Work* back to compliance with the *Project Schedule*, subject to Section 14.2, *The City* may take any action as permitted under this *Agreement* for the *Contractor's* delay in completion of the *Work* in accordance with the *Project Schedule*.

7.3 Late Achievement of Scheduled Operational Date

- (1) If the *Contractor* fails to complete all of the *Work* required to be completed under the *Agreement* prior to the *Scheduled Operational Date*, as that date may be adjusted by a *Change Order*, *The City*, in its sole discretion, may elect to proceed with one of the following actions:
- (a) terminate the *Agreement* or take the *Work* out of the *Contractor's* control in accordance with Article 17;
 - (b) set off against any funds that *The City* may owe to the *Contractor* the amount of liquidated damages for the delay in achieving the *Scheduled Operational Date* at the rate specified in the *Special Conditions* for each day or part of a day between the specified *Scheduled Operational Date* and the actual date on which the *Scheduled Operational Date* is achieved to compensate *The City* for the anticipated costs of *The City's* staff and consultants, continued management of the *Project Site*, loss of revenue, and management of all other issues and costs related to the delay; or
 - (c) adjust the *Scheduled Operational Date*, if deemed appropriate by *The City*, for such period as *The City* determines, without requiring the *Contractor* to pay any consideration for the adjusted time period.
- (2) If *The City* elects to adjust the *Scheduled Operational Date* in accordance with Subsection 7.3(1)(c) and the *Contractor* does not complete the *Work* on or before the adjusted *Scheduled Operational Date*, then, upon *Notice* by *The City* to the *Contractor*, *The City* may avail itself of any of the remedies specified in the *Agreement*, including Subsection 7.3(1)(b) above, or of any other remedy.
- (3) The *Contractor* acknowledges that the amount of liquidated damages as described in Subsection 7.3(1)(b) is a reasonable estimate of *The City's* damages and further acknowledges that the actual damages for the *Contractor's* failure to complete all of the *Work* required to be completed under the *Agreement* prior to the *Scheduled Operational Date*, as that date may be adjusted by a *Change Order*, are difficult or impossible to accurately estimate at the *Effective Date* of the *Agreement*.

- (4) If the *Contractor* fails to complete all of the *Work* required to be completed under the *Agreement* prior to the *Scheduled Operational Date* and *The City* proceeds to take action in accordance with Subsection 7.3(1), the *Contractor* is not eligible for any financial bonus under Section 7.4.

7.4 Completion Prior to Scheduled Date for Issuing of Construction Completion Certificate

- (1) Subject to Subsection 7.3(3), if the *Contractor* completes all the *Work* in accordance with the requirements of the *Agreement* prior to the date scheduled for issuing of the *Construction Completion Certificate*, as that date may be adjusted by *Change Order*, *The City* may provide a financial bonus to the *Contractor* of either:
- (a) a stipulated lump sum; or
 - (b) an amount of money for each day beginning after the day on which the *Contractor* is issued the *Construction Completion Certificate* for the *Work* to, but not including, the date scheduled for issuing the *Construction Completion Certificate* as specified in the *Project Schedule*.
- (2) If a financial bonus is determined by *The City* to be payable under Subsection 7.4(1) above, the financial bonus will not be issued to the *Contractor* until *The City's Design Professional* has approved all *As-Built Drawings* for the *Project* to be provided by the *Contractor* in accordance with Subsection 6.3(1).
- (3) If *The City* determines a *Project* is suitable for providing a financial bonus as described in Subsection 7.4(1), the type of bonus, the amount of the bonus, and any details related to the achievement of the bonus will be specified in detail in the *Special Conditions*.

ARTICLE 8: ACCESS TO SITE AND SITE CONDITION

8.1 Access and Use

- (1) Prior to the *Contractor's* access and use of the *Project Site* the *Contractor* must submit the *Health and Safety Plan* and the *Quality Management Plan* to the *City Representative* and *The City's Design Professional* for their review and written approval unless *The City* has expressly waived the requirements for submission of the *Health and Safety Plan* and the *Quality Management Plan* prior to the *Contractor's* access and use of the *Project Site*, or altogether, in the *Special Conditions* or by *Notice*.
- (2) From the *Effective Date* (and subject to the issuing of the *Notice to Proceed*) to the date on which the *Final Acceptance Certificate* is issued, or on termination of the *Agreement*, whichever is earlier, and subject to all terms and conditions of the *Agreement*, *The City* grants to the *Contractor* a non-exclusive license for a right of use and access to, on, and over the *Project Site* and any *Facility*, as may be applicable under the *Agreement*, sufficient to allow the *Contractor* to perform the *Work*.
- (3) Notwithstanding any review or approval by the *City Representative* or *The City's Design Professional* of the *Health and Safety Plan* and the *Quality Management Plan*, such review or approval by *The City* will not mean, and is not intended to imply, that the foregoing *Work Plans* comply with *Applicable Law*. The *Contractor* is solely responsible for its compliance with all *Applicable Law* while performing the *Work* during the *Term*.
- (4) The *Contractor* must provide a *Site Office* for its own use. The *Contractor* must also provide a *Site Office* for *The City*, which must be available for access by *The City* at least 48 hours prior to

commencement of the *Work* and at all times during performance of the *Work* and include, at minimum:

- (a) a large table for *Drawings* (at least one metre by two metres), a desk with a minimum of four drawers, and two chairs;
- (b) light, heat and proper ventilation; and
- (c) telephone and internet services.

Any additional requirements by *The City* for the *Site Office* will be specified in the *Special Conditions*.

8.2 Uninterrupted Access and Use

- (1) The *Contractor's* use of the *Project Site* and any *Facility*, as may be applicable, will be without material interference during the duration of the *Agreement* and will be sufficient to enable the *Contractor* to perform the *Work* throughout the *Term*, subject to the following:
- (a) any *Identified Encumbrances* and work relating to them;
 - (b) the exercise by *The City* of any express right under and in accordance with the *Agreement*, including:
 - i. *The City's* right under Article 14 and Article 17 to direct the *Contractor* to stop or suspend construction;
 - ii. *The City's* right under Article 11 to access and use of the *Project Site* or *Facility* for inspection purposes;
 - iii. *The City's* emergency response obligations under Section 5.5, Section 12.4 and other *Applicable Law*;
 - iv. *The City's* rights in accordance with *Applicable Law*; and
 - v. other rights of *The City* to access the *Project Site* and the *Facility* in fulfillment of its obligations as a municipal government body;
 - (c) any entry upon the *Project Site* and the *Facility* by *The City* in accordance with the provisions of the *Agreement* or by any third party through written consent of *The City*, provided that each such entry does not materially adversely interfere with the *Contractor's* performance of the *Work*;
 - (d) *The City's* right of access to the *Project Site* and areas adjacent to the *Project Site* for the purposes of responding to compliance or enforcement requirements of any *Governmental Authority*;
 - (e) the right of any *Governmental Authority* to enter the *Project Site* and the *Facility* for any purpose under *Applicable Law*; and
 - (f) any interference, including by means of an injunction issued by a court, or action by protesters, to the extent attributable to a negligent or wrongful act or omission by the *Contractor*.

8.3 Access Fee

- (1) Unless otherwise specified in the *Special Conditions*, no fee or other monetary amount will be payable by the *Contractor* for its right of access to and use of the *Project Site*.

8.4 Status of the Site

- (1) Except as expressly provided in the *Agreement* or as may be represented in any reports produced and provided by *The City* as described in Subsection 8.4(2), *The City* provides no representations, warranties, or guarantees with respect to the physical condition of the *Project Site*.
- (2) The *Contractor* acknowledges and confirms that it will undertake and assume full liability for its own review, analysis, interpretation, drawing of inferences, reaching of conclusions, and exercise of judgment in relation to any and all reports produced and provided by *The City* to the *Contractor* that disclose the environmental condition of the *Project Site*.

8.5 Condition of the Site

- (1) Subject to the *Contractor's* obligations under the *Agreement* to perform the *Work*, the *Contractor* must ensure that it maintains the *Project Site* so as to comply with all *Applicable Law* throughout the duration of the *Agreement*.
- (2) In addition to Subsection 8.5(1), the *Contractor* must, at its sole cost:
 - (a) be responsible for repairing all damage to the *Project Site* and the *Work*, however caused, except for damage caused:
 - i. by an *Event of Force Majeure*;
 - ii. directly by *The City*; or
 - iii. by any *Person* exercising rights under an *Identified Encumbrance*;
 - (b) if carrying out ditching or excavation operations on or near a *Roadway*, ensure that all necessary and adequate precautions are taken to prevent subsidence or withdrawal of support of sidewalks or curbs, carriageways, existing utilities, adjacent property, or other property;
 - (c) protect adjacent property to the *Project Site* as required by the *Agreement*, or where otherwise necessary;
 - (d) ensure that all precautions, as may be necessary in the circumstances, are diligently and expeditiously taken to protect all members of the public from loss or personal bodily injury during performance of any *Work* if *Work* is being performed at or in the vicinity of a location to which the public has or may gain access. Such precautions may include:
 - i. ceasing performance of any portion of the *Work* that may cause or increase any danger to the public and performing that portion of the *Work* in a manner which will remove or reduce, to an acceptable minimum, any danger to the public; or
 - ii. closing access by the public to any area in the vicinity of the *Work* which cannot be made sufficiently safe and providing alternative safe access for the public to those areas where the public is entitled to access;

- (e) preserve the safety of any *Facility* or other temporary structure that is owned by *The City* and located on the *Project Site*, unless specific alternative instructions relating to the use or treatment of the *Facility* or temporary structure have been received from *The City*;
- (f) maintain the *Project Site* reasonably free from waste material caused by or incidental to the *Work* and store, transport, or dispose of waste material, as may be required in the circumstances, in accordance with *Applicable Law*;
- (g) not stockpile any *Material* or *Construction Equipment* on the *Project Site*, except for the purpose of carrying out *Work* under the *Agreement*; and
- (h) comply with all of *The City's* additional requirements or instructions relating to the *Project Site* as may be described in the *Special Conditions*.

8.6 Latent Physical Conditions

- (1) If the *Contractor*, in exercise of reasonable diligence while performing the *Work*, discovers a subsurface or latent physical condition at the *Project Site* that materially differs from information provided in the *Agreement* about the existing physical condition of the *Project Site*, or as represented in the reports produced and provided by *The City* as described in Subsection 8.4(2) (referred to in this Section 8.6 as the "*Project Site Documents*"), then the *Contractor* must:
 - (a) provide *Notice* to *The City* immediately, and no later than five *Business Days* after the day on which the *Contractor* discovers that there is a material difference in the physical condition of the *Project Site* from what is represented in the *Project Site Documents*; and
 - (b) allow *The City* an opportunity to inspect the reported subsurface or latent physical condition on the *Project Site* before the *Project Site* is further disturbed.
- (2) *The City* will respond to the *Contractor's Notice* issued in accordance with Subsection 8.6(1)(a) within five *Business Days* and advise the *Contractor* when *The City* will carry out an inspection of the subsurface or latent physical condition, taking into account the urgency of the matter.
- (3) If *The City's Design Professional*, subject to carrying out an inspection, determines that there is a material difference in the physical condition of the *Project Site* from what is represented in the *Project Site Documents*, *The City* may issue a *Change Order* to account for an adjustment to the *Project Price* or an adjustment to the *Project Schedule* (or both) on the request of the *Contractor*. The *Change Order* will account for only those documented costs incurred by the *Contractor* that arise from the *Contractor's* performance of additional *Work* as a result of the material difference in the physical condition of the *Project Site* from what is represented in the *Project Site Documents*, and only for the additional costs of the *Contractor* that are incurred after the day on which the *Contractor* provides *The City Notice* in accordance with Subsection 8.6(1)(a).
- (4) If the *Contractor* fails to provide *Notice* to *The City* within the timeframe required in Subsection 8.6(1)(a), *The City* may reject the *Contractor's* request for a *Change Order* for costs incurred by the *Contractor* that arise from the performance of additional *Work* as a result of the material difference in the physical condition of the *Project Site* from what is represented in the *Project Site Documents* if the *Contractor's* failure to provide the required *Notice* restricts *The City's* ability to take any action in relation to the *Project* that it determines is in the best interest of *The City* in the circumstances.

8.7 Permitted Use

- (1) The *Contractor* must ensure that the *Contractor* and any *Subcontractors* use the *Project Site* and any *Facility* only for the purposes of carrying out *Work* for the *Project*.

8.8 Ownership of Facility

- (1) The *Contractor* acknowledges that *The City* retains all right, title, and interest in the *Project Site* and any *Facility* and that the *Contractor* has no ownership interest in either the *Project Site* or the *Facility*.

8.9 Survey Monuments

- (1) The *Contractor* must determine the location of all *Survey Monuments* that will, or may, be affected by the *Work* and must contact *The City* at least two *Business Days* prior to the commencement of any *Work* on the *Project Site* regarding the locating of *Survey Monuments*.
- (2) The *Contractor* must preserve and maintain all *Survey Monuments* made or established on the *Project Site* and must not permit any removal, damage, destruction, or displacement of *Survey Monuments*. The *Contractor* must assume all costs related to the re-establishment of any *Survey Monuments*, and for rectifying *Work* improperly installed or constructed due to a failure to properly preserve or maintain *Survey Monuments*.
- (3) The *Contractor* must pay any fines due to its failure to properly preserve or maintain *Survey Monuments* on the *Project Site* for an offence as described in the *Surveys Act*.
- (4) The *Contractor* must complete, as may be required by *The City's Design Professional*, any surveys and measurements of the *Project Site* and establish or check lines and grades, all of which may be verified for accuracy by *The City*. If additional staking to confirm or establish *Survey Marks* is required, the *Contractor* must assume all costs related to additional staking.

8.10 Signage on the Project Site

- (1) The *Contractor* must supply and erect signs on the perimeter fence of the *Project Site* that identify the *Project* and are in the form identified by *The City* in the *Technical Specifications*, and:
 - (a) if the *Project Site* is located off a *Roadway*, erect one freestanding sign; or
 - (b) if the *Project Site* is located on a *Roadway*, and if the *Project* is not signed with the "Alberta Cities Transportation Partnership and Roads Business Unit" sign, erect a minimum of two portable or free-standing signs.
- (2) All signs erected on the *Project Site* must be professionally designed and constructed.
- (3) All signs must be located so as not to interfere with any traffic flow directional sign or with any permanent or temporary traffic control device. The *Contractor* must monitor all signs on a daily basis and ensure that they are not impeding traffic flow, have not been knocked over, and have not been removed from the approved location.
- (4) The *Contractor* will:
 - (a) maintain all signs located on the *Project Site* in good condition for the duration of the *Project* and clean the signs periodically;

- (b) post appropriate warning signs where applicable;
- (c) provide safety and instruction signs and notices that include graphic symbols conforming to CSA Standard CAN/CSA-Z321-96;
- (d) not post any advertising signs unless *The City* has approved, in writing, the sign or signs; and
- (e) on completion of the *Project*, or earlier at the request of *The City*, dispose of all signs erected on the *Project Site*.

8.11 Location and Disruption of Existing Services on the Project Site

- (1) The existence, location, elevation, and condition of underground utilities is not guaranteed by *The City*, and notwithstanding any other provisions of the *Agreement*, the *Contractor* will be responsible for determining the location and elevation of all wastewater, storm water, and water pipes or lines, gas mains or lines, electrical power lines, all telecommunications lines, conduits or fibres, and any other utility structures or facilities (collectively referred to as "*Utility Facilities*" for the purpose of this Article) through [Alberta One Call](https://utilityandsafety.ca/) (1-800-242-3447 or <https://utilityandsafety.ca/>) or other effective and non-destructive method acceptable to the owners of the *Utility Facilities* (the "*Utility Owners*"). The *Contractor* must pay for any and all services supplied by the *Utility Owners*.
- (2) The *Contractor* must notify all *Utility Owners* of the *Contractor's* intention to perform any operations or any *Work* in the vicinity of the *Utility Facilities* at least one week prior to commencement of any *Work*, including any affected business units of *The City*.
- (3) The *Contractor* is liable for any loss of, damage or harm to a *Utility Facility* belonging to a *Utility Owner* that is in any way caused by the *Contractor* while carrying out *Work* during the *Term*.
- (4) If a *Utility Facility* must be moved, repaired, replaced, or capped off, the *Contractor* must make arrangements for such move, repair, replacement, or capping off directly with the *Utility Owner* of the *Utility Facility* and will notify *The City* of all such arrangements and any associated requirements imposed by the *Utility Owner*. The *Contractor* assumes all liability arising from the move, repair, replacement, or capping off of such *Utility Facilities*.
- (5) The *Contractor* must make its own arrangements with *Utility Owners* for any temporary services provided by the *Utility Owners* that are, or become necessary, for carrying out or completing the *Project* and the *Contractor* is responsible for all costs related to the installation of *Utility Facilities* or provision of services by a *Utility Owner* to perform the *Work* for the *Project*.

8.12 Connections or Tie-ins on the Project Site

- (1) If any of the *Work* carried out by the *Contractor* contemplates connections or tie-ins to facilities or structures already existing on the *Project Site* or facilities or structures installed by an *Other Contractor*, the *Contractor* must perform such connections or tie-ins without endangering the existing facilities or structures. If the facilities or structures require alteration to permit the connection or tie-ins to be completed, the *Contractor* must receive written approval from *The City* prior to performing any such alterations.

8.13 Access and Use Rights Cease

- (1) The *Contractor's* access to and use of the *Project Site* will terminate on the date on which the *Final Acceptance Certificate* is issued or on termination of the *Agreement*, whichever is earlier.

ARTICLE 9: CHANGES AND CHANGE ORDERS

9.1 Changes

- (1) *The City*, without invalidating the *Agreement*, may make a *Change* and add, delete, modify, or make revisions to the *Work* and issue a *Change Order* or a *Change Directive* at any time.
- (2) The *Contractor* must not perform a *Change* without a written and signed *Change Order* being issued by *The City*. All *Change Orders* must be completed in *The City's* standard form as set out in Appendix B-1 or Appendix B-2, as applicable.
- (3) If both additions and deletions to the *Work* are incorporated into one *Change Order*, all calculations must be determined on a net basis for that *Change Order*.
- (4) If more than one *Change* is incorporated into a *Change Order*, all calculations relating to additions or deletions to the *Work* for each *Change* must be determined on a net basis for each *Change* that is identified in the *Change Order*.
- (5) If a *Change* involves any reduction in the *Project Price* and results in net savings in costs to the *Contractor* for completing the *Work* as required in the *Agreement*, then the value of the savings must be reflected in a lump sum payment to *The City* or in adjustments to *Construction Period Payments* as may be reasonably determined by the *Parties*.
- (6) *The City* will make the final determination in regard to implementing a *Change* and issuing a *Change Order*.

9.2 Change Order Process

- (1) *The City* will issue a *Notice of Proposed Change* to the *Contractor* if:
 - (a) *The City* determines a *Change* is desirable or necessary to achieve the goals of the *Project*; or
 - (b) the *Contractor* considers a *Change* may be desirable or necessary to properly complete the *Work*, contacts the *City's Representative* to describe the proposed *Change*, and *The City* agrees to consider the proposed *Change*.
- (2) Within 10 *Business Days* after receipt of a *Notice of Proposed Change* from *The City*, the *Contractor* must submit a *Change Quotation* to *The City* calculated in accordance with Section 9.3. All proposed *Work* in the *Notice of Proposed Change* must be completed under the provisions of the original *Agreement* to the greatest extent possible. If a modification to the *Project Schedule* is not identified in the *Change Quotation*, the *Change Order* will not extend the *Project Schedule* or entitle the *Contractor* to additional compensation or damages of any nature whatsoever for any subsequent adjustments to the *Project Schedule* arising from or related to the *Change*.
- (3) The *Contractor* will:
 - (a) use commercially reasonable efforts to obligate its *Subcontractors* to minimize any increase in costs and to maximize any reduction in costs for carrying out the *Change*;

- (b) take into account and apply the full amount of any and all expenditures that have been reduced or avoided to reduce the amount of costs incurred by a *Change*; and
 - (c) use commercially reasonable efforts to obtain the best value for money when procuring any *Materials* or *Construction Equipment* required by a *Change* and use commercially reasonable efforts to comply with prevailing *Good Industry Practice* in relation to any procurement relating to a *Change* to a standard no less than the *Contractor* would apply if all costs incurred were to the *Contractor's* account.
- (4) As soon as practicable, and in any event not more than 10 *Business Days* after *The City* receives a *Change Quotation* from the *Contractor*, the *Parties* will discuss and consider the *Change Quotation* and, if applicable, an adjustment to the *Construction Period Payments*.
- (5) Within 10 *Business Days* after the *Parties* consider the *Change Quotation* as described in Subsection 9.2(2), *The City* may either:
- (a) issue a *Change Order* when the terms and conditions of the *Change Quotation* have been agreed to by both *Parties*; or
 - (b) withdraw the *Notice of Proposed Change* by *Notice* to the *Contractor*.
- (6) If any of (a) the cost of a proposed *Change*, or (b) an adjustment to the *Project Schedule* in relation to a proposed *Change* cannot be promptly agreed upon prior to performance of the proposed *Change*, or (c) both (a) and (b), and *The City* requires a *Change* to be performed, *The City* may issue a *Change Directive* to the *Contractor* in *The City's* standard form. On receiving a *Change Directive* from *The City*, the *Contractor* will immediately begin performance of the *Change* described in the *Change Directive*. The *Contractor*, applying the measures described in Subsection 9.2(3), will calculate the cost of the *Change* and any related adjustment to the *Project Schedule* for performing the *Change* in accordance with one or more of the cost methods described in Section 9.3 as directed by *The City*, and will issue a *Change Quotation* to *The City*. *The City* will review the *Change Quotation* and will issue a *Change Order* only when the costs of the *Change* have been agreed to by both *Parties*.
- (7) If the *Contractor* and *The City* cannot agree on the cost of a proposed *Change*, the costs set out in the *Change Order* will be determined in accordance with Cost Method D as described in Subsection 9.3(5). If the *Parties* fail to reach *Agreement* on the application of Cost Method D, either *Party* may request an independent valuation in accordance with Section 9.5 based on the application of Cost Method D.
- (8) When *The City* issues a *Change Order*, the *Parties* will do all acts and execute all documentation necessary to implement the *Change Order*.

