

construction practice, coordinate the Work with the other work and connect to other work as specified or shown in the Contract Documents.

- (b) If the sending of other contractors, workers or the City's own forces onto the Site results in a delay in the performance of the Work, which could not have been reasonably foreseen or anticipated by the Contractor when executing the Articles of Agreement, the Contractor may make a claim therefore in accordance with GC 6.2 and 9.1.
- (c) If the Contractor discovers any deficiencies in any other work which might affect the Work, the Contractor shall immediately report such deficiencies to the Engineer and then confirm such report in writing.

3.10 Use of the Site

- (a) The Contractor shall make every effort to confine the Contractor's equipment and plant, storage of materials and operations to limits indicated by the Contract Documents, by a specific direction of the Engineer or by Applicable Laws, and shall not unreasonably occupy the Site. Where the Contractor requires additional land for the erection of temporary facilities and storage of materials, including access to them, the Contractor shall arrange for such and assume all costs and liabilities arising therefrom.
- (b) The Contractor shall not load or permit to be loaded on any part of the Work, a weight or load or force that will endanger its safety or exceed the design loads.
- (c) The Contractor shall not interfere in any way with the work or scheduling of any other contractor, worker or employee of the City. Subject to GC 3.9(b), in order to avoid or minimize such interference, the City may in its absolute discretion, establish schedules or methods and shall notify the Contractor accordingly.

3.11 Survey

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

3.12 Protection of the Work, Property and the Public

- (a) The Contractor shall be responsible for protecting the Work, the City's property at the Site including the Contract Documents and any plant and material, including plant and material supplied by the City to the Contractor, against loss or damage from any cause but subject to GC 3.15(c). In particular, the Contractor shall take necessary precautions, at the Contractor's expense, to ensure that:

- (i) no person, adjacent property, right, easement or privilege is injured, damaged or infringed by reason of the Contractor's activities in performing the Work;
 - (ii) pedestrian and other traffic on any public or private road or waterway is not unduly impeded, interrupted or endangered by the performance or existence of the Work;
 - (iii) fire hazards in or about the Work or the Site are minimized;
 - (iv) adequate medical services are available to all persons employed on the Work at all times during the performance of the Work;
 - (v) adequate sanitation measures are taken in respect of the Work; and
 - (vi) all facilities necessary for the purpose of maintaining security are provided, and the Contractor shall assist any person authorized by the City to inspect or to take security measures on the Site.
- (b) The Engineer may order the Contractor to do such things and to perform such additional Work as the Engineer considers reasonable and necessary to ensure compliance with or to remedy a breach of GC 3.12(a) and the Contractor shall comply with the directions of the Engineer, at the Contractor's expense.

3.13 Permits

The Contractor shall procure and post at the Site all permits, certificates and licences required for the construction of the Work and shall be responsible for all fees in respect thereof.

3.14 Applicable Laws

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

3.15 Material and Plant Supplied by City

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

- (b) The Contractor shall not use any material, plant or real property placed in the Contractor's care, custody and control by the City, except for the purpose of performing the Work.
- (c) The Contractor is not liable to the City for any loss or damage to material, plant or real property if that loss or damage results from and is directly attributable to reasonable wear and tear.

3.16 Equipment, Plant and Material Supplied by Contractor

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

3.17 Workers' Compensation Act

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

- (c) If the City is required to pay any amount to the Workers' Compensation Board on behalf of the Contractor, or any Subcontractor, the City may deduct the amount from any amount owing to the Contractor under this or any other contract, or may demand a reimbursement by the Contractor to the City for the amount paid by the City.
- (d) If at any time the performance of the Work is stopped because the Contractor unreasonably fails or refuses to comply with a regulation or order issued pursuant to the *Workers Compensation Act*, R.S.N.W.T. 1988, c. W-6, as duplicated for Nunavut by s. 29 of the *Nunavut Act*, then such failure or refusal shall be considered a default under this Contract, and this Contract may be terminated at the City's option, in accordance with GC 10.3.

3.18 Occupational Health and Safety

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

3.19 Cutting and Patching

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

3.20 Defective Work

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

3.21 Testing and Inspection

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

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

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

3.22 Site Cleanliness

- (a) The Contractor shall maintain the Site in a tidy condition and free from the accumulation of waste material and debris, to the satisfaction of the Engineer.
- (b) Before the issuance of a certificate of Substantial Completion, the Contractor shall remove all the Contractor's plant and material not required for the remaining Work, and all waste material and other debris, and shall ensure that the Work and the Site are clean and suitable for occupancy or use by the City, unless otherwise directed by the Engineer.
- (c) Before the issuance of a certificate of Final Completion, the Contractor shall remove from the Site all the Contractor's plant and material and any waste material and other debris, to the satisfaction of the Engineer.
- (d) If the Contractor fails or refuses to remove all such plant, materials, equipment and waste within a reasonable time after achieving Final Completion then, on written notice from the Engineer to the Contractor specifying a reasonable time to remedy such failure or refusal, the City may do or cause to be done the removal and all reasonable resulting costs incurred by the City may be deducted from any amounts owing by the City to the Contractor.
- (e) The Contractor's obligations described above do not extend to waste material and other debris caused by the City's agents or other contractors.

3.23 Claims Against and Obligations of the Contractor

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

3.24 Patent Rights

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

3.25 Royalties

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

3.26 Records to be Kept by Contractor

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

3.27 Public Ceremonies and Signs

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

3.28 Non-Compliance by Contractor

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

4. ADMINISTRATION BY ENGINEER

4.1 Engineer's Duties and Authority

- (a) The Engineer will administer this Contract on behalf of the City as provided in the Contract Documents.
- (b) The Engineer will be the City's representative until the Work has been completed in accordance with the Contract Documents.

