

- (q) Unless the context otherwise requires, wherever used herein the plural includes the singular, the singular includes the plural, and each of the masculine, feminine and neuter genders include all other genders.
- (r) Unless otherwise provided in this Contract, all accounting and financial terms used in this Contract shall be interpreted and applied in accordance with Canadian generally accepted accounting principles, consistently applied from one period to the next.
- (s) References containing terms such as:
  - (i) “hereof,” “herein,” “hereto,” “hereinafter,” and other terms of like import are not limited in applicability to the specific provision within which such references are set forth but instead refer to this Contract taken as a whole; and
  - (ii) “includes” and “including”, whether or not used with the words “without limitation” or “but not limited to”, shall not be deemed limited by the specific enumeration of items but shall in all cases be deemed to be without limitation and construed and interpreted to mean “includes without limitation” and “including without limitation”;
- (t) Whenever the terms “will” or “shall” are used in this Contract in relation to the Contractor they shall be construed and interpreted as synonymous and to read “the Contractor shall”.

### 1.3 Notices

- (a) Where a notice is required by the Contract Documents to be given in writing to the Contractor, it may be delivered personally to the Contractor or his site superintendent, or delivered or sent by mail or facsimile transmission to the Contractor’s address set out in the Articles of Agreement or to his office at or near the Site.
- (b) Where a notice is required by the Contract Documents to be given in writing to the Engineer, it may be delivered personally, or delivered or sent by mail or facsimile transmission to the Engineer’s address set out in the Articles of Agreement, or to the office of the Engineer at or near the Site.
- (c) Notwithstanding the foregoing provisions of this GC 1.3, each party shall use the most expeditious method of giving the written notice or communication.
- (d) A written notice or communication sent by mail shall be deemed to have been received ten days from the date of posting. Whenever a notice or communication is sent by facsimile transmission, acknowledgement from the receiving party must be given to the other party that the notice or communication has in fact been received, for it to be effective; this acknowledgement may be made verbally, in person or by telephone. If no such acknowledgement is given, it shall be deemed to have been received and be effective ten days from the date the original document was sent.

#### **1.4 Rights and Remedies**

- (a) No obligations or responsibilities of any kind by or on behalf of the City shall be implied into the Contract Documents if in the opinion of the Engineer, it is not reasonable under the circumstances to imply that such obligations or responsibilities form part of the Contract Documents.
- (b) Any failure by the City or the Engineer to enforce or to require the strict performance of any of the provisions of this Contract shall not, in any way constitute a waiver of those provisions and affect or impair those provisions or any right the City has at any time to avail itself of any remedies the City may have for any breach of these provisions or to require the Work to be performed in accordance with the Contract Documents.
- (c) Except as expressly provided in the Contract Documents, the duties and obligations imposed by the Contract Documents and the rights and remedies available thereunder shall be in addition to and not a limitation of any duties, obligations, rights and remedies otherwise imposed or available by law.

#### **1.5 Assignment**

This Contract, or any part of it, or any benefit or interest in it, shall not be assigned by either party without the prior written consent of the other party, which consent shall not be unreasonably withheld. Notwithstanding the foregoing, the City has the right, in the event of any default by the Contractor, to assign all its rights and remedies against the Contractor to the Government of Nunavut.

#### **1.6 Applicable Law**

This Contract shall be deemed to have been made in Nunavut and shall be governed by and interpreted in accordance with the laws of Nunavut and the laws of Canada applicable therein.

#### **1.7 Successors and Assigns**

This Contract shall ensure to the benefit of and be binding upon the parties hereto and their lawful heirs, executors, administrators, successors and assigns.

### **2. CITY'S OBLIGATIONS**

#### **2.1 Payment**

Subject to any other provision in the Contract Documents, the City shall make payments to the Contractor at the times and in the manner set out in GC 5.