9.3 Determination of Cost of Changes

- (1) When *The City* approves a *Change* that requires either an increase or a decrease in the *Project Price*, the cost of the *Change* will be calculated in accordance with one or more of the following methods as selected by *The City*:
- (a) **Cost Method A** – Lump Sum;
 - (b) **Cost Method B** – Unit Price (as submitted in the *Procurement Documents*);
 - (c) **Cost Method C** – *Force Account Rates* (current edition);
 - (d) **Cost Method D** – *Net Cost Plus*;

- (e) **Cost Method E** – other method as specifically set out in the *Special Conditions*.
- (2) **Cost Method A – Lump Sum**: If the proposed cost of a *Change* is to be determined by Cost Method A, the *Contractor* will provide to *The City* a lump sum quote in the *Change Quotation*, accounting for *Materials Costs*, *Total Labour Costs*, *Construction Equipment Costs*, *Overhead Costs*, and profit that are specifically related to performance of the *Change*. Amounts in the *Change Quotation* for *Overhead Costs* and profit specifically related to performing the *Change* cannot exceed the amount that may be charged for *Overhead Costs* and profit as determined under Cost Method D in Subsection 9.3(5). *The City*, in its sole discretion, may request documentation in support of the *Change Quotation* in the form of a full breakdown of the lump sum quote. Alternatively, *The City* may request a substitute *Change Quotation* that calculates the cost of the *Change* in accordance with Cost Method D as described in Subsection 9.3(5).
- (3) **Cost Method B – Unit Price** as submitted in the *Procurement Documents*: If the proposed cost of a *Change*, or any part of the proposed cost of a *Change*, is to be determined by Cost Method B, the unit prices, as submitted by the *Contractor* in the *Procurement Document* for the *Project*, will be applied to calculate the cost of the *Change*, or any part of the *Change*, without any additional amounts included for *Overhead Costs* and profit.
- (4) **Cost Method C – Force Account Rates**:
- (a) Payment for a *Change* utilizing *Force Account Work*:
- i. will not be made without the prior written approval by *The City* of the *Force Account Work*; and
 - ii. will not include any allowance for *Overhead Costs* and profit, which are already included in the *Force Account Rates*.
- (b) *Materials Costs*, *Total Labour Costs*, and *Construction Equipment Costs* for carrying out the *Change* and completed under *Force Account Rates* will be calculated in accordance with the *Force Account Rates* in effect at the date of approval of the *Force Account Work* by *The City*.
- (c) *Work* performed in relation to a *Change* and not included in the *Force Account Rates*, as may be determined by *The City*, will be calculated in accordance with Cost Method D as set out in Subsection 9.3(5).
- (d) If, during the performance of a *Change*, the *Contractor* is required to administer *Work* that is being performed by a *Subcontractor* under *Force Account Rates*, the *Contractor* may be compensated for *Overhead Costs* and profit for the *Contractor's* administration, which must not exceed 10% of the *Subcontractor's Net Cost* of performing the *Change*.
- (5) **Cost Method D – Net Cost Plus**: If the proposed cost of a *Change* is to be determined by Cost Method D, the *Contractor* will be required to provide all supporting documentation, including supplier invoices, verifying all *Net Costs* specifically related to performance of the *Change* described in the *Change Quotation*, in addition to any other documentation *The City* may require. *The City* will review and verify the total amount of the *Change*, including *Overhead Costs* and profit, to be paid to the *Contractor*.

The *Contractor* will be required to describe, in detail, the following costs in the *Change Quotation* for Cost Method D:

Item	Allowed costs in calculating the cost of a <i>Change</i>
<i>Materials Costs</i>	<p>The <i>Materials Costs</i> necessary to perform the <i>Change</i>, including the:</p> <ul style="list-style-type: none"> a) identification of each item; b) quantity of each item; c) unit price of each item; and d) corresponding adjustment to the <i>Project Price</i>; <p>less any rebates, refunds, returns from sale of surplus materials, and supplies and trade discounts (other than prompt payment discounts).</p>
<i>Total Labour Costs</i>	<p>Include only:</p> <ul style="list-style-type: none"> a) the unit cost of the <i>Total Labour Costs</i> specifically related to performance of the <i>Change</i> for each item in the list of <i>Materials Costs</i> that are necessary to perform the <i>Change</i>; and b) any corresponding adjustment to the <i>Project Price</i>.
<i>Construction Equipment Costs</i>	<p>Include only:</p> <ul style="list-style-type: none"> a) the list of rented <i>Construction Equipment</i> specifically required to perform the <i>Change</i>; and b) the <i>Construction Equipment Costs</i> specifically related to performing the <i>Work</i> to implement the <i>Change</i>.
<i>Overhead Costs and profit</i>	<p><i>Overhead Costs</i> and profit related to performing a <i>Change</i> must not exceed:</p> <p><u>for the <i>Contractor</i>:</u></p> <p>The total of:</p> <ul style="list-style-type: none"> a) 5% on the <i>Net Cost</i> to the <i>Contractor</i> of the <i>Contractor's Total Cost of Materials and Labour</i> specifically related to performing the <i>Change</i>; b) 5% of the <i>Subcontractor's Net Cost</i> specifically related to performing the <i>Change</i>; and c) 10% profit on "a)" immediately above, excluding the 5% mark-up on "a)"; and <p><u>for the <i>Subcontractor</i>:</u></p> <p>The total of:</p> <ul style="list-style-type: none"> a) 5% on the <i>Net Cost</i> to the <i>Subcontractor</i> of the <i>Subcontractor's Total Cost of Materials and Labour</i> specifically related to performing the <i>Change</i>;

Item	Allowed costs in calculating the cost of a <i>Change</i>
	<p>b) 5% of the <i>Sub-Subcontractors' Net Cost</i> specifically related to performing the <i>Change</i>; and</p> <p>c) 10% profit on "a)" immediately above, excluding the 5% mark-up on "a)".</p> <p><u>for all Sub-Subcontractors:</u></p> <p>The total of:</p> <p>a) 5% on the <i>Net Cost</i> to the <i>Sub-Subcontractor</i> of the <i>Sub-Subcontractor's Total Cost of Materials and Labour</i> specifically related to performing the <i>Change</i>; and</p> <p>b) 10% profit on "a)" immediately above, excluding the 5% mark-up on "a)".</p>

FORMULA FOR CALCULATION:

1	A	B	C	D	E	F
2		Net Cost	Mark-up Total Cost of Materials and Labour	Mark-up Subcontract or	Profit	Sub-Total
3	% Mark-up		5%	5%	10%	
4	Sub-Subcontractor cost		=B4*C3	=0	=B4*E3	=SUM(B4:E4)
5	Subcontractor cost		=B5*C3	=B4*D3	=B5*E3	=SUM(B5:E5)
6	Contractor cost		=B6*C3	=(B4+B5)*D3	=B6*E3	=SUM(B6:E6)
7	Total Cost of Change Order					=SUM(F4:F6)

SAMPLE CALCULATION:

1	A	B	C	D	E	F
2		Net Cost	Mark-up Total Cost of Materials and Labour	Mark-up Subcontract or	Profit	Sub-Total
3	% Mark-up		5%	5%	10%	
4	Sub-Subcontractor cost	\$1,000	\$50	0	\$100	\$1,150
5	Subcontractor cost	\$1,500	\$75	\$50	\$150	\$1,775
6	Contractor cost	\$3,000	\$150	\$125	\$300	\$3,575
7	Total Cost of Change Order					\$6,500

- (6) If the cost of the *Change* is determined by **Cost Method E**, the cost method will be described in detail in the *Special Conditions*.
- (7) Subject to *The City's* final determination of the costs of a *Change*, payment for a *Change Order* will be made on the *Construction Period Payment* or *Construction Period Payments* (as may be agreed upon by the *Parties*) after the *Change* described in the *Change Order* has been carried out.

9.4 Authorization for Change Orders

- (1) A *Change Order* issued in accordance with the *Agreement* or in relation to a *Cash Allowance* or *Contingency Allowance* may be authorized by the *City Representative* for the *Project* and must be signed by the *Contractor* or the *Contractor's* authorized representative.
- (2) A *Change Order* that requires an increase to the *Project Budget* and an extension to the purchase order must be authorized by both *The City's* employee that is authorized to approve increases to the *Project Budget* (the "Dept ID") and the *Manager, Supply* and must be signed by the *Contractor* or the *Contractor's* authorized representative.

9.5 Dispute Resolution for Valuation of Changes

- (1) If, at any time during the *Term*, or after termination of the *Agreement*, a question or dispute arises regarding the effect of a *Change Order* or a *Change Directive* on the *Project Price*, either *Party* may request by *Notice* that an expert valuation be made to determine the matters in dispute in accordance with Subsection 9.2(7).
- (2) Within ten *Business Days* of a *Notice* for a valuation being issued, the *Parties* will jointly appoint a single valuator to review the *Change Order* or *Change Directive* with respect to the effect of the *Change Order* or *Change Directive* on the *Project Price*. A valuator must not be an employee or agent of either *Party* and must not be a *Person* having a direct or indirect interest in the subject matter of the *Agreement*.
- (3) The appointed valuator will consider and arrive at a determination concerning the matters in dispute based on the valuator's observations and knowledge. Subject to Subsection 9.2(7), the valuator may determine only the cost of the *Change Order* or *Change Directive* and its effect on the *Project Price* and may not consider any issues relating to liability or question of law.
- (4) The valuation made by the valuator will be deemed to determine the matter in dispute for the purposes of the *Agreement*.
- (5) The *Parties* must agree to the fees to be paid to the valuator prior to the valuation and each *Party* will pay an equal share of the cost of the valuation.

ARTICLE 10: PAYMENT FOR WORK

10.1 Payment - General

- (1) All *Construction Period Payments* will be made in accordance with this Article 10 and any related provisions set out in the *Agreement*.
- (2) No *Construction Period Payments*, nor issuance of a *Certificate of Substantial Performance* by the *Contractor*, nor issuance of a *Substantial Completion Certificate*, nor issuance of a *Construction*

Completion Certificate, nor partial or entire use or occupancy of the *Project Site* or *Facility* by *The City*, will constitute acceptance that all or any part of the *Work* is complete, is satisfactory, without damage, or has been provided in accordance with the *Agreement*. The *Contractor* will be solely responsible for any portion of the *Work* not accepted by *The City* because the *Work* is incomplete, unsatisfactory, damaged, or defective unless *The City* has accepted responsibility in writing for the incomplete, unsatisfactory, damaged, or defective *Work*.

10.2 Application for Payment

- (1) On execution of the *Agreement*, *The City* will issue a purchase order for the *Project Price* to authorize payment to the *Contractor*.
- (2) The *Contractor* will cooperate with the reasonable requirements of *The City's* finance department and will submit *Construction Period Invoices* and all other documentation relating to the *Agreement* in a form and with the structure and content as is reasonably required to be compatible with *The City's* information systems. The *Contractor* shall ensure the *City Representative* receives a copy of every *Construction Period Invoice* it submits to *The City*.
- (3) The *Contractor* shall, within 15 *Business Days* following the end of a *Construction Period*, prepare and submit a *Construction Period Invoice* to *The City* that complies with the requirements of Subsection 10.2(5) for the *Work* performed during a *Construction Period*.
- (4) The *Contractor* shall prepare a *Construction Period Invoice* in respect of *Work* that has been performed by the *Contractor* during the most recent *Construction Period*, including for amounts invoiced to the *Contractor* by *Subcontractors* during the *Construction Period*, that includes the following information:
 - (a) all of the information required for a "*Proper Invoice*" as set out in section 32.1(1) of the *Prompt Payment and Construction Lien Act* and the following identifying and administrative information:
 - i. *Project* name and file number;
 - ii. the invoice number and date;
 - iii. the purchase order number issued by *The City*; and
 - iv. *City Representative* name, title, phone number and email address;
 - (b) a confirmation that a *Draft Construction Period Invoice* was submitted in accordance with Subsection 10.2(8);
 - (c) a detailed breakdown of the invoiced costs that includes hours worked (broken down by individual), percentage of *Work* completed, fees, and disbursements;
 - (d) all documentation, invoices, timesheets, quotations and other evidence necessary to substantiate the amounts claimed;
 - (e) *Subcontractor* invoices which shall include all information required of a *Construction Period Invoice* in accordance with this Subsection 10.2(4);
 - (f) a separate line items setting out the amount held back in the *Builders' Lien Fund* in respect of the *Construction Period*;
 - (g) for each *Construction Period Invoice* other than the first *Construction Period Invoice*:

- i. an executed statutory declaration in *The City's* standard form, as set out in Appendix A, stating that any amounts due to all *Subcontractors* have been paid in full up to and including to the end of the previous *Construction Period* for which the *Contractor* has submitted the *Construction Period Invoice*; and
 - ii. a *Workers' Compensation Board Clearance Certificate*;
 - (h) the *Contractor's* GST/HST number, business registration number, and list the total amount of taxes payable separate from the total amount payable and list the total amount due (total amount of taxes plus the amount payable for the *Work* completed in the current *Construction Period*);
 - (i) a completed reporting form relating to the construction of a *Tangible Capital Asset* if required in accordance with Subsection 10.2(7); and
 - (j) any other information required by this *Agreement* or as *The City* may direct.
- (5) In order to be considered a "*Proper Invoice*" for the purposes of the *Prompt Payment and Construction Lien Act* and this *Agreement* (a "*Proper Invoice*"), a *Construction Period Invoice*:
- (a) must include all information required by Subsection 10.2(4);
 - (b) must be submitted in accordance with Subsection 10.2(2); and
 - (c) all of the required confirmations made by the *Contractor* in the *Construction Period Invoice* must be true.

The City shall have no obligation to review a *Construction Period Invoice* that purports to be a *Proper Invoice* but which does not meet the requirements of this Section 10.2. For clarity, *The City* shall have no obligation to make a payment and the time periods set out in this Section 10.2 and in section 32.2 of the *Prompt Payment and Construction Lien Act* shall not apply until the *Contractor* has submitted a *Construction Period Invoice* that constitutes a *Proper Invoice*.

- (6) Unless otherwise specified in the *Special Conditions* or approved in writing by the *City Representative*, the cost of any *Material* must not be included in a *Construction Period Invoice* until the *Material* is incorporated into the *Work* and installed in its final location. For additional certainty, in the event that any *Materials* have been paid for by *The City*, but the *Materials* have not been incorporated into the *Work*, the *Materials* are the property of *The City*.
- (7) If required in the *Special Conditions*, the *Contractor* must complete and submit *The City's* reporting form (obtained from the *City Representative*) relating to the construction of a *Tangible Capital Asset* with each *Construction Period Invoice* in addition to any other documentation requested by *The City* for a *Tangible Capital Asset* under construction.
- (8) The *Contractor* shall, within five *Business Days* following the end of a *Construction Period*, prepare and submit to the *City Representative* a draft *Construction Period Invoice* containing all documents listed in Subsection 10.2(4) (referred to in this Section 10 as a "*Draft Construction Period Invoice*"). If requested by *The City*, *The Parties* shall attend a meeting to discuss the *Draft Construction Period Invoice* five *Business Days* after the submission of the *Draft Construction Period Invoice*, or at such other time agreed to by the *Parties* in writing.
- (9) After *The City* receives a *Construction Period Invoice* that constitutes a *Proper Invoice* from the *Contractor*,

- (a) *The City* shall review the *Construction Period Invoice* and issue a *Notice of Dispute* to the *Contractor* to advise of any disputed amounts no later than 14 *Days* after receipt of the *Construction Period Invoice*; and
- (b) subject to funds held back by *The City* in the *Builders' Lien Fund* under Subsection 10.3.1(1), *The City* shall issue a *Construction Period Payment* in respect of the undisputed amounts payable under the *Construction Period Invoice* on or before the day that is 28 days after the receipt of the *Construction Period Invoice*.
- (10) Any *Construction Period Payment* by *The City* shall not constitute acceptance by *The City* of any amounts set out in a *Construction Period Invoice*. *The City* reserves the right to dispute any amounts set out in a *Construction Period Invoice* at any time during the *Term*, whether or not it has previously made a *Construction Period Payment* in respect of such amounts.
- (11) If *The City*, acting in good faith, disputes all or part of any *Construction Period Invoice*, it will request from the *Contractor* the supporting documentation that is reasonably required to justify and confirm the *Contractor's* claim. Unless either *Party* refers the matter to adjudication under the *Prompt Payment and Construction Lien Act*, the *Parties* will use commercially reasonable efforts to resolve the dispute in question within 28 *Days* after the day on which the *Notice* was sent. If the *Parties* fail to resolve the dispute within such period, the dispute may be referred for resolution in accordance with Section 22.1 of this *Agreement*. Following resolution of the dispute, any amount that has been paid by *The City*, and is determined not to have been payable, will be paid by the *Contractor* to *The City* and any amount that has been withheld by *The City*, and is determined to have been payable, will be paid by *The City* to the *Contractor*.
- (12) If the *Contractor* has incurred any liability to *The City*, whether arising from or under the *Agreement* or arising from or under any other *Agreement* between *The City* and the *Contractor*, *The City* may set off the amount of the liability against any amounts due or payable by *The City* to the *Contractor* under the *Agreement*. If *The City* exercises its right of set off pursuant to this Subsection 10.2(12) against a payment, *The City* shall provide *Notice* to the *Contractor* advising of the amount set off.
- (13) The *Contractor* acknowledges and agrees that, in accordance with *Applicable Law*, after a lien has been filed or registered against the *Project Site* by reason of *Work* supplied or claimed to have been supplied by a *Subcontractor*, *The City* cannot make further *Construction Period Payments* until the liens have been released or removed in accordance with Subsections 10.3.1(7) and 10.3.1(8).
- (14) If the *Contractor* is required in the *Special Conditions* to perform testing and commissioning activities in respect of a portion of the *Work*, a *Construction Period Invoice* in respect of such portion of the *Work* may only be submitted once such testing and commissioning has been successfully completed by the *Contractor* as determined by *The City*, including the submission of any related documentation. For clarity, a *Construction Period Invoice* submitted prior to successful completion of required testing and commissioning shall not be considered a *Proper Invoice*.

10.3 Liens and Holdbacks

10.3.1 Application of Prompt Payment and Construction Lien Act

- (1) In accordance with the *Prompt Payment and Construction Lien Act*, *The City* will hold back a *Builder's Lien Fund* from all payments due and payable to the *Contractor* under the *Agreement*. *The City* will not pay any interest to the *Contractor* on the *Builders' Lien Fund*.

- (2) If *The City* is not required to hold back a *Builders' Lien Fund*, *The City* may nevertheless, at its discretion, hold back an equivalent amount of money as would be held back in the *Builders' Lien Fund* from each payment made under the *Agreement* to the *Contractor* until the *Construction Completion Certificate* is issued for the *Project*.
- (3) Subject to the *Prompt Payment and Construction Lien Act*, *The City* will release:
- (a) the major *Builders' Lien Fund* in accordance with Subsection 10.3.1(5), if:
- i. a *Certificate of Substantial Performance* is issued for the *Work* and is posted in a conspicuous place on the *Project Site*, if it is possible to do so, and is provided electronically to the *Contractor's* employees and all *Subcontractors* within three Days of being issued;
 - ii. the *Lien Period* has expired measured from the date the *Certificate of Substantial Performance* was issued;
 - iii. a *Substantial Completion Certificate* is issued by the *City Representative* for the *Work*;
 - iv. the *Contractor* has provided to *The City* an executed statutory declaration in *The City's* standard form in Appendix A evidencing that payment has been made in full, other than applicable holdbacks or amounts in dispute and disclosed to *The City*, to the *Contractor's* employees and *Subcontractors* for all services and *Materials* relating to the *Work*;
 - v. the *Contractor* has provided to *The City* a certificate of title for the *Project Site*, dated no earlier than the first day after the expiry of the *Lien Period* measured from the date the *Certificate of Substantial Performance* was issued, showing that no liens are registered or filed against the *Project Site*, unless the *Work* being carried out by the *Contractor* is on lands held by *The City* as a *Roadway* in respect of which a certificate of title is not issued;
 - vi. the *Contractor* has provided an invoice to *The City* for the amount of the *Builders' Lien Fund* to be released by *The City*;
 - vii. the *Contractor* has provided to *The City* a current *Workers' Compensation Board Clearance Certificate*; and
 - viii. any other applicable requirements under the *Prompt Payment and Construction Lien Act* have been satisfied;
- (b) the minor *Builders' Lien Fund*, if:
- i. *The City* has issued a *Construction Completion Certificate* or a conditional *Construction Completion Certificate* for the *Work*;
 - ii. the *Lien Period* has expired measured from the date on which the *Construction Completion Certificate* or conditional *Construction Completion Certificate* (as referenced in Subsection 5.8(2)) was issued;
 - iii. the *Contractor* has provided to *The City* an executed statutory declaration in *The City's* standard form in Appendix A evidencing that payment has been made in full, other than applicable holdbacks or amounts in dispute and disclosed to *The City*, to the *Contractor's* employees and *Subcontractors* for all services and *Materials* relating to the *Work*;
 - iv. the *Contractor* has provided to *The City* a certificate of title for the *Project Site*, dated no earlier than the first day after the expiry of the *Lien Period* measured from the date the

Construction Completion Certificate or conditional *Construction Completion Certificate* was issued, showing that no liens are registered or filed against the *Project Site* and *The City* has verified the information, unless the *Work* being carried out by the *Contractor* is on lands held by *The City* as a *Roadway* in respect of which a certificate of title is not issued;

- v. the *Contractor* has provided an invoice to *The City* for the amount of the *Builders' Lien Fund* to be released by *The City*;
 - vi. the *Contractor* has provided to *The City* a current *Workers' Compensation Board Clearance Certificate*; and
 - vii. any other applicable requirements under the *Prompt Payment and Construction Lien Act* have been satisfied.
- (4) When a *Subcontractor* has reached *Substantial Performance* of the *Work* for its portion of the *Work* under a subcontract, the *Contractor* may obtain from the *Subcontractor*, and the *Contractor* may deliver to the *City Representative*, a *Certificate of Substantial Performance* of that *Work*. At the sole discretion of the *City Representative*, *The City* may agree to release a portion of the *Builders' Lien Fund* to the *Contractor* for the value of the *Work* actually performed by the *Subcontractor* under the subcontract if:
- (a) the *Certificate of Substantial Performance* is posted in a conspicuous place on the *Project Site*, if it is possible to do so, and is provided electronically to all *Sub-Subcontractors* within three *Days* of being issued;
 - (b) the *Lien Period* has expired measured from the date on which the *Certificate of Substantial Performance* was issued;
 - (c) a *Substantial Completion Certificate* for the subcontract is issued by the *City Representative* for the *Work* completed under the subcontract;
 - (d) the *Contractor* has provided to *The City* satisfactory evidence that payment has been made in full, other than applicable holdbacks, for all services and *Materials* relating to all the *Work* actually performed under the *Subcontractor's* subcontract;
 - (e) the *Contractor* has provided to *The City* a certificate of title for the *Project Site*, dated no earlier than the first day after the expiry of the *Lien Period* measured from date the *Certificate of Substantial Performance* of the *Work* performed under the subcontract was issued, showing that no liens are registered or filed against the *Project Site* or are related in any way to the *Work*, unless the *Work* was carried out on lands held by *The City* as a *Roadway* in respect of which a certificate of title is not issued;
 - (f) the *Contractor* has provided an invoice to *The City* for the amount of the *Builders' Lien Fund* to be released by *The City*;
 - (g) the *Contractor* has provided to *The City* a current *Workers' Compensation Board Clearance Certificate*;
 - (h) the *Contractor* has provided any other information, documentation, or *Performance Security* as may be required by *The City* as a condition of the release of the portion of the *Builders' Lien Fund*; and

- (i) the *Contractor* has complied with any other applicable requirements under the *Prompt Payment and Construction Lien Act*.