- (c) Except as expressly stated in the Contract Documents, the Engineer shall have no authority to relieve the Contractor of any of the Contractor's obligations under this Contract.
- (d) The Engineer will be the initial interpreter of the requirements of the Contract Documents and judge of the acceptability of the Work performed and shall deal with Claims as they arise, in accordance with GC 9.1.
- (e) If any error, inconsistency, or omission in the Contract Documents is discovered, the Engineer shall provide directions or clarifications to the Contractor.
- (f) During the progress of the Work, the Engineer shall have authority to reject Work that, in the Engineer's opinion, does not conform with the requirements of the Contract Documents, or to issue written additional instructions regarding the Work which may, in the opinion of the Engineer, be necessary to supplement or clarify the Contract Documents. Such additional instructions shall be consistent with the intent of the Contract Documents, shall not entitle the Contractor to an Adjustment and shall be binding upon and be carried out promptly by the Contractor.
- (g) Wherever, under this Contract, the Engineer is required to exercise discretion by:
 - (i) rendering a decision, opinion or consent;
 - (ii) expressing satisfaction or approval;
 - (iii) determining value; or
 - (iv) otherwise taking action which may affect the rights and obligations of the City or the Contractor,

the Engineer shall do so impartially, consistent with the terms of this Contract and having regard to all of the circumstances. Any such decision, opinion, consent, expression of satisfaction or approval, determination of value or action, may be opened up, reviewed or revised as provided in GC 9.

4.2 Observing the Work

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

4.3 Engineer's Decision

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

5. PAYMENT AND COMPLETION

5.1 Progress Payments

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

- (f) If for any reason the City disputes the net amount shown for payment on a progress certificate the City shall, within the time specified in this GC, pay to the Contractor any amount not disputed and also deliver to the Contractor and the Engineer written reasons for any deductions.

5.2 Contract Holdbacks

- (a) The City will retain Contract holdbacks in accordance with the following:
 - (i) ten percent from each progress payment made prior to the issuance of the first Holdback Payment Certificate by the Engineer (the "Lien Holdback"), and
 - (ii) five percent from any payments made to the Contractor following the issuance of the first Holdback Payment Certificate, other than from holdback payments.

5.3 Substantial Completion

- (a) When the Contractor considers the Work ready to be utilized for its intended purpose, the Contractor may apply in writing to the Engineer to issue a certificate of Substantial Completion. The Contractor shall prepare and submit with its application a comprehensive list of items to be completed or corrected, a statutory declaration as per GC 3.23(b) and particulars of, or a waiver of, all outstanding claims against the City, arising out of the Work. The Contractor shall proceed promptly to complete and correct the items on the list. Failure to include an item on this list does not alter the Contractor's responsibility to complete the Work in accordance with the Contract Documents.
- (b) Following the receipt of an application from the Contractor for a certificate of Substantial Completion, the Engineer shall, with reasonable promptness, make an inspection and assessment of the Work. Within seven days of the inspection, the Engineer shall notify the Contractor of his approval, or reasons for, disapproval of the application. If the Engineer determines that the Work is substantially completed, he shall issue a certificate of Substantial Completion to the City and the Contractor. A list of items to be completed or rectified shall accompany the certificate. If the Engineer does not consider the Work to be substantially completed, he shall notify the Contractor in writing of the reasons why and list the items to be completed or rectified, of which the Engineer is aware.
- (c) The City may deduct from the Contract Price, or any amounts due to the Contractor, the costs associated with the Engineer being called upon to perform more than one inspection for the purpose of determining Substantial Completion, when in the opinion of the Engineer, the Work was clearly not yet substantially complete.

- (d) The certificate of Substantial Completion shall establish the date of Substantial Completion and shall fix the time within which the Contractor shall complete or correct all items on the list accompanying the certificate. Warranties required by the Contract Documents shall commence on the date of Substantial Completion, unless otherwise provided, in the certificate of Substantial Completion.
- (e) Similarly, in accordance with the procedure set out above, the Engineer may in its absolute discretion, issue a certificate of Substantial Completion in respect of any part of the Work which has been both completed to the satisfaction of the Engineer and which the City has elected to occupy or use prior to completion.
- (f) In addition to other holdbacks as provided by the Contract Documents, when considering Substantial Completion, the City may hold back from payments otherwise due to the Contractor the amount that is two times of the amount of a reasonable estimate, as determined by the Engineer, on account of deficient or defective Work already paid for. This holdback may be held, without interest, until such deficiency or defect is remedied. The items of defect or deficiency and the amounts of related holdback shall be listed separately on the payment certificate.

5.4 Final Completion

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

- (c) Receipt by the Contractor of the certificate of Final Completion shall entitle the Contractor to payment in accordance with GC 5.5.

5.5 Final Progress Payment

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

5.6 Holdback Release

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

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

5.7 Delay in Making Payment

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

5.8 Right of Set-off

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

6. TIME AND DELAYS

6.1 Time of the Essence

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

6.2 Delays

- (a) Where a delay occurs in the progress of the Work and:
 - (i) the delay is attributable to or within the control of the Contractor or its Subcontractors, or was reasonably foreseeable by them at the time this Contract was entered into, the Completion Date will not be adjusted. The Contractor will be liable to the City for all costs and expenses incurred by the City, as well as for any losses resulting from the City's inability to utilize the Work for its intended purpose resulting from the delay, and the City may deduct such costs from payments owing to the Contractor under this Contract;
 - (ii) the delay is due to an act or neglect by the City, the Engineer, or other contractor, or of an employee of any of them, then the Contractor may make a Claim therefore, in accordance with GC 9.1, or