## **2.2 Site Availability**

- (a) The City shall furnish, as indicated in the Contract Documents, the lands upon which the Work is to be performed, rights-of-way and easements for access to the Site and any other lands designated for the use of the Contractor. The Contractor shall provide and pay for any additional lands and access the Contractor may require, in accordance with GC 3.10(a).
- (b) Except for permits and fees which are the responsibility of the Contractor under GC 3.13, the City shall obtain and pay for necessary approvals, easements and charges required for the development of the Site and for the use or occupancy of permanent structures or for permanent changes in existing facilities.

## **2.3 Engineer as Representative**

- (a) Unless otherwise provided in the Contract Documents, the City shall communicate with the Contractor through the Engineer, and the Contractor shall communicate with the City through the Engineer.
- (b) If the contract with the Engineer is terminated, the City shall promptly appoint a replacement.

## **2.4 Reference Points**

The City shall establish physical reference points for construction on the Site which are, in the opinion of the Engineer, necessary to enable the Contractor to proceed with the Work. The Contractor shall safeguard such reference points in accordance with GC 3.11(b).

## **2.5 Materials Supplied by the City**

Any materials, instructions, information or services required to be supplied by the City under this Contract shall be furnished with reasonable promptness to avoid delay in the orderly progress of the Work.

## **2.6 Control of the Work**

Neither the City nor the Engineer shall supervise or have control or authority over, nor be responsible for, the Contractor's means, methods, techniques or procedures of construction. Neither the City nor the Engineer will be responsible for the Contractor's failure to perform the Work in accordance with the Contract Documents, nor for its failure to comply with Applicable Laws.

## **2.7 Limitation of Liability**

In no event, including without limitation if the City breaches its obligations under this Contract, shall the City be liable to the Contractor, its Subcontractors, subsubcontractors or any other parties engaged directly or indirectly by or acting on their behalf, for indirect loss, consequential loss, loss of business opportunity or loss of anticipated profit.

### **3. CONTRACTOR'S OBLIGATIONS**

#### **3.1 General Obligation**

Notwithstanding any omissions from the Contractor's tender, the Contractor is required to perform all of the Work required by the Contract Documents, including any Work which can be reasonably inferred from them as being necessary to produce the intended result. The Contractor is to perform the Work within the Contract Time, in accordance with the Construction Schedule referred to in GC 3.6.

#### **3.2 Independent Contractor**

The Contractor is an independent contractor and shall have complete control of the Work. The Contractor shall effectively direct and supervise the Work to ensure conformance with the Contract Documents. The Contractor shall be solely responsible for all construction means, methods, techniques, sequences and procedures and for coordinating all parts of the Work, except as may be otherwise specified in the Contract Documents.

Nothing in this Contract shall be construed to mean that the Contractor is an employee, agent or other representative of the City.

#### **3.3 Review of Contract Documents**

- (a) By executing this Contract, the Contractor represents that the Contractor has reviewed the Contract Documents and has verified the dimensions, quantities and details described in them. Failure to discover or correct errors, omissions, conflicts or discrepancies which ought to have been discovered by such a review shall not relieve the Contractor from full responsibility for unsatisfactory Work, faulty construction or improper operations resulting therefrom, nor from rectifying such conditions at the Contractor's expense.
- (b) If the Contractor proceeds with the Work in the face of an error, inconsistency or omission that the Contractor discovered, or that a competent Contractor reasonably experienced in the Work would have discovered, without additional instructions from the Engineer, then the Contractor shall at the Contractor's cost remove or replace any incorrectly constructed Work.

#### **3.4 Site Conditions**

- (a) By executing this Contract, the Contractor represents that the Contractor is familiar with the conditions under which the Work is to be performed. The Contractor further represents that the Contractor understands the requirements of the Contract Documents and what effects the Site conditions will have on the Work. The Contractor's failure to visit the Site will not excuse the Contractor from the responsibility which otherwise would have been assumed, had the Contractor visited the Site.

- (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 be 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