Notwithstanding the above, the *Contractor* must protect all *Work* throughout the *Term*, and is responsible for the repair or replacement of any *Deficiencies* and for any *Work* not performed, regardless of whether the *Deficiencies* or incomplete *Work* were apparent when a *Certificate of Substantial Performance* for that portion of the *Work* performed under a subcontract was issued.

- (5) The *Contractor* must issue a *Certificate of Substantial Performance* when *Substantial Performance* of all *Work* described in the *Agreement* is achieved unless the *Contractor* receives written approval from the *City Representative* waiving this requirement. On verification of the achievement of *Substantial Performance*, the *City Representative* will issue a *Substantial Completion Certificate* to the *Contractor* for the *Work*.
- (6) In the event the *City Representative* waives the requirement for the *Contractor* to issue a *Certificate of Substantial Performance* when *Substantial Performance* of all *Work* described in the *Agreement* is achieved, the requirements of Subsection 10.3.1(3)(b) must be satisfied prior to *The City's* release of the *Builders' Lien Fund*.
- (7) When all requirements of Subsection 10.3.1.(3)(b) have been satisfied, *The City* will release funds from either:
 - (a) the entire *Builders' Lien Fund* (if a *Certificate of Substantial Performance* was not issued); or,
 - (b) the minor *Builders' Lien Fund* (as described in the *Prompt Payment and Construction Lien Act*) (if a *Certificate of Substantial Performance* was issued).
- (8) The *Contractor* must, at its own cost and expense, promptly take all steps required to discharge any lien or deal with any claim that is filed or registered against *The City* or the *Project Site* by a *Subcontractor* by reason of *Work* supplied or claimed to have been supplied by the *Subcontractor*. *The City* will advise the *Contractor* within 10 *Days* following receipt by *The City* of a *Notice* of a lien or claim filed or registered under *Applicable Law* against *The City* or the *Project Site* relating to the *Work*.
- (9) If the *Contractor* fails to promptly take all steps required to discharge any lien or deal with any claim filed or registered against *The City* or the *Project Site*, *The City*, without limiting any other rights or remedies it may have, will take any steps it deems necessary and appropriate to remove, vacate or discharge the lien or claim and seek immediate recovery from the *Contractor* of the amount of payment and any associated costs, including legal costs (on a full indemnity basis), all of which will be payable on demand or set off against any amounts owing under the *Agreement* or otherwise due, to the *Contractor* by *The City*.
- (10) Subject to the *Prompt Payment and Construction Lien Act*, if the *Project Price* exceeds \$10,000,000 and the *Project Schedule* specifies a *Construction Period* of longer than one year, *The City* will release the major *Builders' Lien Fund* or the minor *Builders' Lien Fund*, as applicable, on an annual basis provided the following requirements are satisfied:
 - (a) the *Contractor* has provided to *The City* an executed statutory declaration in *The City's* standard form in Appendix A evidencing that payment has been made in full, other than applicable holdbacks or amounts in dispute and disclosed to *The City*, to the *Contractor's* employees and *Subcontractors* for all services and *Materials* relating to the *Work*;

- (b) the *Contractor* has provided to *The City* a certificate of title for the *Project Site*, dated no earlier than the applicable anniversary of the *Effective Date*, showing that no liens are registered or filed against the *Project Site*, unless the *Work* being carried out by the *Contractor* is on lands held by *The City* as a *Roadway* in respect of which a certificate of title is not issued;
- (c) the *Contractor* has provided an invoice to *The City* for the amount of the *Builders' Lien Fund* to be released by *The City*;
- (d) the *Contractor* has provided to *The City* a current *Workers' Compensation Board Clearance Certificate*; and
- (e) any other applicable requirements under the *Prompt Payment and Construction Lien Act* have been satisfied.

10.3.2 Lien Letter of Credit or Holdback Bond

- (1) *The City* will accept a *Lien Letter of Credit* or a *Holdback Bond* in lieu of retaining a *Builders' Lien Fund*. The *Lien Letter of Credit* or *Holdback Bond* must be in an amount of 10 percent of the maximum amount to be paid to the *Contractor* under the *Agreement* including any *Contingency Allowance* and *Cash Allowance* (including *GST*, if applicable).
- (2) The *Lien Letter of Credit* or *Holdback Bond* must be valid for 75 Days beyond the *Scheduled Operational Date* of the *Project* as set out in the *Project Schedule*. If the *Project Schedule* is extended or delayed, or the value of the *Agreement* is increased, or both, or if in the opinion of *The City* the completion of the *Project* will be delayed, the *Lien Letter of Credit* or *Holdback Bond*, as may be provided, must be extended or increased accordingly. Failure to extend or increase the *Lien Letter of Credit* or *Holdback Bond* may result in *The City* realizing upon the *Lien Letter of Credit* or *Holdback Bond*, or taking other action under the *Agreement*, including termination of the *Agreement*.
- (3) The *Lien Letter of Credit* or *Holdback Bond* and any additions to them or substitutions of them must be forwarded to *The City* within seven Days of the *Effective Date*, failing which *The City* will act in accordance with Subsection 10.3.1.
- (4) Any reduction of the amount of the *Lien Letter of Credit* or *Holdback Bond* must, prior to any such reduction, be authorized by *The City*.
- (5) If requested in writing by either the *Contractor* or the issuing company of the *Lien Letter of Credit* or *Holdback Bond*, the *Lien Letter of Credit* or *Holdback Bond* will be returned to the *Contractor* or issuing company after all requirements for release of the *Builders' Lien Fund* as described in Subsection 10.3.1.(3)(b) have been met.

10.4 Payments by the Contractor to Third Parties

- (1) The *Contractor* must promptly make payment to all third parties when payments are due, including, but not limited to:
 - (a) payment to any *Subcontractor* engaged by *The Contractor*;
 - (b) payment for *Materials*, *Total Labour Costs* and all utilities, including any sum due for services provided by a third party; and
 - (c) pay for the use, rent, or hire of any motor vehicles, rented *Construction Equipment*, temporary buildings, or structures erected by or for the *Contractor*.

- (2) On request by *The City*, the *Contractor* must provide evidence satisfactory to *The City* whether any, some, or all of the payments to third parties as required by 10.4(1) have been made.

10.5 Deductions or Withholding Payment for Deficiencies

- (1) In addition to any other rights and remedies available to *The City* under the *Agreement*, *The City*, at any time during the *Term*, may withhold or retain the whole or any part of any *Construction Period Payment*, or the whole or any part of any other payment, from the *Contractor* as a matter in dispute under Subsection 10.2(11) for a *Deficiency* until the *Deficiency* is corrected, repaired or replaced, or the matter resolved to the satisfaction of *The City*.
- (2) If, in the opinion of *The City*, it is not expedient to correct *Deficiencies* or *Work* not completed in accordance with the *Agreement*, *The City* may deduct the difference in the value between (a) the *Deficiencies* or *Work* not completed in accordance with the *Agreement*, and (b) the *Work* as specified in the *Agreement*. The difference in value will be determined in the first instance by *The City*.
- (3) The acceptance by the *Contractor* of the *Final Payment* will constitute a waiver and release by the *Contractor* of all claims against *The City*, except those claims made prior to the issuing of the *Final Payment* and remaining unsettled.

10.6 Cash Allowances

- (1) *Cash Allowances* will:
 - (a) be included in the *Project Price*;
 - (b) be expended as *The City* directs; and
 - (c) cover the *Net Cost* to the *Contractor* of *Total Costs of Material and Labour*.
- (2) *The City* will issue a *Change Order* to the *Contractor* authorizing any expenditures under a *Cash Allowance* based on a *Change Quotation* submitted by the *Contractor* for the expenditure.
- (3) If the *Change Quotation* submitted by the *Contractor* includes any *Force Account Work*, the proposed cost of such *Force Account Work* is to be determined by Subsection 9.3(4) Cost Method C – *Force Account Rates*, without any additional amounts included for *Overhead Costs* and profit, despite any markup for *Overhead Costs* and profit submitted by the *Contractor* in the *Procurement Document* for the *Project*.

10.7 Contingency Allowances

- (1) The *Contractor* has no right or claim against any part of the *Contingency Allowance*.
- (2) *Contingency Allowances* will be included in the *Project Price* and expended only as *The City* directs.
- (3) Only costs for additional approved work or services that are beyond the specified requirements of the *Agreement* will be expended from the *Contingency Allowance*. No portion of the *Contingency Allowance* may be expended for performing a correction or the replacement of any *Work* that the *Contractor* is required to perform under the terms of the *Agreement*.
- (4) *Changes* expended from the *Contingency Allowance* must be approved by *The City* through a *Change Order*. The value of a *Change Order* issued for a *Change* approved under a *Contingency Allowance* will be determined in accordance with Section 9.3.

10.8 Changes in Taxes and Duties

- (1) Unless expressly provided otherwise in the *Agreement*, the *Contractor* must pay any and all federal and provincial duties, sales taxes, fuel, and excise taxes, and any other charges or surcharges applied under *Applicable Law*, which, at the time of the *Effective Date*, are applicable to the *Work* to be provided by the *Contractor* under the *Agreement*.
- (2) If, after the submission date specified in the *Procurement Documents*, any federal and provincial duties, sales taxes, fuel and excise taxes, and any other charges or surcharges applied under *Applicable Law Change* as a result of an *Authority Requirement*, but public notice of the change was provided by the relevant *Governmental Authority* prior to the *Effective Date*, the change will be deemed to have occurred before the *Effective Date* and be effective as of the date announced by the relevant *Governmental Authority*.
- (3) Notwithstanding Subsections 10.8 (1) and (2), if public notice of a change in *GST* (or equivalent form of tax) has been issued by a *Governmental Authority* at any time subsequent to the *Effective Date*, *The City* will pay the difference between the *GST* rate at the *Effective Date* and the *GST* rate in effect at the time of invoicing, with the result that the *Contractor* will not:
 - (a) suffer losses or increased costs as a result of the change in *GST* rates; and
 - (b) be eligible for any reimbursement associated with the change in *GST* rates.
- (4) As a result of any changes in taxes or duties during the *Term* as described in this Section 10.8, the *Contractor* must file a claim and cooperate fully with *The City* and other *Governmental Authority* to obtain any refund in the manner established by the *Governmental Authority*. The *Contractor* must provide to *The City* a certified statement setting out any increase or decrease in the cost to the *Contractor* for the associated increase or decrease of every duty or tax applicable to the *Work*. The *Contractor* must also provide to *The City* any related documentation of any changes in cost that the *Contractor* must pay or deduct by reason of changes in duties or taxes. Refunds or credits obtained by the *Contractor* that result in decreased cost to the *Contractor* for performance of the *Work* must be disclosed to *The City* and accrue to the benefit *The City*.
- (5) The calculations relating to changes in duties or taxes referenced in this Section 10.8 do not include any other costs incurred by the *Contractor* such as administrative costs resulting from calculating any cost adjustments as contemplated in this Section 10.8.

10.9 Information and Assistance Provided by the Contractor

- (1) The *Contractor*, at *The City's* request and cost, must assist *The City* in applying for and obtaining all remissions and credits of *GST*, outside of *The City's* routine *GST* filings, to which *The City* is entitled.
- (2) *The City* may apply for a global or general exemption, waiver, remission, or refund of some or all taxes that may otherwise be applicable in relation to the *Agreement*. The *Contractor*, at *The City's* request and cost, will:
 - (a) assist *The City* in making an application for any global or general exemption, waiver, remission, or refund;
 - (b) provide any documentation that may reasonably be required to support *The City's* application; and
 - (c) provide any consent that *The City* may require.

Any exemption, waiver, remission, refund, or other recovery of taxes obtained by *The City* through the application will be of sole benefit to *The City*.

- (3) The *Contractor* will provide *The City* with any information reasonably requested by *The City* in relation to the *GST* chargeable in accordance with the *Agreement* and payable by *The City* to the *Contractor*.

10.10 Contractor Indemnities – Taxes, Duties and Tariffs

- (1) *The City* will be entitled to make any applicable deductions or withholdings required by *Applicable Law* from any amount paid or credited, or to be paid or credited, to the *Contractor* on or after the date on which:
 - (a) the *Contractor* becomes a non-resident and at all times while it remains a non-resident; or
 - (b) *The City* is required by *Applicable Law* to deduct or withhold amounts in respect of taxes, duties or tariffs on or in respect of any amounts paid or credited to the *Contractor* by *The City* under the *Agreement*.
- (2) The *Contractor* will indemnify *The City* for:
 - (a) the full amount of all taxes, duties, or tariffs that arise, are imposed on, or are required to be paid by *The City* in respect of any amounts paid or credited by *The City* to the *Contractor* under the *Agreement* as a result of any of the items in Subsection 10.10(1)(a) or 10.10(1)(b), less any amount withheld or deducted by *The City* in respect of the taxes, duties or tariffs, and
 - (b) any liability payable or incurred by *The City* in connection with the taxes, duties, or tariffs (including penalties, interest and reasonable expenses associated with tax compliance, reporting and contesting such liability, including any reasonable professional expenses payable or incurred in connection with such taxes, duties, or tariffs).

Payment under this indemnification will be made within 30 *Days* from the date *The City* makes a written demand for it. A certificate containing reasonable detail as to the amount of the indemnifiable taxes, duties or tariffs and any associated liabilities submitted to the *Contractor* by *The City* will be conclusive evidence, absent manifest error, of the amount due from the *Contractor* to *The City*. *The City* will be entitled to exercise its rights of set off under Subsection 10.2(12) against any amounts owing under this indemnification.

- (3) Notwithstanding Subsection 10.10(1), if the *Work* described in the *Agreement* is subject to a non-resident withholding tax, *The City* will accept an authorization of waiver obtained from the Canada Revenue Agency authorizing *The City* to not withhold the non-resident withholding tax only if the authorization of waiver is received by *The City* prior to payment of the first *Construction Period Payment*.

10.11 Importing of Goods

- (1) Unless otherwise specified in the *Agreement*:
 - (a) the *Contractor* will undertake all needed operations and pay all relevant charges for clearing any imported equipment or *Materials* through the Canada Border Services Agency if necessary; and

- (b) the *Contractor* must ensure that it or its agent or representative is the "IMPORTER OF RECORD" for customs purposes if the *Contractor* or its supplier manufactures or purchases any goods from outside of Canada for the performance of the *Agreement*.
- (2) If prices for imported goods are quoted in the *Agreement*, *The City* will pay only the amount quoted in the currency quoted that is specified in the *Agreement* at the time of execution, despite any fluctuations in the quoted currency during the *Term*.
- (3) *The City*, at its sole discretion, may delegate specific responsibility for imported goods to a *Person* other than the *Contractor*. If *The City* exercises its discretion in this manner, *The City* or its representative will facilitate clearance of imported goods through the Canada Border Services Agency. The *Contractor* must provide all information and documentation required by the Canada Border Services Agency to *The City* to enable *The City* or its representative to complete the importation process without delay.
- (4) *The City* will not be liable for, and the *Contractor* or its supplier will indemnify *The City* in respect of any special or dumping duties which may be levied by the Canada Revenue Agency or Canada Border Services Agency, or otherwise, on any imported goods required for performance of the *Agreement*.
- (5) The cancellation, reduction, or remission of any special or dumping duty included in the *Project Price* will accrue to the benefit *The City*.

ARTICLE 11: INSPECTIONS AND TESTING

11.1 The City's Right to Inspect

- (1) *The City*, at any time during the progress of the *Work*, may conduct inspections on any part of the *Work* to determine if the *Work* is being performed in accordance with the *Agreement*. The inspections will be at the sole expense of *The City*, unless the result of an inspection determines that the *Work* is not in accordance with the *Agreement*, in which case the *Contractor* will reimburse *The City* for the inspection and redo or repair the *Work* in preparation for a new inspection to be performed by *The City*.
- (2) If required in the *Special Conditions*, the *Contractor* must prepare an *Inspection Plan* which will be followed when inspections of the *Work* are performed. If *The City* has advised the *Contractor* that *The City* will be carrying out inspections of the *Work*, the *Inspection Plan* must allow *The City* sufficient time to perform the inspections contemplated in this Article 11.
- (3) The *Contractor* must ensure that *The City* has a safe and unrestricted right of access to the *Project Site* for the purpose of inspecting the *Work*, or for the purpose of sampling any *Material* if production is in progress for the *Material*. If required by *The City*, the *Contractor* must provide any *Samples* for testing or inspection of *Materials* at the *Contractor's* own expense and must be available and provide assistance to *The City* if *The City* conducts any quality control testing to determine if the *Work* or the *Materials*, or both of them, are consistent with the *Quality Management Plan*. Any detailed requirements related to the *Quality Management Plan* will be specified in the *Special Conditions*.
- (4) *The City* may inspect all *Construction Equipment* and *Materials* brought on to the *Project Site* at any time during the performance of the *Work*. *The City*, in its sole discretion, may require the *Contractor* to certify, by a qualified *Design Professional*, that any *Construction Equipment* or *Material* complies with the *Technical Specifications* and other requirements of the *Agreement*. *The City*, in its sole discretion,

may reject any item of *Construction Equipment* or *Material* and require a proper and suitable replacement that is satisfactory to *The City*, at the *Contractor's* expense, if it is determined by *The City* that the item does not comply with the *Technical Specifications* or other requirements of the *Agreement*.

- (5) Any inspection of any part of the *Work* by *The City*, or omission or failure on the part of *The City* to inspect any of the *Work*, will not be interpreted to be acceptance by *The City* of any part of the *Work*, or as relieving the *Contractor* of strict compliance with all terms and conditions of the *Agreement* relating to the *Work*, the *Materials* being supplied, or the *Contractor's* compliance with all *Applicable Law*.

11.2 Contractor's Obligations Concerning Inspections

- (1) The *Contractor* must inspect and will be solely responsible for the inspection and any testing of all workmanship and *Materials* provided by the *Contractor* or its *Subcontractors* for the *Work* to ensure:
 - (a) compliance in each and every respect with the *Agreement* and all *Applicable Law*;
 - (b) that good and proper construction practices are followed; and
 - (c) that all *Work* is performed in a safe and environmentally sound manner.
- (2) The *Contractor* must ensure that *Work*, including any and all *Work* performed by *Subcontractors*, complies with all applicable requirements of the *Agreement*. If the *Work*, or any part of the *Work*, does not comply with the *Agreement*, or if there is insufficient evidence of due exercise of quality control by the *Contractor* for the *Work* or any part of it, all costs related to verifying the acceptability of the *Work* will be the responsibility of the *Contractor* regardless of the results of the verification process. The method and criteria for verifying acceptability of the *Work* will be at the sole discretion of *The City's Design Professional*.
- (3) Any costs associated with inspections and testing carried out by the *Contractor* to ensure that the *Work* complies in all respects with the requirements of the *Agreement* are at the sole cost and expense of the *Contractor*.
- (4) If the *Technical Specifications* require any part of the *Work* to be inspected or tested and approved by reason of an *Authority Requirement*, the *Contractor* must provide *The City* with sufficient advance *Notice* that the *Work* is ready for the inspection. Inspections by *The City* will be conducted within a reasonable period of time after receiving *Notice* from the *Contractor* that the *Work* is ready for the inspection. If the inspection is by a *Governmental Authority* other than *The City*, the *Contractor* must advise *The City* of the date fixed for inspection.
- (5) If any *Work* described in Subsection 11.2(4) has been inspected and requires a re-inspection, *The City* will pay for the cost of re-inspection if the *Work* complies with the requirements of the *Agreement* at the time of the initial inspection; but if at that time the *Work* does not comply with the requirements of the *Agreement*, the re-inspection must be paid for by the *Contractor*.
- (6) If *The City's Design Professional's* inspection or approval is required for any part of the *Work*, and that part of the *Work* is closed or covered by the *Contractor* without *The City's Design Professional's* inspection or approval, *The City* may require the *Contractor* to open or uncover that part of the *Work* for *The City's Design Professional's* inspection and subsequently re-close or recover it, all at the *Contractor's* expense and without adjustment to the *Project Schedule*.

- (7) The *Contractor* must ensure that all *Materials*, temporary facilities, and other items used in performing the *Work*, whether purchased, rented, manufactured, or fabricated by, or under the direction of the *Contractor*, or otherwise provided by the *Contractor* or *Subcontractors*, are safe, environmentally sound, maintained in good condition, and capable of performing their required functions. In the case of tools, meters, and other devices that require calibration, the *Contractor* must ensure that such calibration is performed as recommended by the manufacturer and in accordance with normal industry practice.

ARTICLE 12: OCCUPATIONAL HEALTH AND SAFETY

12.1 Health and Safety Plan

- (1) The *Contractor* will be solely responsible for:
- (a) construction safety at the *Project Site*;
 - (b) construction safety in performance of the *Work*;
 - (c) the *Contractor's* and all *Subcontractors'* compliance with *Applicable Law* and all practices relating to health and safety; and
 - (d) the development, implementation, and administration of a *Health and Safety Plan* in connection with performance of the *Work*, which must be submitted to *The City* in accordance with the requirements of Subsection 8.1(1).
- (2) The *Health and Safety Plan* will include, but is not limited to, consideration of the following matters:
- (a) compliance with, and enforcement of, *Applicable Law* and *Authority Requirements*, including *OH&S Legislation* and *Fire Code* (Alberta);
 - (b) hazard assessment and control;
 - (c) emergency preparedness;
 - (d) emergency response plan;
 - (e) worksite orientation;
 - (f) certification and competency of workers;
 - (g) safety inspections;
 - (h) safety meetings and coordination;
 - (i) incident reporting, notification, and investigation;
 - (j) safety equipment on the *Project Site*;
 - (k) fire safety equipment on the *Project Site*;
 - (l) *Joint Health and Safety Committee*;
 - (m) health and safety representative; and
 - (n) identifying supervisors at the *Project Site*.

- (3) Acceptance by *The City* of the *Health and Safety Plan* does not limit the *Contractor's* responsibility for the accuracy and completeness of the *Health and Safety Plan* or of the *Contractor's* responsibilities and obligations regarding its implementation.

12.2 Prime Contractor Status

- (1) Pursuant to these *Standard General Conditions*, *The City* delegates, and the *Contractor* agrees to accept, the role and legislated obligations of *Prime Contractor for Safety* for the entire *Project Site* until the *Construction Completion Certificate* is issued for the *Work* unless the *Special Conditions* specifically identify that *The City* is retaining the role of *Prime Contractor for Safety* for the *Project Site*. A partial takeover of the *Project* by *The City* prior to issuing of the *Construction Completion Certificate* will not affect this delegation unless a *Notice of a Change in designation of the Contractor as Prime Contractor for Safety* is provided by *The City to the Contractor*, in which case the *Contractor* must follow the direction of *The City* as specified in the *Notice*.
- (2) The *Contractor* must post and maintain in a conspicuous location or locations on the *Project Site* *The City's Notice of designation of Prime Contractor for Safety*, which must also include the name of the *Person* appointed as the *Contractor's* safety designate on the *Project Site* and the name of the *Person* appointed as the *Contractor's Representative*, if applicable. It is the responsibility of the *Contractor* to ensure that all workers on the *Project Site* know the identity of both the *Contractor's* safety designate and the *Contractor's Representative*.
- (3) Prior to issuance of the *Notice to Proceed*, the *Contractor* must ensure that the *Contractor's* safety designate and *Project Site* designate are competent to oversee the legislated obligations of *Prime Contractor for Safety*.
- (4) The *Contractor*, as *Prime Contractor for Safety*, must hold an orientation meeting prior to the commencement of the *Work* and on an ongoing basis, as necessary, during the performance of the *Work*. The agenda for the meeting (and all subsequent meetings) must include safety on the *Project Site*, which must address the requirement for compliance with *OH&S Legislation*, any safety policies and procedures of *The City* that apply to the *Project Site*, communication of any hazards identified by *The City* or the *Contractor*, and incident reporting processes. A written agenda for the meeting must be provided to *The City* for review prior to the meeting. A list of attendees at the orientation meeting must be maintained.
- (5) At any time, *The City*, on giving the *Contractor Notice* of not less than two *Days*, may withdraw the delegation of *Prime Contractor for Safety* from the *Contractor* and either take on *Prime Contractor for Safety* itself, or delegate to an *Other Contractor* the role of *Prime Contractor for Safety*. In this case, the *Contractor* must comply, and will ensure the compliance of all *Subcontractors* and *Persons* for whom it is responsible under *Applicable Law*, with all safety directions made or imposed by the replacement *Prime Contractor for Safety*.
- (6) No change to the designation of the *Contractor* as *Prime Contractor for Safety* will be effective without having obtained the prior written authorization of *The City* in each instance.

12.3 Contractor's Obligations under OH&S Legislation

- (1) The *Contractor* must establish and maintain effective safety management systems and processes during the *Term* that actively engage the *Contractor* and every *Subcontractor* on the *Project Site* in meeting their legislated obligations for compliance as employers and workers under *OH&S Legislation*.
- (2) In addition to complying with all requirements under *OH&S Legislation*, the *Agreement*, and the *Health and Safety Plan*, and without limiting any of the *Contractor's* obligations under them, the *Contractor* must:
 - (a) assess any hazards and make the assessment reports and analysis available to *The City* prior to carrying out the related *Work*, including but not limited to any hazards identified by *The City* in the *Special Conditions*, in safety meetings, or otherwise, and to ensure that identified hazards are communicated to all *Subcontractors*, *Sub-Subcontractors*, and any workers who are conducting or who are reasonably anticipated to conduct *Work* in relation to the *Project*, a *Facility*, or the *Project Site*;
 - (b) establish and maintain systems or processes that will ensure compliance with *OH&S Legislation* for all employees at the *Project Site*;
 - (c) maintain its health and safety program as outlined in its *COR* or *SECOR* (or other equivalent certification), monitor for compliance, and intervene when non-compliance is observed;
 - (d) advise *The City* of any changes in the status of its *COR* or *SECOR*, or changes to its *Health and Safety Plan* or health and safety program during the *Term*;
 - (e) advise *The City* of any changes in the status of its *Workers' Compensation Board* coverage, including any orders, tickets, and administrative penalties issued.
 - (f) ensure that first aid equipment, supplies, facilities, first aid attendants and services are adequate and appropriate at the *Project Site* and ensure that a system or process is in place to maintain them;
 - (g) ensure that an up to date emergency response plan is developed and in place for the *Project Site* that is in compliance with *Applicable Law* which is aligned with all other emergency response plans that *The City* may have in place for the *Project* or for property adjacent to the *Project Site*.
 - (h) maintain, and as required by the *Special Conditions* or otherwise at *The City's* request, provide copies to *The City* of all of the following *Records*:
 - i. accurate statistics of all injuries, loss, near miss incidents, and any other matter that is reportable under *OH&S Legislation* occurring on the *Project Site*;
 - ii. safety data sheets for each controlled product at the *Project Site* and any additional information of which the *Contractor* is, or ought to be, aware concerning the use, storage, and handling of a controlled product;
 - iii. a tracking system of all training *Records* complete with photocopies of all relevant certifications for all workers and equipment on the *Project Site*; and
 - iv. safety audits and corrective action plans prepared if a safety issue or concern is discovered during the course of a safety audit.
- (3) The *Contractor* must notify *The City* of all visits to the *Project Site* by regulatory agencies such as Alberta Occupational Health and Safety or Alberta Environment and Parks during the work shift in

which the visit occurred. Copies of all documentation issued by the regulatory agency are to be provided to *The City* immediately upon issuance.

- (4) The *Contractor* must notify *The City* immediately of any of the following in respect of the *Project Site*:
 - (a) loss or near miss incidents occurring at the *Project Site*;
 - (b) injury, incident, illness or exposure that is reportable under *OH&S Legislation*, and provide a copy of the report immediately once prepared or made;
 - (c) inspection of the *Project Site*, and provide details of the inspection immediately once available;
 - (d) investigation of an injury, incident or illness, and provide details of the investigation immediately once available; and
 - (e) orders received from, or other correspondence with, regulatory agencies such as Alberta Occupational Health and Safety or Alberta Environment and Parks, and provide copies of such orders and correspondence immediately.
- (5) If any requirements of the *Agreement* or general instructions of *The City* to the *Contractor* are not consistent with *OH&S Legislation*, the *Contractor* must immediately report the inconsistency to *The City* and continue to act in accordance with all *OH&S Legislation*.

12.4 Stop Work Order

- (1) *The City*, at its sole and absolute discretion and for reasons relating to the *Contractor's* non-compliance with *Applicable Law* and matters of health and safety, may:
 - (a) cause parts of, or all of, the *Work* or the *Project* to be stopped;
 - (b) cause removal of or exclude the *Contractor* or any of the *Subcontractors* from the *Project Site*; or
 - (c) immediately pursue any additional remedies available to it under the *Agreement*.
- (2) If *The City*, acting reasonably, takes any action as described in Subsection 12.4(1), the *Contractor* will not be entitled to:
 - (a) any additional time in the *Project Schedule* for completion of the *Work* under the *Agreement*;
 - (b) additional compensation under the *Project Price*; or
 - (c) any claim against *The City*.

ARTICLE 13: INSURANCE, WORKERS' COMPENSATION AND PERFORMANCE SECURITY

13.1 Contractor's Insurance

- (1) During the *Term* and at all times when the *Contractor* is performing any part of the *Work*, the *Contractor* must comply with the following requirements:
 - (a) maintain, with an insurance company or companies satisfactory to *The City* and allowed by the laws of the Province of Alberta to provide insurance in Alberta, the following types of insurance policies in forms satisfactory to *The City*:
 - i. commercial general liability ("CGL") insurance for bodily injury (including death) and property damage in an amount of not less than Five Million Dollars (\$5,000,000.00)

inclusive limit for any one occurrence, unless otherwise specified in *Special Conditions*. This CGL insurance must be written to a minimum of the current or the most recent version of the IBC 2100 form, and the insurance policy must include:

- A. *The City* as an additional insured;
 - B. a cross-liability clause;
 - C. products and completed operations coverage of no less than 24 months;
 - D. broad-form contractual liability coverage;
 - E. non-owned automobile liability coverage;
 - F. operation of attached machinery clause;
 - G. the waiving of every right of subrogation by the insurance company or companies against *The City* arising out of or in any way connected with the performance of the *Agreement*;
 - H. a provision that the rights of *The City* under any provision of the insurance policy will not be prejudiced by any default or violation by the *Contractor* or by any other *Person* insured by that policy; and
 - I. any other specific clauses, coverage, or limits as may be required by *The City* or set out in *Special Conditions*;
- ii. automobile third party liability insurance for bodily injury (including death) and property damage in an amount of not less than Two Million Dollars (\$2,000,000.00) inclusive limit for any one occurrence, unless otherwise specified in *Special Conditions*. This automobile third party liability insurance must insure every automobile used in the performance of the *Agreement* and will include specific clauses, coverage or limits as may be specified in the *Special Conditions*;
- (b) secure an endorsement to each of the insurance policies set out in Subsection 13.1(1)(a) indicating the insurance company or companies will endeavour to provide *The City* with at least *30 Days' Notice* prior to any cancellation or material change to the policies; and,
- (c) prior to commencing any *Work* or operation under the *Agreement*, provide to *The City* a certificate of insurance satisfactory to *The City* evidencing the insurance and also provide a certificate of insurance satisfactory to *The City* evidencing the renewal or continuance of the insurance within ten *Business Days* of any expiry date(s) of it.
- (2) The *Contractor* and each *Subcontractor* must, at their own expense, insure against loss or damage to *Construction Equipment, Materials* or *Facilities* (including *Site Offices* or temporary structures), or to the *Work* or any part of the *Work* in connection with the *Project* to such limits as will enable the continuation of the *Work*.
- (3) The *Contractor* may provide to *The City* a recommendation for additional insurance coverage that it considers necessary, including insurance for professional liability and *Contractor's* pollution liability. *The City*, at its sole discretion, will determine if the additional insurance proposed by the *Contractor* is deemed necessary for the *Work*.
- (4) The *Contractor* is solely responsible for the payment of every deductible amount for every policy of insurance provided under the *Agreement*.

- (5) The *Contractor* acknowledges and agrees that:
 - (a) the insurance requirements as specified in this Article 13 are primary and *The City's* insurance is non-contributory; and
 - (b) the insurance requirements specified in this Article 13 will not be interpreted to and will in no manner limit or restrict the liability of the *Contractor* under the *Agreement*;
- (6) If *The City* determines it is necessary for all or any of the *Contractor's* insurance to be in forms different than those as maintained by the *Contractor*, then the *Contractor* must comply with *The City's* determination and forward to *The City* the relevant insurance documentation.
- (7) If the *Contractor* has not maintained the insurance required by this Article 13 and provided the required documentation to *The City*, *The City* may, without waiving, relinquishing or abridging any right it has under the *Agreement*, obtain the required insurance and charge the cost of the insurance to the *Contractor*. *The City*, at its sole option, may set off the cost of the insurance against any amount due from *The City* to the *Contractor*.
- (8) Unless otherwise specified in the *Special Conditions*, *The City* will not place a course of construction policy (or "builder's risk" policy) for the *Work*. It is the *Contractor's* responsibility to determine if a course of construction policy is necessary for the *Work* and if the *Contractor* determines such a policy is necessary, the *Contractor* must maintain the policy.

13.2 City Procured Insurance

- (1) *The City's* obligations to procure and maintain insurance coverage for the *Project*, if any, will be specified in the *Special Conditions*.

13.3 Workers' Compensation

- (1) The *Contractor* must ensure compliance by both the *Contractor* and every *Subcontractor* with the requirements of the *Workers' Compensation Act* and regulations. The *Contractor*, as well as each *Subcontractor* it engages, must maintain an account in good standing with the *Workers' Compensation Board* for all employees working in Alberta. The *Contractor's* account must include coverage for all employees, partners, proprietors, or directors of the firm, company, or corporation who are based in Alberta or will be present, or may have cause to be present, at the *Project Site*. *The City* may seek further verification any time during the performance of the *Agreement*. Notwithstanding any other provisions in the *Agreement*, *The City* may refuse to make a *Final Payment* to the *Contractor* unless the *Contractor* provides a *Workers' Compensation Board Clearance Certificate* to *The City*.
- (2) If, at any time, *The City* receives information from the *Workers' Compensation Board* that:
 - (a) the account of the *Contractor* or any *Subcontractor* has ceased to be in good standing; or
 - (b) there are amounts that the *Contractor* or any *Subcontractor* owes to the *Workers' Compensation Board* by reason of any act or omission of the *Contractor* or any *Subcontractor*, or by reason of any order made by the *Workers' Compensation Board*; or
 - (c) the *Workers' Compensation Board* is making a demand for payment from *The City* by reason of any act or omission of the *Contractor* or any *Subcontractor* under the provisions of the *Workers' Compensation Act*;

The City may suspend payments owed to the *Contractor* until either:

- (a) the *Contractor* has obtained and submits to *The City* a *Workers' Compensation Board Clearance Certificate* indicating that the *Contractor* or *Subcontractor*, as the case may be, no longer owes money to the *Workers' Compensation Board*, or has otherwise been brought into good standing with the *Workers' Compensation Board*; or
 - (b) *The City* pays the *Workers' Compensation Board* the amount owing on behalf of the defaulting *Contractor* or any *Subcontractor* or the amount of the demand for payment in respect of the *Contractor* or any *Subcontractor*.
- (3) If *The City* is required to pay any amount to the *Workers' Compensation Board* on behalf of the *Contractor* or any *Subcontractor*, or by reason of any act or omission of the *Contractor* or any *Subcontractor*, *The City* may deduct the amount from any amount owing to the *Contractor* under the *Agreement* or under any other *Agreement*, or may demand a reimbursement by the *Contractor* to *The City* for the amount paid by *The City* on the *Contractor's* or *Subcontractor's* behalf. This right will be in addition to and not in substitution for any other right at law or in equity that *The City* has by reason of the failure of the *Contractor* to comply with the provisions of the *Workers' Compensation Act*.

13.4 Exempt Contractors or Subcontractors

- (1) Notwithstanding Section 13.3, if a *Contractor* or *Subcontractor* is in an exempt industry under the *Workers' Compensation Act*, or does not qualify for coverage under the *Workers' Compensation Act* in Alberta, the *Contractor* or *Subcontractor* must add an employer's liability extension to its CGL policy.

13.5 Performance Security

- (1) No later than five *Days* following execution of the *Agreement*, the *Contractor* must deliver to *The City* all types of *Performance Security* in the amounts specified in the *Agreement*. The *Performance Security* must be in the form required by *The City* or in a form that is acceptable to *The City*, and must be enforceable in the Province of Alberta.
- (2) If the *Agreement* is amended or a *Change Order* is issued that increases the *Project Price*, the *Contractor* must also increase the *Performance Security* provided under the *Agreement* to an amount not less than 50% of the increased *Project Price* by obtaining and providing additional *Performance Security*, or a satisfactory rider or extension to the existing *Performance Security*, from the surety company. If the surety company declines consent or coverage for any amendment to the *Agreement* or for a *Change Order*, the *Contractor* must obtain and provide *The City* with valid *Performance Security*, satisfactory to *The City*, covering the *Work* specified in the amendment to the *Agreement* or in the *Change Order*. The *Contractor* will be compensated for the additional cost of such *Performance Security*.
- (3) If there is a *Labour and Material Payment Bond* required by *The City*, the *Contractor* must ensure that all *Subcontractors* have *Notice* of the *Labour and Material Payment Bond*. The *Contractor* must post and maintain in a conspicuous location or locations on the *Project Site*, a copy of the *Labour and Material Payment Bond*. The agenda for the meetings held by the *Contractor* pursuant to Subsection 12.2(4) will include *Notice* of the *Labour and Material Payment Bond*.

ARTICLE 14: FORCE MAJEURE AND DELAY**14.1 Force Majeure**

- (1) An *Event of Force Majeure* means any occurrence, other than the financial incapability of any *Party*, that prevents or delays a *Party* from performing its obligations under the *Agreement* (except an obligation to pay an amount as required by the *Agreement*) within the time required for the performance of the obligation and:
- (a) occurs without the fault or negligence of the *Party* relying on the occurrence;
 - (b) the *Party* relying on the occurrence, exercising reasonable diligence, could not have reasonably contemplated it happening;
 - (c) at the time of the occurrence, was beyond the commercially reasonable control of the *Party* required to perform the obligation; and
 - (d) the *Party* relying on the occurrence is unable to reasonably prevent or mitigate against the occurrence.

An event will not be considered beyond a *Party's* commercially reasonable control if a reasonable business *Person* applying due diligence in the same or similar circumstances under the same or similar obligations as those contained in the *Agreement* would have put in place plans to either materially mitigate or negate the effects of the occurrence.

For additional certainty, a failure of a *Party's* agent or *Subcontractor* to meet any obligation in relation to the *Agreement* when the failure by the agent or *Subcontractor* does not itself result from an *Event of Force Majeure* will not be considered an *Event of Force Majeure*.

- (2) Either *The City* or the *Contractor* may claim that an *Event of Force Majeure* has occurred by giving the other *Party* initial verbal notice within 24 hours of the *Event of Force Majeure*, followed by *Notice* and a proposed plan of corrective action for resolving or minimizing the effect of the *Event of Force Majeure* within 72 hours of the *Event of Force Majeure* or within a time period agreed to by the *Parties*.
- (3) If *The City* has given *Notice* of an *Event of Force Majeure* under Subsection 14.1(2) or agrees with the *Contractor's Notice* given under Subsection 14.1(2) that the *Work* or any portion of it is affected as a result of an *Event of Force Majeure*, then *The City* may do any one of the following:
- (a) suspend all performance of the *Work*, or any portion of it, in accordance with Section 14.3;
 - (b) terminate the *Agreement* or any portion of it, in accordance with Article 17; or
 - (c) require the *Contractor* to complete the *Work* at the earliest possible date and undertake any additional actions that will mitigate any loss suffered by *The City* as a result of the *Contractor's* inability to perform its obligations during, or as a result of, the *Event of Force Majeure*, and issue a *Change Order* to compensate the *Contractor* for any additional actions taken by it that mitigate *The City's* losses.
- (4) If the *Project Schedule* is materially affected by an *Event of Force Majeure* and *The City* determines an adjustment to the *Project Schedule* is justified, *The City* will issue a *Change Order* to adjust the *Project Schedule*.

- (5) If *The City* does not agree that the *Work* or any portion of it is affected as a result of an *Event of Force Majeure* for which the *Contractor* has given *Notice* under Subsection 14.1(2), then the *Contractor* must complete the *Work* in accordance with the *Project Schedule*.
- (6) Any delay by either *The City* or the *Contractor* caused by an *Event of Force Majeure* will not constitute an *Event of Default* under the *Agreement* nor give rise to any claim for damages by either *Party*. For additional certainty, the *Contractor* will not be entitled to payment of any additional out-of-pocket costs resulting from an *Event of Force Majeure* and the *Contractor's* inability to perform all, or part, of its obligations under the *Agreement* during the *Event of Force Majeure*.
- (7) No *Party* will be deemed to be in default in performance of any of its obligations under the *Agreement* while, and so long as, performance would be in violation of or in conflict with any *Applicable Law* or *Authority Requirement* while it is, or purports to be in force, provided that if the *Applicable Law* or *Authority Requirement* is finally declared to be invalid by a court of competent jurisdiction, the *Party* will no longer be excused as of the date of the court's declaration or decision.

14.2 Delay

- (1) Subject to the limitations and requirements expressly stated in this Section 14.2 and the *Contractor's* obligation to mitigate the impact of any delay, *The City* may adjust the *Project Schedule*, on a proportionate basis, for any delay, but specifically excluding any act, omission or *Event of Default* of the *Contractor*, directly caused by any of the following:
 - (a) any undue delay caused by a delay in *The City's* execution of the *Agreement*, unless the *Project Schedule* was updated to account for such delay prior to issuing the *Notice to Proceed*;
 - (b) an act or default of an *Other Contractor*;
 - (c) an approved *Change* that will impact the *Project Schedule*;
 - (d) a suspension or other similar order as described in Subsection 14.3, provided that the order is not issued as the result of an act or fault of the *Contractor* or any *Person* for whom the *Contractor* is responsible under *Applicable Law*;
 - (e) an *Event of Force Majeure* that materially affects the *Project Schedule*; or
 - (f) an act or omission of *The City* that the *City Representative* reasonably determines justifies an adjustment to the *Project Schedule*;
 - (g) any other cause of any kind that *The City* reasonably determines justifies an adjustment to the *Project Schedule*.
- (2) No adjustment to the *Project Schedule* or to the *Project Price* will be made for any delay unless the reason for the delay is described in Subsection 14.2(1) above and then only if the *Contractor* provides *The City Notice* of the delay within five *Business Days* after the occurrence of the event that caused the delay (unless the delay is caused by an *Event of Force Majeure*, in which case, *Notice* in accordance with Subsection 14.1(2) is required). Any adjustment to the *Project Schedule* or to the *Project Price* will be made in accordance with Article 9 of the *Standard General Conditions*.
- (3) The *Notice* to be provided under Subsection 14.2(2) must:
 - (a) contain sufficient detail to enable *The City* to identify the cause of the delay and to take steps to mitigate the impact of the delay; and

- (b) be provided by the *Contractor* to *The City* with respect to each and every event of delay.
- (4) Knowledge by *The City* of any delay, or of the impact of any delay, will not constitute a waiver of the requirement to provide *Notice* in accordance with this Section 14.2. The *Contractor's* failure to provide *Notice* in strict compliance with Section 14.2 will be deemed to be prejudicial to *The City* and will preclude the *Contractor* from claiming, or from any entitlement to claim, any adjustment to the *Project Schedule* or to the *Project Price* with respect to the delay or any impact as a result of the delay.

14.3 Suspension

- (1) In addition to any other rights that *The City* may have under the *Agreement* or under *Applicable Law*, *The City* may, in the exercise of its sole discretion, and at any time, require the *Contractor* to suspend the *Work*, or any part of it, by giving *Notice* to the *Contractor* specifying both:
 - (a) the *Effective Date* on which the *Work*, or any part of it, is suspended; and
 - (b) a description of the *Work*, or of any part of it, that is being suspended (within this Section 14.3 referred to as "*Suspended Work*").
- (2) On receiving a *Notice* regarding any *Suspended Work*, the *Contractor* must:
 - (a) discontinue the *Suspended Work*;
 - (b) not place any further purchase orders or contracts in relation to the *Suspended Work*;
 - (c) make reasonable efforts, as may be applicable or necessary, to obtain suspension terms satisfactory to *The City* with respect to all purchase orders, supply contracts, subcontracts, and rental *Agreements* related to the *Suspended Work*; and
 - (d) continue to perform all *Work* that is not *Suspended Work*.
- (3) During the period of time of any *Suspended Work*, the *Contractor* will:
 - (a) secure and protect the *Suspended Work* and all *Construction Equipment* and *Materials* to be used or incorporated into the *Suspended Work*; and
 - (b) use its employees and *Construction Equipment* in a manner, and take any steps as may be necessary or desirable, to minimize costs associated with the *Suspended Work*.
- (4) *The City* may authorize the *Contractor* to resume any *Suspended Work* by giving the *Contractor* reasonable *Notice* specifying the date on which the *Suspended Work* may be resumed. The *Contractor* will resume the *Suspended Work* on the date specified in the *Notice* and to the extent provided in the *Notice*.
- (5) If a *Notice* for *Suspended Work* is issued by *The City*, the *Contractor* may request a *Change Order* in accordance with Section 9.2 adjusting either the *Project Price* or the *Project Schedule*, or both, to account for any additional costs of performing the *Work* as a result of the *Suspended Work*. Any *Change Orders* issued as a result of the *Suspended Work* will be for only the verifiable additional costs incurred by the *Contractor* and will not include costs for damages or loss of profits. *The City* will not be responsible for any damages or loss of profits as a result of *Suspended Work*.

ARTICLE 15: INDEMNITIES**15.1 Contractor's Indemnity**

- (1) The *Contractor* will indemnify and defend *The City* from and against any and all liabilities, losses, costs and expenses of whatever kind or nature, damages, causes of action, legal or administrative proceedings, claims, interest, and legal fees on a solicitor and client basis (collectively referred to within this Article as "*Claims*") arising during the performance of the *Contractor's* obligations under or in connection with the entire *Agreement* to the extent the *Claims* are directly or indirectly caused, occasioned by, or contributed to by reason of any action, omission, error, or fault of the *Contractor*, *Subcontractors*, *Sub-Subcontractors* or any other party for whom the *Contractor* is responsible.

ARTICLE 16: DEFICIENCIES AND WARRANTIES**16.1 Warranty of Work**

- (1) The *Contractor* warrants that all *Work* supplied by the *Contractor* and any *Subcontractors*, either directly or indirectly, will comply in all respects with this *Agreement* and will be free from *Deficiencies*.
- (2) Neither the issuing of a *Construction Completion Certificate*, nor payment following the issuing of the *Construction Completion Certificate*, nor failure to provide *Notice* as described in Subsection 16.1(3), nor anything in the *Agreement*, will relieve the *Contractor* from its obligations to repair or replace *Deficiencies* or *Warranty Items*.
- (3) *The City* will promptly give *Notice* to the *Contractor* of observed *Warranty Items*. The *Notice* will provide a period of time for the *Contractor* to (i) repair or replace the *Warranty Item*, or (ii) provide a plan for such repair or replacement, such plan to include a timeframe for completion of the *Contractor's* repair or replacement of the *Warranty Item*.
- (4) During the *Warranty Period*, the *Contractor* will promptly perform the *Warranty Work*, at the *Contractor's* expense, for all *Warranty Items* for which the *Contractor* has been provided *Notice* in accordance with Subsection 16.1(3) and complete the *Warranty Work* within the timeframe specified in the *Notice*.
- (5) The *Contractor* will be responsible for obtaining warranties in excess of the *Warranty Period* on behalf of *The City*, as may be required by *The City*, from or through *Subcontractor(s)*. The *Contractor* will ensure that each *Subcontractor*, as may be required:
 - (a) issues any extended warranties, or otherwise facilitates the assignment of any extended warranties, to the benefit of *The City*, and
 - (b) delivers any extended warranties to *The City*.
- (6) If the manufacturer of any *Material* will not directly provide a warranty for the *Material* to *The City*, or at any time cancels the warranty for the *Material*, then *The City* will be entitled to withhold a sum of money from the amount otherwise due, or accruing due, to the *Contractor* sufficient to replace the affected *Material* for the applicable *Warranty Period* or for any extension of the *Warranty Period*.
- (7) The *Contractor* must ensure that *Warranty Work* of an emergency nature, as reasonably determined by *The City*, is performed immediately upon receipt of *Notice* from *The City*.

- (8) If the *Contractor* fails to repair or replace a *Warranty Item* as required by the *Notice* issued by *The City* in accordance with Subsection 16.1(3), *The City* may proceed to:
- (a) complete the repair or replacement and then recover the cost of the repair or replacement from the *Contractor* by either, at *The City's* option:
 - i. deducting the amount of the cost of the repair or replacement from any amount due to the *Contractor* by *The City* either under the *Agreement*, or any other contract, or otherwise, or
 - ii. collecting the cost of repairs or replacements from the *Contractor* by any lawful means available to *The City*; or
 - (b) realize on any *Performance Security* held by *The City* under the *Agreement*.
- (9) No form of communication from *The City* other than the *Final Acceptance Certificate* will constitute acceptance or acknowledgement of:
- (a) any *Work* or other matter in respect of which it is issued;
 - (b) the satisfactory performance, or any partial performance, of the *Contractor*;
 - (c) the accuracy of any claim or demand by the *Contractor*; or
 - (d) additional or varied *Work* ordered by *The City*.

ARTICLE 17: DEFAULT AND TERMINATION

17.1 Event of Default and Termination

- (1) An *Event of Default* means any one or more of the following actions, or course of action, of the *Contractor*:
- (a) the *Contractor* ceases or appears to have ceased operations, or, in the reasonable opinion of *The City*, is insolvent, or is adjudged bankrupt, or seeks a protection order under any bankruptcy or insolvency legislation, or makes a general assignment for the benefit of its creditors, or a receiver is appointed by a court of competent jurisdiction on account of the *Contractor's* insolvency;
 - (b) the *Contractor* fails to disclose a conflict of interest as required in the preceding procurement process or fails to disclose a conflict of interest in accordance with Section 4.9;
 - (c) the *Contractor* abandons or suspends the *Work* for a period exceeding 14 continuous *Days* and does not continue any activity with respect to the *Work*;
 - (d) the *Contractor* refuses or fails to supply properly skilled workers or a sufficient amount of properly skilled workers, or proper *Materials*;
 - (e) the *Contractor* is not progressing continuously with the *Work* or with a part of the *Work* in a manner that ensures completion of the *Work* in accordance with the *Project Schedule*;
 - (f) the *Contractor* fails to promptly secure a discharge of a lien or trust claim registered against *The City* under the *Prompt Payment and Construction Lien Act*;
 - (g) the *Contractor* fails to make prompt payment of any amounts due to any *Subcontractor* or supplier of *Materials* or services;

- (h) the *Contractor*, in the reasonable opinion of *The City*, fails to comply with *Applicable Law*;
 - (i) the *Contractor*, in the reasonable opinion of *The City*, fails to comply with the instructions of *The City*;
 - (j) the *Contractor* fails to continue to meet or exceed any prequalification requirements, if applicable, including not assigning to the *Work* the *Key Personnel* that were represented to be assigned in the *Procurement Documents*;
 - (k) the *Contractor* fails to perform the *Work* in a sound and workmanlike manner and in all respects in strict conformity with the *Agreement*;
 - (l) the *Contractor*, prior to or after executing the *Agreement*, makes a material misrepresentation or omission or provides materially inaccurate information to *The City*;
 - (m) the *Contractor* conducts itself in an unethical or criminal manner;
 - (n) the *Contractor* fails to submit reports, schedules, documents or information to *The City* as required under the *Agreement*;
 - (o) the *Contractor*, in the reasonable opinion of *The City*, otherwise materially breaches any material provision of the *Agreement*;
 - (p) the *Contractor* undergoes a change in control, as contemplated by the *Business Corporations Act*, which adversely affects the *Contractor's* ability to satisfy some or all of its obligations under the *Agreement*.
- (2) On occurrence of an *Event of Default* described in Subsection 17.1(1)(a), *The City* may, in its sole discretion, choose to terminate the *Agreement* immediately and implement any additional remedies available to it under the *Agreement* and *Applicable Law*.
- (3) On occurrence of an *Event of Default* described in Subsection 17.1(1)(b) to 17.1(1)(p) inclusive, *The City* may issue a *Notice of Default* to the *Contractor* and will provide the surety company with a copy of the *Notice of Default*. If the *Contractor* fails to cure the *Event of Default* within seven *Business Days* from the date that the *Notice of Default* is issued, *The City* may issue a *Continuing Notice of Default*.
- (4) Notwithstanding Subsection 17.1(3), if the *Event of Default* cannot, by reasonable commercial efforts, be cured within seven *Business Days*, the *Contractor* may, within the seven *Business Days*, propose a commercially reasonable course of action for curing the *Event of Default*. If *The City* approves the *Contractor's* proposal, the *Contractor* must diligently pursue the approved course of action until the *Event of Default* is cured. If the *Event of Default* is not cured in accordance with the approved course of action and within the time period specified in it, *The City* will issue a *Continuing Notice of Default*.
- (5) If the *Contractor* fails to cure the *Event of Default* as allowed under Subsection 17.2(3) or 17.2(4) and *The City* has issued a *Continuing Notice of Default*, *The City* will provide the surety company with a copy of the *Continuing Notice of Default*. In its sole discretion, after issuing the *Continuing Notice of Default*, *The City* may take any one or more of the following actions:
- (a) withhold or retain the whole or part of any *Construction Period Payment* or other payment as described in Section 17.2;
 - (b) implement any additional remedies available to it, including taking the whole of the *Work*, or any part of the *Work*, out of the control of the *Contractor* as described in Section 17.3; or
 - (c) terminate the *Agreement* and implement any additional remedies available to it.

- (6) The duties and obligations imposed on the *Contractor* by the *Agreement* and the rights and remedies available to *The City* under the *Agreement* will be in addition to and not a limitation of any rights, remedies, duties, and obligations otherwise imposed on the *Contractor* or available to *The City* under *Applicable Law*.
- (7) Promptly, and not later than 14 *Days* after the date on which *The City* has provided a copy of the *Continuing Notice of Default* to the surety company, the surety company will advise *The City* of its intentions relating to performance of the *Work* under the *Agreement*.

17.2 Withholding of Payment

- (1) In addition to any other rights and remedies available to *The City* under the *Agreement*, *The City* may withhold or retain the whole or any part of any *Construction Period Payment* or other payment to the *Contractor* if an *Event of Default* occurs.
- (2) *The City* may apply the amount of any *Construction Period Payment* or any other payment withheld or retained under Subsection 17.2(1) to:
 - (a) pay any *Person* to whom the *Contractor* is indebted in relation to performance of the *Work*;
 - (b) secure the discharge of a lien or trust claim served on *The City* under the *Prompt Payment and Construction Lien Act*; or
 - (c) compensate, or reimburse *The City* for amounts paid or costs incurred by *The City* in connection with the *Event of Default*.
- (3) If the *Contractor* remedies the *Event of Default*, the amount of money remaining from the amount withheld under Subsection 17.2(1) less the amount of money paid out under Subsection 17.2(2) will be released to the *Contractor*.

17.3 Taking the Work out of the Contractor's Control

- (1) If *The City* has issued a *Continuing Notice of Default* to the *Contractor*, *The City* may, without any additional process or action under *Applicable Law*, on giving *Notice* to the *Contractor*, take the whole of the *Work*, or any part or parts of the *Work*, out of the control of the *Contractor* and provide *Notice* to the surety company of one of the following:
 - (a) that notwithstanding the surety company's rights under the *Performance Security* for the *Agreement*, *The City* is terminating the *Agreement* and taking over the whole of the *Work*; or
 - (b) that *The City* is taking over a portion of the *Work* and the *Performance Security* continues to apply to the remainder of the *Work*.
- (2) If the *Event of Default* is an emergency as described in Subsection 5.5(1), *The City* may take the whole of the *Work* or any part or parts of the *Work* out of the control of the *Contractor* and provide *Notice* to the surety company that notwithstanding that *The City* must take immediate action to take over the *Work* or any part or parts of it because the *Event of Default* is an emergency that impacts the health and safety of the public, *The City* will not forfeit the *Performance Security*.
- (3) On receipt of a *Notice* from *The City* that *The City* is taking control of the whole of the *Work*, or any part or parts of the *Work*, the *Contractor* must immediately discontinue the *Work*, or any part or parts of it, as specified in the *Notice*.

- (4) The taking of the *Work*, or any part or parts of it, out of the control of the *Contractor* in accordance with Subsection 17.3(1) or 17.3(2) will not relieve or discharge the *Contractor* from any obligation under the *Agreement* or imposed on the *Contractor*, except the obligation to complete the performance of that part of the *Work* that was taken out of the *Contractor's* control.
- (5) If the *Work*, or any part or parts of it, is taken out of the *Contractor's* control in accordance with Subsection 17.3(1) or 17.3(2), all *Material* and *Construction Equipment* and the interest of the *Contractor* in all licenses, powers, privileges acquired, used, or provided by the *Contractor* under the *Agreement* for the *Work*, or any part or parts of it, that is taken under the control of *The City* will be assigned by the *Contractor* to *The City* without compensation to the *Contractor*.
- (6) *The City* will have the right, subject to Section 17.4, to complete, by contract or with *The City's Own Forces*, the *Work* taken out of the *Contractor's* control, and the *Contractor* agrees that *The City* will have the right to take possession of and use any of the *Material* and property of every kind provided by the *Contractor* for the purpose of the *Work*, and, acting reasonably in the circumstances, to procure other *Material* and *Construction Equipment* for the completion of the *Work*. *The City* will not be required to obtain the lowest price to complete the *Work* taken out of the *Contractor's* control.
- (7) When *The City* determines that any *Construction Equipment* or any interest of the *Contractor* referred to in Subsection 17.3(5) is no longer required for the purposes of the *Work*, or that it is not in the best interest of *The City* to retain that *Construction Equipment* or interest, it will be returned to the *Contractor*.
- (8) If the cost to *The City* of completing the *Work*, or any part of it, is less than the amount to which the *Contractor* would have been entitled under the *Agreement* for completing the *Work*, the *Contractor* will have no claim against *The City* for any amount in excess of the cost for completing the *Work*. If the cost of the *Work* performed by *The City* is more than the amount to which the *Contractor* would have been entitled under the *Agreement* for the same *Work*, the *Contractor* will pay to *The City* the additional cost incurred by *The City* for performing the *Work*.
- (9) When any part of the *Work* is being carried out by *The City*, by contract or by *The City's Own Forces*, the *Contractor* will continue to perform the remainder of the *Work* in accordance with the *Agreement*, and in a manner that does not, in any way, hinder or interfere with the Persons performing the part of the *Work* being carried out by *The City*.

17.4 Additional Termination Rights of The City

- (1) Subject to Section 17.6, *The City* may, at any time, terminate the *Agreement* for *The City's* convenience and without cause, by providing the *Contractor* 30 Days' Notice.
- (2) Without limiting *The City's* rights under Subsection 17.4(1), *The City* may terminate the *Agreement*, by Notice, for any one or more of the following reasons:
 - (a) *The City* is prevented from proceeding under the *Agreement* by the act of a *Governmental Authority* or by an *Authority Requirement*;
 - (b) *The City* cancels the *Project*, on 30 Days' Notice to the *Contractor*;
 - (c) the *Project* is rendered impracticable by an *Event of Force Majeure*.

17.5 Contractor's Obligations on Termination

- (1) On receipt of *Notice* from *The City* terminating the *Agreement* in accordance with this Article 17, the
- (2) *Contractor* will do all of the following:
 - (a) cease performance of the *Work* as directed by *The City* in the *Notice*;
 - (b) take any actions necessary, or that *The City* may direct, for the protection and preservation of the *Work*;
 - (c) except for *Work* directed to be performed prior to the *Effective Date* of the termination stated in the *Notice*, terminate all existing subcontracts and purchase orders and not enter into any further subcontracts or purchase orders;
 - (d) provide to *The City* any completed or partially completed *Work*;
 - (e) execute such documentation and provide information as may be required by *The City* to give effect to the termination of the *Agreement*;
 - (f) comply with all instructions provided by *The City*, including instructions for facilitating the transfer of its obligations to another *Person*; and
 - (g) provide a report to *The City* detailing:
 - i. the current state of the *Work* at the *Effective Date* of termination as stated in the *Notice*; and
 - ii. any other information requested by *The City* relating to the performance of the *Work* and to the *Agreement*.

17.6 Payments to Contractor on Termination

- (1) Subject to Subsection 17.6(2), if the *Agreement* is terminated by *The City* under Section 17.4 or by the *Contractor* under Subsection 17.7(1), *The City*, without limiting any other rights or remedies it has under the *Agreement* including its right of set-off under Subsection 10.2(12), will pay to the *Contractor*, without duplication, the following:
 - (a) for all *Work* performed in accordance with the *Agreement* up to the date of termination that has not been previously paid to the *Contractor* based on the *Project Price*; and
 - (b) for the actual, verifiable costs incurred by the *Contractor* in connection with the demobilization of its *Construction Equipment*, the *Site Office*, all personnel and temporary construction works; and
 - (c) for any reasonable amount which the *Contractor* has paid or is legally liable to pay to an arms-length *Subcontractor* concerning the *Work* under the *Agreement*, where the liability for early termination of the subcontract was properly and reasonably incurred at a time when the *Contractor* reasonably expected to execute the remainder of the *Work* under the *Agreement* in its entirety, as long as the *Contractor* gave timely *Notice* of the termination of the subcontract to the *Subcontractor* and took all reasonable steps to minimize such costs; and
 - (d) for any *Overhead Costs* and in respect of profit as may be provided for in the *Agreement*, applicable to the actual and verifiable costs incurred by the *Contractor* under this Subsection 17.6(1).

- (2) Prior to *The City* issuing any payment to the *Contractor* under Subsection 17.6(1), the *Contractor* must submit to *The City* a *Construction Period Invoice* and provide *The City* with acceptable invoices, information and other documentation to verify the *Construction Period Invoice*, including copies of any relevant *Subcontractor* documentation.
- (3) The amount of any compensation payable by *The City* to the *Contractor* under Subsection 17.6(1) will be reduced by any amount which the *Contractor* recovers under an insurance policy applicable to the termination or which the *Contractor* would have recovered if the *Contractor* complied with the requirements of the *Agreement* in respect of insurance or with the terms of any applicable policy of insurance.
- (4) The *Contractor* is not entitled to any other payment from *The City* arising out of or in connection with *The City's* termination of the *Agreement* under Subsection 17.6(1). Any compensation paid to the *Contractor* under this Section 17.6 will be in full and final settlement of any claims, demands, or proceedings of the *Contractor* and the *Contractor* will:
 - (a) release *The City* from all liability in relation to any breaches or other events leading to the termination of the *Agreement*, including the circumstances leading to any such breach or termination; and
 - (b) be precluded from exercising all other rights and remedies in respect of any breach or termination whether in contract, tort, restitution, statute, at common law, or otherwise.

17.7 Contractor's Rights of Termination or to Stop Work

- (1) The *Contractor* may suspend performance of the *Work* or terminate the *Agreement* three *Business Days* after *Notice* of the *Contractor's* intention has been received by *The City*, if *Work* on the *Project Site* is stopped by an order of a *Governmental Authority*, or by an *Authority Requirement*, and such order or exercise of the *Governmental Authority* or by the *Authority Requirement* is not related to an act or omission of the *Contractor*.
- (2) Subject to any requirements of the *Prompt Payment and Construction Lien Act*, if the *Agreement* is terminated under Subsection 17.7(1), *The City* will pay to the *Contractor* all amounts as described in Section 17.6.
- (3) The *Contractor* may terminate the *Agreement* if *The City* fails to comply with any order of an adjudicator that is binding under the *Prompt Payment and Construction Lien Act*.
- (4) Notwithstanding Subsection 17.7(3), *The City* will not be obliged to make any *Construction Period Payment* or other payment earlier than would be required under the *Agreement*. The retention of any amount of money due to the *Contractor* by *The City* will not create a right for the *Contractor* to suspend *Work* or terminate the *Agreement* if the amount:
 - (a) is required to be withheld under the *Prompt Payment and Construction Lien Act*;
 - (b) may be otherwise withheld under the *Agreement*;
 - (c) relates to an amount of money or a claim that is in dispute; or
 - (d) may be otherwise withheld under *Applicable Law*.

17.8 Claiming of Damages by Other Contractors

- (1) If the *Contractor* suffers loss or damage by an act or omission of any *Other Contractor* on the *Project Site*, the *Contractor* must make its claim in writing against the *Other Contractor* and at the same time advise *The City* in writing of the claim and provide to *The City* a copy of the claim made against the *Other Contractor*. The *Contractor* must advise *The City* in writing within two *Business Days* after the occurrence of the event that caused the loss or damage to the *Contractor*.

ARTICLE 18: ANNOUNCEMENTS, CONFIDENTIALITY AND FOIP

18.1 Confidentiality, Promotion Restrictions and Photographs

- (1) Any publicity or publications related to the *Agreement* will be carried out at the sole discretion of *The City*. *The City* may, in its sole discretion, acknowledge the *Work* provided by the *Contractor* in any such publicity or publication. The *Contractor* will not make use of its association with *The City* without the prior written consent of *The City*. Without limiting the general application of this paragraph, the *Contractor* will not at any time, directly or indirectly, communicate with the media in relation to the *Agreement* without the prior express written consent of *The City*.
- (2) Photographs taken of the *Project Site* by the *Contractor* during the performance of the *Agreement* are the property of *The City* and any publication of the photographs will be at the sole discretion of *The City*.

18.2 City Confidential Information

- (1) During and following the *Term*, the *Contractor* will:
 - (a) keep all *City Confidential Information* confidential and secure;
 - (b) limit the disclosure of *City Confidential Information* to only those of its directors, officers, employees, agents, partners, affiliates, volunteers, or *Subcontractors* that have a need to know *The City Confidential Information* for the purpose of doing or providing the *Work* and who have executed a non-disclosure *Agreement* or otherwise been advised by the *Contractor* of their obligations;
 - (c) not, directly or indirectly, disclose, destroy, exploit or use any *City Confidential Information* (except for the purpose of doing or providing the *Work*, or except if required by order of a court or tribunal), without first obtaining:
 - i. the written consent of *The City*; and
 - ii. in respect of any *City Confidential Information* about any third party, the written consent of such third party;
 - (d) provide *City Confidential Information* to *The City* on demand; and
 - (e) return all *City Confidential Information* to *The City* before the end of the *Term*, and not retain any copies.

18.3 Restrictions on Copying

- (1) The *Contractor* will not copy any *City Confidential Information*, in whole or in part, unless copying is essential for doing or providing the *Work*. On each copy made by the *Contractor*, the *Contractor* will reproduce any notices that appear on the original.

18.4 Injunctive and Other Relief

- (1) The *Contractor* acknowledges that breach of any provisions of this Article 18 may cause irreparable harm to *The City* or to any third party to whom *The City* owes a duty of confidence, and that the injury to *The City* or to any third party may be difficult to calculate and inadequately compensable in damages. The *Contractor* agrees that *The City* is entitled to obtain injunctive relief (without proving any damage sustained by it or by any third party) or seek any other remedy against any actual or potential breach of the provisions of this Article 18.

18.5 Notice and Protective Order

- (1) If the *Contractor* or any of its directors, officers, employees, agents, partners, affiliates, volunteers, or *Subcontractors* become legally compelled to disclose any *City Confidential Information*, the *Contractor* will provide *The City* with prompt *Notice* to that effect in order to allow *The City* to seek one or more protective orders or other appropriate remedies to prevent or limit such disclosure, and it will cooperate with *The City* and its legal counsel to the fullest extent. Obtaining a protective order or other remedy for *The City* will be at *The City's* sole cost and expense.
- (2) If protective orders or other remedies are not obtained by *The City* under Subsection 18.5(1), the *Contractor* will disclose only that portion of *City Confidential Information* that the *Contractor* is legally compelled to disclose only to such *Person* or *Persons* to whom the *Contractor* is legally compelled to disclose. The *Contractor* will provide *Notice* to each such recipient (in cooperation with legal counsel for *The City*) that such *City Confidential Information* is confidential and subject to non-disclosure on terms and conditions equal to those contained in the *Agreement* and, if possible, will obtain each recipient's written *Agreement* to receive and use such *City Confidential Information* subject to those terms and conditions.

18.6 FOIP Records and Compliance

- (1) The *Contractor* and *The City* acknowledge and agree that *FOIP* applies to and governs all *Records* and may require the disclosure of *Records* to third parties, and that the *Contractor* will:
 - (a) keep *Records* secure;
 - (b) provide *Records* to *The City* within seven *Days* of being directed to do so by *The City* for any reason;
 - (c) not access any *Personal Information* unless *The City* determines, in its sole discretion, that access is permitted under *FOIP* and is necessary in order to do or provide the *Work*;
 - (d) not directly or indirectly use, collect, disclose, or destroy any *Personal Information* for any purposes that are not authorized by *The City*;
 - (e) ensure the security and integrity of *Personal Information* and keep it in a physically secure and separate location safe from loss, alteration, destruction, or intermingling with other *Records* and

databases, and to implement, use, and maintain the most appropriate tools, measures, and procedures to do so;

- (f) restrict access to *Personal Information* to those of its directors, officers, employees, agents, partners, affiliates, volunteers, or *Subcontractors* who have a need to know it for the purpose of doing or providing the *Work* and who have been specifically authorized by the *City Representative* to have such access for the purpose of doing or providing the *Work*; and
 - (g) implement other specific security measures that in the reasonable opinion of *The City* would improve the adequacy and effectiveness of the *Contractor's* measures to ensure the security and integrity of *Personal Information* and *Records* generally.
- (2) Any confidential information supplied to *The City* by the *Contractor* may be disclosed by *The City* if *The City* is obligated to do so under *FOIP*, by an order of a court or tribunal, or in connection with a legal proceeding. The provisions of this Subsection 18.6(2) will prevail over any inconsistent provisions in the *Agreement*.

ARTICLE 19: INTELLECTUAL PROPERTY

19.1 City Intellectual Property

- (1) The *Contractor* agrees that all *Intellectual Property* and every other right, title and interest in and to all concepts, techniques, ideas, information and *Materials*, however recorded, (including images and data) provided by *The City* to the *Contractor* will remain the sole property of *The City* at all times.

19.2 License for Use

- (1) *The City* grants, and the *Contractor* accepts, a non-exclusive, non-assignable, limited license to *Intellectual Property* owned, licensed or otherwise controlled, or in the possession of *The City* to permit the *Contractor* to use the *Intellectual Property* provided by *The City* to the *Contractor* only as necessary to allow the *Contractor* to satisfy its obligations under the *Agreement*. The benefit of the license granted under the *Agreement* is limited solely to the *Contractor*. Upon termination or completion of the *Agreement*, the *Contractor* will promptly return the *Intellectual Property* to *The City* and will have no further right to use the *Intellectual Property*.

19.3 No Use of City Insignia

- (1) The *Contractor* may only use any insignia or logo of *The City* if use of the insignia or logo is required to perform the *Work* as described in the *Agreement* and only if the *Contractor* has received the prior written consent of *The City* to do so.

19.4 Ownership of Intellectual Property

- (1) *The City* will be the sole owner of any *New Intellectual Property*. The *Contractor* irrevocably assigns in favour of *The City* and *The City* accepts every right, title, and interest in and to all *New Intellectual Property*, immediately following its creation, for all time. The *Contractor* also irrevocably waives in favour of *The City* all rights of integrity and other moral rights to all *New Intellectual Property*, immediately following its creation, for all time. To the extent that any of the *Work* includes, in whole or in part, the *Contractor's Intellectual Property*, the *Contractor* grants to *The City* a licence to use the

Contractor's Intellectual Property in the manner contemplated in Section 19.5, for which the total consideration will be payment of the *Project Price* to the *Contractor* by *The City*.

19.5 Contractor's Grant of License

- (1) The *Contractor* represents and warrants unrestricted right and good and sufficient title to the *Contractor's Intellectual Property*. In addition, for those parts of the *Work* that are the *Contractor's Intellectual Property* or incorporate the *Contractor's Intellectual Property*, the *Contractor* grants to *The City* a perpetual, world-wide, non-exclusive, irrevocable, transferable, royalty free, fully paid-up right and license:
 - (a) to use, modify, reproduce, and distribute, in any form, those parts of the *Work* if such use, modification, reproduction or distribution is required or beneficial to *The City's* continuing management or operation of the *Project* during the *Term* or after termination or expiry of the *Agreement*; and
 - (b) to authorize other *Persons*, including agents, *Other Contractors*, or *Subcontractors* to do any of the former on behalf of *The City*.

19.6 No Restrictive Material in Work

- (1) Unless specified in the *Technical Specifications* or otherwise agreed to in writing by *The City* in advance, the *Contractor* will not incorporate into any *Work* anything that would restrict the right of *The City* to modify, further develop, or otherwise use the *Work* in any manner that *The City* deems necessary, or that would prevent *The City* from entering into any contract with any *Contractor* other than the *Contractor* for the modification, further development of, or other use of the *Work*.

19.7 Contractor Representation and Warranty Regarding Third Party Intellectual Property

- (1) The *Contractor* represents and warrants that the performance of the *Work* will not infringe or induce the infringement of any *Third Party Intellectual Property* rights. The *Contractor* further represents and warrants that it has obtained assurances relating to any rights of integrity or any other moral rights associated with all *Third Party Intellectual Property* incorporated into the *Work* confirming that all such rights of integrity and moral rights have been waived.
- (2) The *Contractor* must pay all applicable fees associated with the use of the *Third Party Intellectual Property*, including license fees and royalties required for any *Materials* or *Work* required for the performance of the *Agreement*.
- (3) If *The City* is enjoined in any claim, cause of action, demand, suit or proceeding (or there is a reasonable likelihood that it may be so enjoined) as a result of using any *Third Party Intellectual Property* that is incorporated into or associated with any *Materials* or *Work* provided by the *Contractor* which is attributable to an infringement or alleged infringement of *Third Party Intellectual Property* by the *Contractor*, the *Contractor* will, subject to the prior approval of *The City* and at the *Contractor's* sole expense:
 - (a) procure the right for *The City* to continue using the infringing or allegedly infringing *Third Party Intellectual Property*; or

- (b) replace or modify the *Third Party Intellectual Property* to make it non-infringing, so long as such replacement or modification does not adversely affect the performance or use of the *Material* or the *Work* generally.

ARTICLE 20: ENVIRONMENTAL CONTROLS

20.1 ECO Plan

- (1) If an *ECO Plan* is required in the *Special Conditions*, the *Contractor* must submit an *ECO Plan* for approval prior to commencement of the *Work*. The *ECO Plan* must include consideration of all requirements of this Article 20 and comply with all of the following:
 - (a) *The City's* Environmental Policy;
 - (b) all requirements of the current edition of *The City's ECO Plan Framework*; and
 - (c) *Good Industry Practice*.
- (2) The *Contractor* must comply with and:
 - (a) communicate the *ECO Plan* and the *Contractor's* "Environmental Responsibilities Package and Acknowledgement Form" to all personnel on the *Project Site*, including *Subcontractors* and any *Design Professionals*;
 - (b) provide environmental training and orientation to employees sufficient to perform the *Work* and ensure *Subcontractors* and any *Design Professionals* have sufficient environmental training and orientation appropriate for performing their *Work*;
 - (c) ensure that all environmental training and orientation is documented and *Records* are maintained;
 - (d) maintain all relevant *Records* demonstrating that the *Contractor's Environmental Obligations* have been implemented and are being regularly monitored and maintained;
 - (e) provide *The City* access to *Records* maintained under Subsection 20.1(2)(d) on request; and
 - (f) provide access to the *Project Site* for environmental inspections.

20.2 Erosion and Sediment Control

- (1) The *Contractor* must comply with all *Applicable Law, Permits, Licenses and Approvals, Good Industry Practice*, and all requirements of the current editions of *The City of Calgary "Erosion and Sediment Control Guidelines"* and "Standard Specifications Erosion and Sediment Control" to ensure protection of water bodies, storm water or wastewater infrastructure, *Roadways*, public and private property, and the environment.
- (2) The *Contractor* must implement, monitor, and maintain appropriate practices to minimize and manage erosion and sedimentation on the *Project Site* during the *Term* of the *Agreement*.
- (3) The *Contractor* may contact *The City* (ESC Inspector) assigned to the *Project* to discuss *The City's* requirements at any time.
- (4) The *Contractor* must, in accordance with *Good Industry Practice*, carry out the following on all *Project Sites*, regardless of size:

- (a) implement phased construction to allow areas with high erosion potential to be constructed in a minimum amount of time with permanent stabilization (landscaping) measures implemented early;
 - (b) divert clean runoff (pavement runoff) away from exposed soils or unstabilized areas;
 - (c) minimize the area of disturbed ground that is exposed to erosion at any one time;
 - (d) control erosion at the source by preventing soil detachment and migration;
 - (e) minimize the extent and duration of disturbance to vegetation;
 - (f) stabilize access and egress points to reduce off-site tracking;
 - (g) stabilize and contain stockpiles;
 - (h) control wind-blown and fugitive dust;
 - (i) minimize the compaction of native soil by appropriately locating temporary roads and material storage;
 - (j) minimize exposed slope lengths by breaking them up into smaller slopes using controls;
 - (k) provide temporary cover on exposed soils vulnerable to erosion;
 - (l) maintain subsoil grades in a non-compacted roughened state;
 - (m) provide sufficient capture and storage for containing sediment-laden runoff on the *Project Site*;
 - (n) regularly monitor and maintain the effectiveness of controls (at least every seven *Days*), particularly during or within 24 hours of precipitation or snowmelts (greater than 12 millimetres of rainfall in any 24 hour period or precipitation on wet or partially frozen soils);
 - (o) maintain up-to-date *ESC Plan* inspection and maintenance *Records* on the *Project Site*;
 - (p) develop and implement emergency measures as required;
 - (q) correctly install, inspect, and maintain erosion and sediment controls (as per manufacturer or designer specifications);
 - (r) prevent the release of sediment-laden water or contaminated water to water bodies and storm drainage systems as a result of construction dewatering, surface washing, sand blasting, saw cutting, washing vehicles, or washing out of concrete trucks and any concrete equipment, or any other activities that could result in a prohibited discharge; and
 - (s) remove all temporary erosion and sediment controls when no longer required.
- (5) The *Contractor* must submit to *The City*, an *ESC Plan*, as required in accordance with *The City's* current edition "Erosion and Sediment Control Guidelines" and "Standard Specifications Erosion and Sediment Control".
- (6) If *The City* reasonably determines that there is an erosion or sedimentation matter, or both, on the *Project Site*, *The City* will promptly give *Notice* to the *Contractor*. On receiving the *Notice*, the *Contractor*, subject to any advice provided by the *City Representative*, must take prompt and appropriate action to address the matter. If the *Contractor* fails to take prompt and appropriate action, *The City*, in its sole discretion, may take any steps it determines are necessary to appropriately address the matter at the expense of the *Contractor*. *The City* will provide the *Contractor Notice* of any actions taken by *The City* within 72 hours of taking the appropriate action to resolve the matter. Any costs

incurred by *The City* to resolve the matter may be set off against any amount owed by *The City* to the *Contractor*, whether the amount is owed under this *Agreement*, or another agreement.

20.3 Soil Conservation and Stockpiles

- (1) The *Contractor* must, in accordance with *Good Industry Practice*:
- (a) provide temporary stabilization of exposed soils if wind erosion or water erosion, or both, could contribute sediment to off-site areas, including water bodies, streets, storm drainage systems and property;
 - (b) assess and then strip topsoil from the *Project Site* and exercise due care to prevent mixing of topsoil and subsoil during stripping of the topsoil from the *Project Site*;
 - (c) maintain a one metre separation between topsoil and subsoil stockpiles;
 - (d) ensure that stockpiles in place for more than 30 *Days* are properly stabilized and contained in order to prevent any off-site impacts and ensure that stockpile slopes are not steeper than a 4H: 1V ratio;
 - (e) locate stockpiles in flat, contained areas of the *Project Site*;
 - (f) record all stockpile locations and make the *Records* available at the *Project Site*;
 - (g) control annual weeds on exposed soils before they can set seed in order to reduce the likelihood of spreading;
 - (h) ensure equipment moving from areas with weeds or non-native species into natural areas is clean and free of weeds; and
 - (i) ensure any use of a registered herbicide is approved by the *City Representative* in accordance with *The City's* programs.

20.4 Project Site Water Management

- (1) The *Contractor* must, in accordance with *Good Industry Practice*:
- (a) install, inspect, and maintain temporary surface water drainage systems as required during the *Term* and remove them when the *Work* is completed;
 - (b) obtain a drainage or dewatering permit in compliance with *The City's* Drainage Bylaw 37M2005 prior to discharging impounded water to the storm water system;
 - (c) prevent any slurry from entering into any water bodies, storm water or wastewater infrastructure, *Roadways*, public and private property, or the environment when performing saw cutting or coring activities, and dispose of slurry in accordance with *Applicable Law*; and
 - (d) if concrete is used on the *Project Site*:
 - i. prevent concrete washout, or concrete waste from equipment, from entering either directly or indirectly (as a result of a subsequent precipitation event) water bodies, storm water or wastewater infrastructure, *Roadways*, public and private property, or the environment;

- ii. use a containment system approved by *The City* if concrete washout will occur or if surplus concrete will be stored on the *Project Site*;
- iii. prevent concrete wash or leachate concrete from entering waterways or the storm water system; and
- iv. use sealed form structures if necessary to allow for curing cast-in-place concrete works.

20.5 Project Site Management

- (1) The *Contractor* must, in accordance with *Good Industry Practice*:
- (a) suitably locate, secure, and label chemical, fuel, and lubricant storage areas on the *Project Site* to prevent and minimize the impact of any substance releases or contamination on or off the *Project Site*;
 - (b) ensure that for all *Hazardous Substances* located on the *Project Site*, there is 110 percent secondary containment capacity for the largest container of *Hazardous Substance* in addition to 10 percent of the aggregate capacity of all other containers of *Hazardous Substances*;
 - (c) keep the *Project Site* free from accumulated debris or waste;
 - (d) ensure storage of waste and waste material is controlled to prevent their migration off the *Project Site*;
 - (e) ensure all containers containing waste material are identified, labelled, managed and appropriately disposed of;
 - (f) prevent and control tracking of dirt within and off the *Project Site* and to any adjacent areas, including *Roadways*;
 - (g) take all reasonable measures to control dust within the *Project Site*, including on haul roads, dump sites, stockpiles, and detour roads;
 - (h) promptly remove all mud, dirt debris, and other materials deposited by construction during the construction and rehabilitation period and appropriately dispose of the material; and
 - (i) ensure that spill kits are present on the *Project Site*.

20.6 Waste Management and Recycling

- (1) The *Contractor* must, in accordance with *Good Industry Practice*:
- (a) identify, implement, monitor and maintain methods for reducing and diverting waste from a licensed landfill, and at minimum, recycle all cardboard, paper, wood, asphalt, concrete, metal, and plastics and provide *The City* justification in writing for an inability or refusal to divert the foregoing waste materials from the landfill;
 - (b) retain and submit to *The City*, on request, copies of all relevant *Records*, in a summary form, for all types of waste that are disposed of, diverted or recycled, that identify:
 - i. the type of waste;
 - ii. the *Record* number;
 - iii. the quantity or weight recycled or disposed of;

- iv. the destination of the waste; and
 - v. the classification of the waste under either the Waste Control Regulation (AR 192/96) or the Transportation of Dangerous Goods Regulation (SOR/2001-286);
- (c) provide appropriate collection containers on the *Project Site* for waste and remove waste regularly from the *Project Site*;
 - (d) dispose of waste to disposal sites approved of by *The City* and designated for the type of waste being disposed of;
 - (e) ensure all proposed landfill disposal sites are approved licensed landfills;
 - (f) not burn or bury waste on the *Project Site*; and
 - (g) not dispose of waste into water bodies, storm water or wastewater infrastructure, *Roadways*, public or private property or the environment.

20.7 Fuelling Operations and Spill Prevention

- (1) The *Contractor* must perform all fuelling operations in accordance with *Good Industry Practice*.
- (2) Personnel must be present at the transfer point during fuelling operations for the duration of the fuelling process.
- (3) Spill kits or drip pads, or both, must be present at the fuelling location during refuelling.
- (4) Fuelling or maintenance of *Construction Equipment* must not take place within 30 metres of water bodies, or near storm water infrastructure or environmentally sensitive areas unless a written standard operating procedure is developed and implemented by the *Contractor* and the standard operating procedure has been approved by *The City* prior to implementation.
- (5) Fuelling requirements and procedures outlined in *Applicable Law*, particularly in the Alberta Fire Code, must be followed and fuelling procedures must be communicated to all *Persons* on the *Project Site* who are involved in fuelling or maintenance operations.
- (6) Servicing or repair of *Construction Equipment* must not occur within 30 metres of water bodies, or near storm water infrastructure or environmentally sensitive areas unless approval has been obtained from *The City of Calgary Fire Department Hazardous Substances Section* or other *Governmental Authority*.
- (7) The transportation of dangerous goods or *Hazardous Substances* are restricted in the "Central Business District" as detailed in *The City's* Bylaw 23M2005 and Bylaw 13M2004.

20.8 Release Reporting and Clean-Up

- (1) The *Contractor* must implement, monitor, maintain and document transportation, handling, and storage methods that will prevent spills or releases of chemical, fuel, lubricant, and other *Hazardous Substances* on or around the *Project Site* in accordance with *Good Industry Practice*.
- (2) The *Contractor* must:
 - (a) maintain a contact list of key *Persons* and their phone numbers for reporting spills or releases of chemical, fuel, lubricant and other *Hazardous Substances* and other incidents that may have a

detrimental impact on the environment and ensure the contact list is posted in a visible location on the *Project Site*;

- (b) comply with *The City's "Corporate Substance Release Reporting Program"*;
- (c) maintain containment equipment and adequate quantities of absorbent material that is readily available for use to contain a spill or release;
- (d) if a spill or release of a *Hazardous Substance* occurs:
 - i. immediately report the spill or release to *The City*;
 - ii. immediately report the spill or release to any other *Governmental Authority* as required under *Applicable Law* and, if the chemical, fuel, lubricant or other *Hazardous Substance* is entering or about to enter a water body, storm water or wastewater infrastructure, *Roadway*, public or private property, or the environment, call 911 and request the dispatch of *The City's Fire Department*;
 - iii. contain, remove, or clean up and remedy the spill or release in accordance with *Applicable Law* and in consultation with *The City* and *The City's Fire Department Hazardous Substances Section*; and
 - iv. provide, on request of *The City*, adequate documentation concerning the containment, removal or clean up and remedy of the spill or release and the management and disposal of the *Hazardous Substance* in accordance with *Applicable Law*.
- (e) Hydraulic fluids that meet ASTM D-6046 (or equivalent) must be used when practical and feasible in heavy *Construction Equipment* when the heavy *Construction Equipment* will be used in or immediately adjacent to water bodies or environmentally sensitive areas.

20.9 Discovery of Hazardous Substance

- (1) If the *Contractor* discovers any unexpected *Hazardous Substance* during performance of the *Work*, the *Contractor* and *Subcontractors* must act in accordance with *Good Industry Practice*, including taking all necessary actions (such as stopping the *Work* if necessary) to ensure no *Person* suffers injury, sickness, or death, there is no adverse impact on the environment, and no property is damaged or destroyed as a result of exposure to, or the presence of any unexpected *Hazardous Substance*, and the *Contractor* must immediately notify:
 - (a) *The City's Fire Department*;
 - (b) the *City Representative* and *The City's Design Professional*;
 - (c) Alberta Environment and Parks; and
 - (d) any other *Governmental Authority* requiring notification under *Applicable Law*; and
 - (e) any other *Persons* as may be specified in the *Special Conditions*.
- (2) If the *Contractor* discovers any unexpected *Hazardous Substance* during performance of the *Work*, the *Contractor* must immediately contact the *City Representative* and *The City's Design Professional* to determine a course of action and must allow *The City* unrestricted access to the *Project Site* to investigate the presence of the unexpected *Hazardous Substance* on the *Project Site*.

- (3) If *The City's* Fire Department *Hazardous Substances* Section determines that an emergency situation exists, it will assume control of the *Project Site* in the area of contamination and provide the necessary services and direction to the *Contractor* to contain, remove, clean up and remedy any unexpected *Hazardous Substance*. Control of the *Project Site* will be returned to the *Contractor* when the emergency situation no longer exists.
- (4) When an emergency situation as described in Subsection 20.9(3) is brought under control, the *City Representative* will be responsible for communicating with Alberta Environment and Parks or other *Governmental Authority* to determine additional steps to manage and remedy any unexpected *Hazardous Substance*. The *Contractor* will coordinate with the *City Representative* and *The City's Design Professional* to implement measures to complete the *Work* and meet the requirements of the *Agreement*, including the containment, removal or clean up and remedying and any further management or remedying of the unexpected *Hazardous Substance* and the supply of proper personal protective equipment for individual *Persons* on the *Project Site*. The *Contractor* will provide any documentation to the *City Representative* and *The City's Design Professional*, on request, concerning the containment, removal or clean up and remedying and any further management or remedying of the unexpected *Hazardous Substance*.
- (5) If the *Work* on the *Project Site*, or a part of it, has to be temporarily suspended until the unexpected *Hazardous Substance* has been fully investigated, characterized and managed in accordance with *Authority Requirements*, the *Contractor* may request a *Change Order* adjusting either the *Project Schedule* or the *Project Price*, or both, to account for the delay in the *Work* or for any additional costs for performing the *Work* as a result of the unexpected *Hazardous Substance*, as may be applicable. *The City* will not be liable for any damages or loss of profits as a result of the delay.

20.10 Use of Hazardous Substances in Performance of the Work

- (1) Unless otherwise specified in the *Technical Specifications*, the *Work* must not include, and the *Contractor* must not permit the use of any *Hazardous Substance*, other than those *Hazardous Substances* that are necessary to perform the *Work* in accordance with the requirements of the *Agreement* and are customarily used in the construction of projects in the Province of Alberta that are similar to the *Project*, in which case the *Hazardous Substance* must only be used in accordance with *Applicable Law* and *Good Industry Practice* and with the *Health and Safety Plan*.
- (2) If a *Hazardous Substance* is used or placed in the *Work* or onto the *Project Site* by the *Contractor* or any *Person* for whom the *Contractor* is responsible under *Applicable Law*, the *Contractor* must take all necessary steps to ensure that no *Person* suffers injury, sickness, or death and that no property is damaged or destroyed as a result of exposure to, or the presence of, such *Hazardous Substance*.
- (3) The *Contractor* will indemnify *The City* for all losses and liabilities arising out of or as a result of the *Contractor's* failure, or the failure of any *Person* for whom the *Contractor* is responsible under *Applicable Law*, to comply with the requirements of this Section 20.10.

20.11 Offsite Disposal of Excavated Material

- (1) The *Contractor* must dispose of excavated soil or material:
 - (a) off of the *Project Site* if it is not required for fill or for the *Work* on the *Project Site*; and
 - (b) at a disposal site that is appropriate for the type of soil or material being disposed of.

- (2) *The City* does not make any representations or guarantees as to the suitability of excavated soil or material for offsite deposit or disposal at any particular disposal site.
- (3) The *Contractor* may contact *The City's* Environmental Control Technologist in Waste and Recycling Services for the "Clean fill Disposal Sampling Requirements" at the contact information specified in the *Special Conditions*.

20.12 Recycled and Imported Fill Material

- (1) The source location of any imported or recycled fill material to be used for the *Work* must be approved by *The City* prior to the fill material being brought onto the *Project Site*.
- (2) After *The City* has approved the source location of the fill material in accordance with Subsection 20.12(1), any changes in the source location of the fill material must be reported immediately to *The City* and a new approval must be obtained for any new source location of the fill material.
- (3) The *Contractor* must monitor and maintain *Records* relating to the source, volume and analytical data for any imported or recycled fill material and provide to *The City*, on request, such *Records* for verification that the fill material meets *The City's* requirements.

20.13 Water Supply and Disposal

- (1) The *Contractor* must ensure that suitable and approved water supply and water disposal methods are implemented in accordance with all requirements of *The City* and Section 20.4 and Subsection 20.14(1).

20.14 Authorization to Operate Fire Hydrants

- (1) Withdrawal of water from a fire hydrant for any purpose other than firefighting is prohibited, unless expressly authorized in writing by *The City*. *The City* may provide temporary authorization for the withdrawal of water from fire hydrants for construction purposes (such as dust control, grading, soil compaction and the construction of new landscapes prior to the issuing of a *Final Acceptance Certificate*), but not for irrigation purposes. The *Contractor* must contact *The City* to obtain a Hydrant Connection Unit (within this Section 20.14 referred to as "*HCU*") at the contact information set out in the *Special Conditions*.
- (2) If *The City* authorizes the use of a *HCU* by the *Contractor*, the *Contractor* must:
 - (a) enter into a *HCU* rental *Agreement* with *The City* and obtain a fire hydrant use permit;
 - (b) comply with all provisions of *The City's* Water Utility Bylaw 40M2006 and the fire hydrant use permit, and pay any related deposits or fees;
 - (c) use only water from a fire hydrant for which the *HCU* rental *Agreement* and permit is granted; and
 - (d) ensure that the *HCU* is properly connected to the fire hydrant and that the water meter is functioning at all times when water is being withdrawn through it.
- (3) If the *Contractor* uses the fire hydrant improperly or for a use not authorized under the *HCU* rental *Agreement*, *The City*, in its sole discretion, may:
 - (a) cancel the *HCU* rental *Agreement*;

- (b) cancel the fire hydrant use permit;
- (c) seek costs, and set off such costs against amounts owed under this *Agreement*, from the *Contractor* for damage caused by improper use of the fire hydrant, including, but not limited to:
 - i. repairs to a fire hydrant or water main damaged by the *Contractor*; and
 - ii. repairs to any property of *The City* or to the property of third *Parties*, including repairs made necessary because of a water main break as a result of improper use of the hydrant.
- (4) *The City* may provide training for operation of fire hydrants to the *Contractor* at no cost if the *Contractor* makes a request, in writing, to *The City* for such training.
- (5) The *Contractor* may also make application to *The City* for the purchase of bulk water for construction or other, non-fire, purposes by contacting *The City* at the contact information set out in the *Special Conditions*.

20.15 Reduced Idling of Vehicles and Construction Equipment

- (1) The *Contractor* must not park diesel and natural gas powered vehicles or *Construction Equipment* on the *Project Site* for more than five consecutive minutes with the engine operating unless the operation of the engine is essential for the performance of the *Work* or for initial warm-up of the engine or during periods of cold weather below -10 degrees Celsius.
- (2) The operator of a vehicle or of *Construction Equipment* that is being operated on the *Project Site* must remain with the vehicle or *Construction Equipment* at all times while the vehicle or *Construction Equipment* are in operation.

20.16 Tree and Plant Protection

- (1) If trees are located on or adjacent to the *Project Site*, the *Contractor* must contact Urban Forestry by calling 311 to verify tree ownership and obtain information about tree protection plans in order to establish detailed requirements regarding tree protection. The *Contractor* must submit a tree protection plan to *The City's* Parks Department – Urban Forestry for approval prior to the start of construction when construction or construction-related activities occur within six metres of any tree owned by *The City* if *The City*-owned tree is located:
 - (a) on the *Project Site*; or
 - (b) on property adjacent to the *Project Site* (including in a *Roadway*).
- (2) The *Contractor* must comply with *The City's* Tree Protection Bylaw 23M2002.
- (3) The *Contractor* must plant all trees, shrubs or groundcover in conformity to the most current edition of "Parks Development Guidelines and Standard Specifications, Landscape Construction Specifications".

20.17 Application of Pesticides and Herbicides

- (1) The *Contractor* may apply species-specific pesticides for control of weed species consistent with *Good Industry Practice*, if such application is approved by the *City Representative*, in accordance with *Applicable Law* and *The City's* Pest Management Policy (CP2020-01). The *Contractor* must use applicators approved for use by *The City* and the Province of Alberta.

- (2) If the *Contractor* applies pesticides, the *Contractor* must, at the direction of the *City Representative*:
 - (a) install and collect signs in the location where pesticide was applied indicating that pesticide has been applied;
 - (b) complete a “Daily Pesticide Application Report” while located on the *Project Site* during the day of the application of the pesticide and submit the “Daily Pesticide Application Report” to The *City’s Representative* on or before 15 November annually or prior to the issuance of the *Construction Completion Certificate*, whichever comes first.

20.18 Clean-Up and Restoration of Project Site

- (1) All *Survey Marks*, signs, surplus material, equipment, tools, coverings, waste concrete, excess dirt, sod or gravel, shrubs or trees felled by the *Contractor*, rocks or boulders, or other rubbish must be removed from the *Project Site* immediately after completion of the *Work*.
- (2) The *Contractor* must clean up and restore to pre-construction condition and to the satisfaction of the *City Representative* all existing surfaces and structures damaged during performance of the *Work*, including damage to items such as private curbs, walks, driveways, fences, light standards, signs, and landscaping.
- (3) Unless otherwise specified in the *Special Conditions*, or in writing by *The City*, the *Contractor* must complete the removal of all excavation material that is surplus as a result of backsloping within two weeks from the time the backsloping was started, excepting surplus excavation material located on the *Project Site* that is adjacent to primary streets and bus routes, which must be removed immediately after backsloping is completed.
- (4) The *Project Site* must be “broom-clean” or its equivalent prior to *Contractor’s* application for *Final Payment*.
- (5) If the *Contractor* fails to perform clean-up and restoration of the *Project Site* in accordance with this Section 20.18, *The City* will perform the clean-up and restoration of the *Project Site* and the cost of doing so will be deducted from *The City’s Final Payment* to the *Contractor* or set off against any other amounts owing to the *Contractor* under the *Agreement*.

ARTICLE 21: AUDIT

21.1 Records and Audit

- (1) The *Contractor* must, at its sole expense, following execution of the *Agreement* and for a period of seven years following the termination or expiry of the *Agreement*:
 - (a) keep and maintain in an original form, or in an electronic form that preserves the integrity of the original (as applicable) without alteration, deletion or addition, all accounting and all other *Records*;
 - (b) keep and maintain all *Records* in accordance with generally accepted accounting principles and *International Financial Reporting Standards*, as applicable;
 - (c) keep and maintain all *Records* in accordance with the *Technical Specifications*; and
 - (d) make reasonable efforts to protect the *Records* from both physical damage and unauthorized access.

- (2) If any *Records* kept and maintained by the *Contractor* in electronic form in accordance with Subsection 21.1(1)(a) require special equipment or specialized knowledge to convert the data contained in them into readily readable form, all assistance and facilities reasonably required for such purpose will be provided by the *Contractor* at its sole expense.
- (3) *The City* will have the right to inspect, examine, make copies of, and audit all of the *Contractor's Records* maintained by the *Contractor* under Subsection 21.1(1) at all reasonable times, without prior *Notice*, for the purpose of auditing and monitoring compliance with the requirements of the *Agreement* or the *Procurement Documents*, including any payments made by or to *The City*. On request by *The City*, the *Contractor* will make available and provide access to, or provide copies of (or do both, at the discretion of *The City*) any *Records* requested by *The City* at the *Contractor's* sole expense and within the timeframe provided at the time of the request.
- (4) Subject to Subsections 21.1(1), 21.1(2) and 21.1(3), the costs of any audit conducted by *The City* under *Authority* of Subsection 21.1(3) will be the responsibility of *The City* unless the audit identifies materially inaccurate, materially misleading, or materially incomplete *Records*. If the audit identifies materially inaccurate, materially misleading, or materially incomplete *Records*, the *Contractor* must reimburse *The City* for the total costs of the audit.
- (5) This Section 21.1 will not be interpreted to limit, revoke, or abridge any other rights, powers, or obligations relating to audit that *The City* may have under *Applicable Law*, whether those rights, powers, or obligations are express or implied.
- (6) If the *Contractor* subcontracts all or a portion of its obligations under the *Agreement*, any *Agreements* formed between the *Contractor* and any *Subcontractors* will expressly include provisions that extend the audit rights contained in this Section 21.1 to *The City*. *The City* will have the right to request copies of original invoices from *Subcontractors* relating to completed *Work*.
- (7) No officer, employee, or agent of the *Contractor* or its affiliates or *Subcontractors* may give to, or receive from, any official, officer, employee, or agent of *The City*, or a spouse or immediate relative of any such *Person*, any commission, fee, rebate or gift, other than courtesies of a nominal value during the *Term*. Further, during the *Term*, no director, officer, employee or agent of the *Contractor* or its affiliates or *Subcontractors* may enter into any business arrangement with any individual official, officer, employee, or agent of *The City*. Without limiting the general audit rights under this Section 21.1, *The City* may, acting reasonably, conduct an audit of any and all of the *Contractor's Records* and of the *Records* of its affiliates or *Subcontractors* related to the *Agreement* and the *Work* performed under it, and all transactions in connection with it, for the purpose of determining if this Section 21.1(7) has been complied with.

ARTICLE 22: GENERAL PROVISIONS

22.1 Dispute Resolution

- (1) A dispute between *The City* and the *Contractor* regarding interpretation and application of the *Agreement*, or any part of it, will be resolved by the *Parties* attempting to reach a fair and equitable resolution by using, in good faith, the following methods in the order listed and on an escalating basis to achieve resolution:
 - (a) negotiation between the *City Representative's* supervisor, as specified in the *Contract Letter*, and the *Contractor's* identified senior representative, as specified in the *Contract Letter*;

- (b) negotiation between the *City Representative's Manager*, as specified in the *Contract Letter*, and the *Contractor's* identified senior representative, as specified in the *Contract Letter*; and finally,
- (c) if such senior officers of the respective *Parties* are unable to resolve the dispute, the *Parties* may, if both *Parties* are in agreement, seek formal mediation by a jointly appointed mediator. The *Parties* must agree to the fees to be paid to the mediator prior to the mediation and each *Party* must pay an equal share of the cost of the mediation.

In no event will any stage of the negotiation between the *Parties* (as described in Subsections 22.1(1)(a) and 22.1(1)(b) above) exceed 30 *Business Days*. Formal mediation (as described in Subsection 22.1(1)(c)) must not exceed 60 *Business Days*.

- (2) During negotiations as described in Subsections 22.1(1)(a) and 22.1(1)(b) above, no *Party* will be deemed to have waived any rights or remedies at law or in equity, and both *Parties* agree to maintain the business relationship of the *Parties* to the extent reasonably practical during such negotiations.
- (3) Either *Party* may refer a dispute to arbitration at any time following the time periods for negotiation between the *Parties* set out in Subsections 22.1(1)(a) and 22.1(1)(b) above by delivering to the other *Party* a *Notice* to arbitrate which shall include a brief description of the dispute to be arbitrated and a summary of the relief claimed. The number of arbitrators shall be one, the seat of arbitration shall be Calgary, Alberta and the language of the arbitration shall be English. Unless otherwise agreed between the *Parties*, the arbitration shall be conducted in accordance with the Arbitration Rules of the ADR Institute of Canada, Inc.
- (4) The *Party* commencing the arbitration shall include in the *Notice* to arbitrate the names of three individuals who are acceptable to it to serve as a sole arbitrator. Within 10 *Days* of the receipt of the *Notice* to arbitrate, the other *Party* shall give *Notice* that it accepts the appointment of one of the three individuals or shall name three other individuals who are acceptable to it to serve as sole arbitrator. If the *Parties* are unable to agree upon a sole arbitrator within a further 10 *Days*, either *Party* may apply to the ADR Institute of Canada, Inc. to have the appointment of a sole arbitrator made in accordance with that institution's rules and procedures.
- (5) Either *Party* may refer a matter set out in section 19 of the *Prompt Payment and Adjudication Regulation* made pursuant to the *Prompt Payment and Construction Lien Act* to adjudication pursuant to Part 5 of the *Prompt Payment and Construction Lien Act* at any time. The *Parties* agree that:
 - (a) no other matter may be referred to adjudication;
 - (b) pursuant to section 33.6(5) of the *Prompt Payment and Construction Lien Act*, a determination of an adjudicator with respect to this *Agreement* shall not be binding on the *Parties* as this *Agreement* constitutes a written agreement to appoint an arbitrator under the *Arbitration Act*; and
 - (c) a determination by an adjudicator shall not limit either *Party's* rights to refer a dispute to arbitration in accordance with this Section 22.1.

22.2 Applicable Law

- (1) The *Agreement* will be governed by and interpreted in accordance with the laws in force in the Province of Alberta. No action at law or in equity may be commenced or continued on any matter arising out of or connected with the *Agreement* in any court other than a court of competent

jurisdiction in the Province of Alberta or on appeal to the Federal Court of Appeal or Supreme Court of Canada from the appropriate court in the Province of Alberta.

22.3 Assignment

- (1) The *Contractor* must not assign the *Agreement* or any portion of it without the written consent of *The City*, which consent *The City* may withhold in its sole discretion.

22.4 Amendment and Waiver

- (1) No amendment of the *Agreement* is effective unless made in writing and signed by a duly authorized representative of each of *The City* and the *Contractor*. No waiver of any *Term* or condition of the *Agreement* is effective unless made in writing, and any such waiver has effect only in respect of the particular *Term* or condition stated in the waiver. No representation by either of the *Parties* with respect to the performance of any obligation under the *Agreement* is capable of giving rise to a claim of estoppel unless the representation is made in writing.

22.5 Additional Assurances

- (1) *The City* and the *Contractor* each agree, from time to time, to undertake all acts and provide further assurances and instruments as may reasonably be required to perform the terms and conditions of the *Agreement* in accordance with its spirit and intent.

22.6 Limitation Periods

- (1) The *Parties* agree that the two year limitation period set out in the Limitations Act, R.S.A. 2000, c. L- 12 will be extended for an additional period of two years for any causes of action, proceedings, or claims arising from the subject matter of this *Agreement*.

22.7 Counterparts

- (1) This *Agreement* may be executed in counterparts, in which case, the counterparts together will constitute one *Agreement*, and communication of execution by electronic transmission will constitute good delivery.

22.8 Entire Agreement

- (1) This *Agreement* is the entire *Agreement* between *The City* and the *Contractor* regarding the subject matter of the *Agreement*, and supersedes any previous *Agreements*, discussions, negotiations, and understandings. There are no *Agreements*, representations, warranties, terms, conditions, or commitments regarding the subject matter of the *Agreement* except as expressed in the *Agreement*.

22.9 Currency

- (1) In the *Agreement*, any reference to dollar amounts are in Canadian currency and any amount advanced, paid, or calculated is to be advanced, paid, or calculated in Canadian currency, unless otherwise specified in the *Special Conditions* or approved in writing by *The City*.

22.10 No Agency, Joint Venture, Partnership, Lease or Loan, Employment

- (1) The *Agreement* is not intended to and does not:
 - (a) create any relationship of agency;
 - (b) constitute or create any joint venture;
 - (c) constitute or create any partnership;
 - (d) constitute the relationship of landlord and tenant;
 - (e) constitute the relationship of lender and borrower; or
 - (f) constitute the relationship of employer and employee.
- (2) The *Parties* will not allege or assert for any purpose that the *Agreement* constitutes or creates a relationship of agency, joint venture, partnership, landlord and tenant, lender and borrower, or employer and employee.

[Appendices A, B-1, B-2 and C attached]

APPENDIX A

FORM OF CONTRACTOR STATUTORY DECLARATION – SUBMITTED FOR PAYMENT (X 700)

Version 5.0 (2022 Sept 28)

CONTRACTOR STATUTORY DECLARATION – SUBMITTED FOR PAYMENT

Pursuant to the *Standard General Conditions, Subsection 10.2(4)(g)*

Payment Number: Enter payment sequence number

Provided by the *Contractor* in support of (check appropriate box):

- the second or subsequent *Consolidated Period Payment*; or
- the release of the *Builders' Lien Fund* or other holdbacks.

Purchase Order Number:	Enter correct PO number
Date of application for payment:	Click to enter date
Date of last (immediately preceding) application for payment for which payment has been received:	Click to enter date
<i>All dates must be written year month day</i>	

IDENTIFICATION OF AGREEMENT

Project Title: Enter full project title	
RFx Number: Enter RFx number or reference number for Under Threshold	
Agreement effective date (year month day): Click to enter date	
City Representative: Enter City Representative name	Contractor:. Enter Contractor Company Name

IDENTIFICATION OF DECLARANT (MUST BE AN AUTHORIZED REPRESENTATIVE OF THE CONTRACTOR)

Name of Declarant: Enter name of Contractor Declarant	Position/Title (office held with the <i>Contractor</i>): Enter position or title
Business Address: Enter the full business address	

DECLARATION OF CONTRACTOR'S REPRESENTATIVE:

I solemnly declare that, as of the date of this Statutory Declaration, I am an authorized signing officer of the *Contractor* named in the *Agreement* identified above, and as such have legal authority to bind the *Contractor*, and have personal knowledge that all insurance premiums, accounts payable for subcontracts and related *Total Costs of Material and Labour* which have been incurred by the *Contractor* in performance of the *Work* pursuant to the *Agreement*, have been paid in full up to and including the latest *Construction Period Payment* received, as identified above, except for:

- 1) *Builders' Lien Fund* monies, or
- 2) amounts withheld by reason of a dispute in accordance with applicable legislation which has been identified to the relevant *Party* or *Parties* and from whom payment has been withheld as identified below:
Enter amounts withheld and the reason

I make this solemn statutory declaration conscientiously believing it to be true, and knowing that it is of the same legal force and effect as if made under oath.

The making of a false or fraudulent statutory declaration is a contravention of the Criminal Code of Canada and carries, upon conviction, penalties including fines or imprisonment, or both.

Signature of Declarant – Authorized Representative of the <i>Contractor</i> Declared before me at _____ in the Province of _____ dated _____	Signature of Notary Public or Commissioner for Oaths in and for Alberta _____ Print Name _____ Expiry Date of Commission
---	--

Note: All italicized terms and expressions used on this Contractor Statutory Declaration – Submitted for Payment are defined in The City of Calgary's most recent *Standard General Conditions*. If there is a conflict in the defined terms, the meanings as ascribed in the *Agreement* shall prevail.

APPENDIX A

FORM OF CONTRACTOR STATUTORY DECLARATION – SUBMITTED FOR PAYMENT (X 700)

Version 5.0 (2022 Sept 28)

Statutory Declaration – Form Instructions

1. This form is required pursuant to the Agreement.
2. The most current version of the form is to be used. Check with your City Representative to confirm you have the most current version if you are not certain you do.
3. The Declarant needs to have personal knowledge of the facts and must be authorized to execute this form on behalf of the Contractor.
4. Indicate whether the form is provided in support of a Consolidated Period Payment or for the release of the Builders' Lien Fund by checking the appropriate box at the top of the form.
5. Take care to complete and submit the form properly and check with your City Representative if you have any questions as improperly completed Statutory Declarations could delay payment.

COPY

APPENDIX B-1
FORM OF CHANGE ORDER – CASH ALLOWANCE or CONTINGENCY ALLOWANCE (X 701)

CHANGE ORDER – CASH ALLOWANCE OR CONTINGENCY ALLOWANCE Version 4.3 (2020 June 23)

DATE ISSUED:	CHANGE ORDER NUMBER:
CITY BUSINESS UNIT:	PROJECT TITLE:
CITY REPRESENTATIVE:	PURCHASE ORDER NUMBER:
DESIGN PROFESSIONAL (if applicable):	RFx NUMBER:
CONTRACTOR:	CHANGE INITIATED BY:

CITY FILE NUMBER (optional):

CASH ALLOWANCE CONTINGENCY ALLOWANCE

1. This *Change Order* is issued pursuant to the *Agreement* entered into between *The City* and the *Contractor*. The terms used in this *Change Order* are defined in the *Standard General Conditions* and have the same meanings as ascribed to those terms in the *Agreement*.
2. This *Change Order* is a written instruction from *The City* to the *Contractor* to perform the *Change* described herein and in accordance with any attached *Drawings* or *Technical Specifications*, or both, and the *Contractor's* acknowledgement that it will perform the *Change* with the corresponding adjustment to the *Project Price*, if any, **only as may be approved by executed *Change Order***.
3. The adjustments set out below include all *Total Cost of Materials and Labour*, *Overhead Costs* and profit. The *Contractor* will receive payment for the *Change* only in accordance with this *Change Order* and the *Agreement*.
4. All other terms, covenants and conditions of the *Agreement*, except as amended by this *Change Order*, remain in full legal force and effect.
5. ***Standard General Conditions*, Article 9.1(1), states that *Change Orders* must be completed on this standard form. Any *Change Order* issued on an alternative form will not be approved and authorized by the *City Representative*.**

PO Line No.	Change Description	Extra/Credit
	Total of Extras and Credits	\$

**APPENDIX B-1
FORM OF CHANGE ORDER – CASH ALLOWANCE or CONTINGENCY ALLOWANCE (X 701)**

SUMMARY OF CHANGES (all values exclude GST)		
Base Price Summary		
Original Base Price Subtotal	1	\$
Authorized Base Price Subtotal to date (refer to last X 702)	12	\$
Cash Allowance Summary		
Original <i>Cash Allowance</i>	5	\$
Authorized <i>Cash Allowance</i> to date (refer to last X 702)	13	\$
<i>Cash Allowance</i> Expenditures to date (excluding this <i>Change Order</i>)	14	\$
<i>Cash Allowance</i> Expenditures this <i>Change Order</i>	15	\$
REVISED CASH ALLOWANCE BALANCE REMAINING	16	\$
Contingency Allowance Summary		
Original <i>Contingency Allowance</i>	7	\$
Authorized <i>Contingency Allowance</i> to date (refer to last X 702)	17	\$
<i>Contingency Allowance</i> Expenditures to date (excluding this <i>Change Order</i>)	18	\$
<i>Contingency Allowance</i> Expenditures this <i>Change Order</i>	19	\$
REVISED CONTINGENCY ALLOWANCE BALANCE REMAINING	20	\$
AUTHORIZATION		
CONTRACTOR'S AUTHORIZED REPRESENTATIVE		
_____	_____	_____
PRINT NAME	SIGNATURE	DATE
RECOMMENDED BY THE CITY'S DESIGN PROFESSIONAL (if applicable)		
_____	_____	_____
PRINT NAME	SIGNATURE	DATE
CITY REPRESENTATIVE		
_____	_____	_____
PRINT NAME	SIGNATURE	DATE
<small>Note: All italicized terms and expressions used on this Form X 701 are defined in The City of Calgary's most recent <i>Standard General Conditions</i>. In the event that there is a conflict in the defined terms, the meanings as ascribed in the <i>Agreement</i> shall prevail.</small>		
ORIGINAL: Business Unit File COPY TO: <i>Contractor</i>		

APPENDIX B-1
FORM OF CHANGE ORDER – CASH ALLOWANCE or CONTINGENCY ALLOWANCE (X 701)

Change Order – Cash Allowance or Contingency Allowance – Form Instructions

Completing the Change Order:


1. *Change Orders* shall be used for **either** a *Cash Allowance* or *Contingency Allowance* expenditure.
2. For changes to the *Cash Allowance* or *Contingency Allowance* only the *Contractor's Authorized Representative* and *City Representative* signatures are required. Some Business Units may elect to have this form signed by their *Design Professional*; verify with your Business Unit if a signature by *The City's Design Professional* is required.
3. Include any relevant documentation to detail the work authorization breakdown regarding the change to the *Cash Allowance* or *Contingency Allowance*.
4. No schedule adjustment is to be made as part of this change. Any change that requires a schedule adjustment or an increase to the *Agreement* (PO) is considered an *Agreement Change* and requires an X 702 to be filled out.

COPY

**APPENDIX B-2
FORM OF AGREEMENT CHANGE ORDER (X 702)**

AGREEMENT CHANGE ORDER

Version 4.1 (2020 Feb 1)

	CHANGE ORDER		CHANGE ORDER NUMBER	
	TYPE:			
DATE INITIATED:		CONTRACTOR:		
CHANGE INITIATED BY:	TENDER / RFP NUMBER:	CITY REPRESENTATIVE:		
PO NUMBER:	CITY FILE NUMBER:	PROJECT TITLE:		
<p>6. This <i>Change Order</i> is issued pursuant to the <i>Agreement</i> entered into between <i>The City</i> and the <i>Contractor</i> and amends the <i>Agreement</i> in accordance with the terms and conditions described below and as may be set out in detail in any attached or amended <i>Drawings</i> or <i>Technical Specifications</i>, or both. The terms used in this <i>Change Order</i> and defined in the <i>Agreement</i> have the same meanings as ascribed to those terms in the <i>Agreement</i>.</p> <p>7. This <i>Change Order</i> is a written instruction from <i>The City</i> to the <i>Contractor</i> to perform the <i>Change</i> described in this <i>Change Order</i> and the <i>Contractor's</i> acknowledgement that it will perform the <i>Change</i> with the corresponding adjustment to the <i>Project Price</i> and <i>Project Schedule</i>, if any, only as may be approved in this <i>Change Order</i>.</p> <p>8. The adjustments constitute the only approval for the <i>Change</i> and the adjustments include all <i>Total Cost of Materials and Labour</i>, <i>Overhead Costs</i>, profit, additional bonding (if required) and additional insurance (if required) as described in the <i>Agreement</i>. The <i>Contractor</i> will receive payment for the <i>Change</i> only in accordance with this <i>Change Order</i> and the <i>Agreement</i>.</p> <p>9. All other terms, covenants and conditions of the <i>Agreement</i>, except as amended by this <i>Change Order</i>, remain in full force and effect.</p> <p>10. <i>Standard General Condition</i> Section 9.1(1) states that <i>Change Orders</i> must be completed on this standard Form of Change Order. Any <i>Change Order</i> issued on an alternative form of <i>Change Order</i> will not be approved and authorized by <i>The City</i>.</p>				
<input type="checkbox"/> Purchase Order Increase: Buyer's Notes		<input type="checkbox"/> Purchase Order Decrease: Buyer's Notes		
Line	Description	Extra	Credit	
1.	<i>Performance Security (if required):</i>	\$	\$	
2.	<i>Insurance (if required):</i>	\$	\$	
3.	<i>Total Work Authorization (details on X 704 or describe change/reason for Change Order, and related costs):</i>	\$	\$	
Total of Extras and Credits		\$		
<input type="checkbox"/> Check box if X 704 Change Order Supplemental Details Sheet is attached (optional attachment).				
PURCHASE ORDER ADJUSTMENT		PROJECT SCHEDULE ADJUSTMENT		
Original Purchase Order amount	\$	Original <i>Scheduled Operational Date</i>		
Adjustments to original Purchase Order (to date)	\$	Adjustments to <i>Scheduled Operational Date</i>		
Adjustments to original Purchase Order by this <i>Change Order</i>	\$			
All amounts exclude GST ADJUSTMENT PURCHASE ORDER	\$	NEW SCHEDULED OPERATIONAL DATE		
AUTHORIZATION				
SIGNATURE OF CONTRACTOR'S AUTHORIZED REPRESENTATIVE:	PRINT NAME:	SIGNATURE OF CITY REPRESENTATIVE:	PRINT NAME:	
	DATE:		DATE:	
SIGNATURE OF DESIGN PROFESSIONAL (Choose One):	PRINT NAME:	SIGNATURE OF DEPT ID OWNER:	PRINT NAME:	
	DATE:		DATE:	
SIGNATURE OF THE DIRECTOR, SUPPLY, OR AUTHORIZED REPRESENTATIVE:	PRINT NAME:			
	DATE:			
ORIGINAL: Supply Management COPY TO: City Representative, Contractor, Law Department – Paralegal, Corporate Services # 8053				

**APPENDIX C
FORM OF CHANGE DIRECTIVE (X 703)**

CHANGE DIRECTIVE

Version 4.1 (2020 Feb 01)

DATE ISSUED:	CHANGE DIRECTIVE NUMBER:						
CITY BUSINESS UNIT:	PROJECT TITLE:						
CITY REPRESENTATIVE:	PURCHASE ORDER NUMBER:						
DESIGN PROFESSIONAL (if applicable):	RFx NUMBER:						
CONTRACTOR:	CHANGE INITIATED BY:						
CITY FILE NUMBER (optional):							
<p>6. This <i>Change Directive</i> is issued pursuant to the <i>Agreement</i> entered into between <i>The City</i> and the <i>Contractor</i>. The terms used in this <i>Change Directive</i> have the same meanings as ascribed to those terms in <i>The City's Standard General Conditions</i>.</p> <p>7. This <i>Change Directive</i> is a written instruction from <i>The City</i> to the <i>Contractor</i> to perform the <i>Change</i> described in this <i>Change Directive</i> notwithstanding that a <i>Change Order</i> has not been issued/nor executed.</p> <p>8. The <i>Contractor</i> will proceed promptly with the <i>Change</i> and maintain all <i>Records</i> related to the cost of the <i>Change</i>. All such <i>Records</i> only constitute a record of the <i>Change</i> and do not create any entitlement for payment. The <i>Contractor</i> will receive payment for the <i>Change</i> in accordance with the <i>Agreement</i> by way of a <i>Change Order</i>.</p> <p>9. This <i>Change Directive</i> is the only form that may be used to issue a <i>Change Directive</i>. Any <i>Change Directive</i> issued on an alternative form will not constitute <i>The City's</i> authority to carry out the <i>Change</i> described therein.</p>							
DIRECTIVE:							
<p>COST METHOD APPROVED FOR CHANGE: (See Article 9.3 of the Standard General Conditions)</p> <table style="width:100%; border:none;"> <tr> <td style="width:50%; padding: 2px;">Cost Method A (Lump Sum)</td> <td style="width:50%; padding: 2px;">Cost Method B (Unit Price)</td> </tr> <tr> <td style="padding: 2px;">Cost Method C (Force Account Rates)</td> <td style="padding: 2px;">Cost Method D (Net Cost Plus)</td> </tr> <tr> <td style="padding: 2px;">Cost Method E (Special Conditions)</td> <td></td> </tr> </table>		Cost Method A (Lump Sum)	Cost Method B (Unit Price)	Cost Method C (Force Account Rates)	Cost Method D (Net Cost Plus)	Cost Method E (Special Conditions)	
Cost Method A (Lump Sum)	Cost Method B (Unit Price)						
Cost Method C (Force Account Rates)	Cost Method D (Net Cost Plus)						
Cost Method E (Special Conditions)							
PO Line	Change Directive Description						
CHANGE DIRECTIVE AUTHORIZATION							
RECOMMENDED BY THE CITY'S DESIGN PROFESSIONAL (if applicable)							
CITY REPRESENTATIVE	<table style="width:100%; border:none;"> <tr> <td style="border-top: 1px solid black; width: 33%;"></td> <td style="border-top: 1px solid black; width: 33%;"></td> <td style="border-top: 1px solid black; width: 33%;"></td> </tr> <tr> <td style="text-align: center; font-size: small;">PRINT NAME</td> <td style="text-align: center; font-size: small;">SIGNATURE</td> <td style="text-align: center; font-size: small;">DATE</td> </tr> </table>				PRINT NAME	SIGNATURE	DATE
PRINT NAME	SIGNATURE	DATE					
CITY REPRESENTATIVE	<table style="width:100%; border:none;"> <tr> <td style="border-top: 1px solid black; width: 33%;"></td> <td style="border-top: 1px solid black; width: 33%;"></td> <td style="border-top: 1px solid black; width: 33%;"></td> </tr> <tr> <td style="text-align: center; font-size: small;">PRINT NAME</td> <td style="text-align: center; font-size: small;">SIGNATURE</td> <td style="text-align: center; font-size: small;">DATE</td> </tr> </table>				PRINT NAME	SIGNATURE	DATE
PRINT NAME	SIGNATURE	DATE					
<p>Note: All italicized terms and expressions used on this Form X 703 are defined in The City of Calgary's most recent <i>Standard General Conditions</i>. In the event that there is a conflict in the defined terms, the meanings as ascribed in the <i>Agreement</i> shall prevail.</p>							
<p>ORIGINAL: Business Unit File COPY TO: Contractor</p>							

APPENDIX C

FORM OF CHANGE DIRECTIVE (X 703)

Change Directive – Form Instructions**Completing the Change Directive:**

1. **Obtain the necessary authorizations.** For issuing a *Change Directive*, the *City Representative's* signature is required. The *Design Professional's* signature is not mandatory to process the *Change Directive*, but may be required as per Business Unit procedures.
2. **Identify any additional bond, insurance or statutory holdback requirements.** If the issued *Change Directive* results in a change to the *Agreement's* project budgeted amount, additional insurance, bonding and/or statutory holdbacks may be required.
3. **Identify supporting documentation.** Include any relevant *Agreement* drawings, technical specifications, budget approval documents, etc., and all supporting documentation regarding the *Change Directive*.

COPY

REVISION SCHEDULE

Date of Revision	Section Revised	Description of Revision
Date of Issue: 04 Jan 2017		
17 Aug 2017	1.1(73)	Revised definition of <i>Manager, Supply</i>
10 Feb 2017	2.3	Numbering revised (original missing "(d)")
17 Aug 2017	4.1(f)	Underline beneath semi-colon removed
17 Aug 2017	4.1(3)(b)	Numbering revised from (j)(k) to (i)(ii)
17 Aug 2017	4.1(3)(4)	Reference to subsection revised to 4.1(2)(i)
10 Feb 2017	7.3(4)	Spelling of "financial" corrected to "financial"
17 Aug 2017	9.3(2)	Italicize " <i>The City</i> " in the second and third sentence Added comma after "Alternatively" in third sentence
17 Aug 2017	Appendix B-1	Revised <i>Change Order – Cash Allowance and Contingency</i> (inserted copy)
17 Aug 2017	Appendix B-2	Revised <i>Change Order – Purchase Order Adjustment</i> (inserted copy)
17 Aug 2017	Appendix C	Revised <i>Change Directive</i> (inserted copy)
17 Sept 2018	1.1(29) and throughout SGCs	" <i>Construction Period Payment Certificate</i> " replaced with " <i>Construction Period Payment Notification</i> ".
17 Sept 2018	1.1(30)	Revised definition
17 Sept 2018	1.1(44.1)	New definition added
17 Sept 2018	1.1(69.1)	New definition added
17 Sept 2018	1.1(86) and 1.1(90(d))	Deleted
17 Sept 2018	1.1(93)	Revised definition
17 Sept 2018	1.1(127)	Revised definition
17 Sept 2018	4.7(3)	New subsection added
17 Sept 2018	6.5	Revised section
17 Sept 2018	7.1(1)	Revised subsection
17 Sept 2018	9.3(5)	Revised first table following the second paragraph
17 Sept 2018	10.2(5)(a)	Revised subsection
17 Sept 2018	10.6(3)	New subsection added
17 Sept 2018	11.2(5)	Revised subsection
17 Sept 2018	12.1(2)(l)(m) and (n)	New subsections added
17 Sept 2018	12.2(6)	New subsection added
17 Sept 2018	12.3	Revised section heading
17 Sept 2018	13.5	New subsection added
17 Sept 2018	20.2(1)	Revised subsection
17 Sept 2018	20.2(3)	Deleted
17 Sept 2018	20.2(4)	Revised subsection
17 Sept 2018	20.2(5)(o)	Revised subsection
17 Sept 2018	20.2(6)	Revised subsection
1 Dec 2021	1.1(35)	Revised definition
1 Dec 2021	1.1(69.1)	Revised name
1 Dec 2021	1.1(83)	Revised citation
1 Dec 2021	1.1(121.1)	New defined Term
1 Dec 2021	2.3(d)	Revised subsection

Date of Revision	Section Revised	Description of Revision
1 Dec 2021	4.1(1)	Revised subsection
1 Dec 2021	12.2(3), (4)	Revised subsections
1 Dec 2021	12.3(2), (3)	Revised subsections
1 Dec 2021	12.3(3.1)	New subsection
1 Dec 2021	20.1(2)	Revised subsection
1 Dec 2021	20.20(1)	Revised subsection
16 Sept 2022	Entire Document	Formatting updates (removed section breaks, insert / remove extra spaces, checked defined terms for consistency,
16 Sept 2022	Entire Document	References to Builders' Lien Act were changed to Prompt Payment and Construction Lien Act
16 Sept 2022	1.1 Definitions	Changes to definitions to comply with Prompt Payment and Construction Lien Act (PPCLA): <ul style="list-style-type: none"> Builder's Lien Act – deleted Builder's Lien Fund – changed Construction Period – changed Construction Period Payment Notification – deleted Draft Construction Period Invoice - new Holdback Bond – changed Lien Letter of Credit – changed Lien Period – new Notice of Dispute – new Prompt Payment and Construction Lien Act – new Proper Invoice – new Substantial Performance – changed Previous definition (87) Deleted - deleted
16 Sept 2022	3.1(1)(e)	Revised subsection (numbering corrected)
16 Sept 2022	10.2(1)	Revised subsection (remove reference to PO as it is included in 10.2(4))
16 Sept 2022	10.2(2)	Revised subsection (copies of invoices to City Representative)
16 Sept 2022	10.2(3)	Revised subsection (15 Business Days to submit invoice)
16 Sept 2022	10.2(4)	Revised subsection (indicates items required in invoices)
16 Sept 2022	10.2(5)	New subsection (requirements for proper invoice)
16 Sept 2022	10.2(8)	New subsection (requirement for draft invoice)
16 Sept 2022	10.2(9)	Revised subsection (timings – disputes within 14 days and payment within 28 days)
16 Sept 2022	10.2(10)	New subsection (payment does not indicate acceptance)
16 Sept 2022	10.2(11)	Revised subsection (supporting documentation for disputed invoices)
16 Sept 2022	10.2(12)	Revised subsection (notice for setoff)
16 Sept 2022	10.2(14)	New subsection (testing and commissioning)
16 Sept 2022	10.3.1(3)(a)i.	Revised subsection (requirement to provide electronic Certificate of Substantial Performance as well as posted at site)
16 Sept 2022	10.3.1(3)(a)ii.	Revised subsection (number of days removed and refers to Lien Period definition which references PPCLA)
16 Sept 2022	10.3.1(3)(a)v.	Revised subsection (expiry of lien period)
16 Sept 2022	10.3.1(3)(a)viii.	Revised subsection (updated ref to PPCLA)
16 Sept 2022	10.3.1(4)(a)	Revised subsection (requirement to provide electronic Certificate of Substantial Performance as well as posted at site)

Date of Revision	Section Revised	Description of Revision
16 Sept 2022	10.3.1(4)(b)	Revised subsection (number of days removed and refers to Lien Period definition which references PPCLA)
16 Sept 2022	10.3.1(4)(e)	Revised subsection (expiry of lien period)
16 Sept 2022	10.3.1(4)(i)	Revised subsection (ref to PPCLA)
16 Sept 2022	10.3.1(7)(b)	Revised subsection (ref to PPCLA)
16 Sept 2022	10.3.1(10)	New subsection (annual release if price exceeds \$10,000,000 and related conditions)
16 Sept 2022	10.3.2(2)	Revised subsection (credit / bond validity changed to 75 days)
16 Sept 2022	10.5(1)	Revised subsection (updated reference)
16 Sept 2022	10.10(2)	Revised subsection (updated reference)
16 Sept 2022	17.1(1)(f)	Revised subsection (ref to PPCLA)
16 Sept 2022	17.2(2)(b)	Revised subsection (ref to PPCLA)
16 Sept 2022	17.1(2)	Revised subsection (ref to PPCLA)
16 Sept 2022	17.1(4)(a)	Revised subsection (ref to PPCLA)
16 Sept 2022	17.2(2)(b)	Revised subsection (ref to PPCLA)
16 Sept 2022	17.6(1)	Revised subsection (ref to PPCLA)
16 Sept 2022	17.7	Revised subsection (ref to PPCLA)
16 Sept 2022	22.1(3),(4),(5)	New subsections (arbitration)
16 Sept 2022	Appendix A	Revised (updated form inserted)
16 Sept 2022	Appendix B-1	Revised (most current form inserted)
16 Sept 2022	Appendix B-2	Revised (most current form inserted)
16 Sept 2022	Appendix C	Revised (most current form inserted)