

and been part of the Plans and Specifications.

- 29.3 The Engineer shall determine whether or not anything done or omitted by the Contractor pursuant to an order, dispensation or change referred to in GC29.1 increased or decreased the cost of the work to the Contractor.
- 29.4 If the Engineer determines pursuant to GC29.3 that the cost of the work to the Contractor has been increased, the Owner shall pay the Contractor the increased cost of the labour, plant and material that he necessarily incurred calculated in accordance with GC46 to GC49.
- 29.5 If the Engineer determines pursuant to GC29.3 that the cost of the work to the Contractor has been decreased, the Owner may reduce the amount payable to the Contractor under the contract by an amount equal to the decrease in the cost of the labour, plant and material that was incurred calculated in accordance with GC46 to GC49.
- 29.6 An order, dispensation or change referred to in GC29.1 shall be in writing, signed by the Engineer and given to the Contractor in accordance with GC10.

### **GC30 INTERPRETATION OF CONTRACT BY ENGINEER**

- 30.1 If, at any time before the Engineer has issued a Final Certificate of Completion referred to in GC43.1, any question arises between the parties about whether anything has been done as required by the contract or about what the Contractor is required by the contract to do, and, in particular but without limiting the generality of the foregoing, about
- 30.1.1 the meaning of anything in the Plans and Specifications,
  - 30.1.2 the meaning to be given to the Plans and Specifications in case of any error therein, omission therefrom, or obscurity or discrepancy in their wording or intention,
  - 30.1.3 whether or not the quality or quantity of any material or workmanship supplied or proposed to be supplied by the Contractor meets the requirements of the contract,
  - 30.1.4 whether or not the labour, plant or material provided by the Contractor for performing the work and carrying out the contract are adequate to ensure that the work will be performed in accordance with the contract and that the contract will be carried out in accordance with its terms,
  - 30.1.5 what quantity of any kind of work has been completed by the Contractor, or
  - 30.1.6 the timing and scheduling of the various phases of the performance of the work,
- the question shall be decided by the Engineer whose decision shall be final and conclusive in respect of the work.

- 30.2 The Contractor shall perform the work in accordance with any decisions of the Engineer that are made under GC30.1 and in accordance with any consequential directions given by the Engineer.

### **GC31 WARRANTY AND RECTIFICATION OF DEFECTS IN WORK**

- 31.1 Without restricting any warranty or guarantee implied or imposed by law or contained in the contract documents, the Contractor shall, at his own expense, rectify and make good any defect or fault that appears in the work or comes to the attention of the Owner within 12 months from the date of the Substantial Completion referred to in GC43.2.
- 31.2 The Engineer may direct the Contractor to rectify and make good any defect or fault referred to in GC31.1 or covered by any other expressed or implied warranty or guarantee.

31.3 A direction referred to in GC31.2 shall be in writing, may include a stipulation in respect of the time within which a defect or fault is required to be rectified and made good by the Contractor, and shall be given to the Contractor in accordance with GC10.3.

31.4 The Contractor shall rectify and make good any defect or fault described in a direction given pursuant to GC31.2 within the time stipulated therein.

#### **GC32 NON-COMPLIANCE BY CONTRACTOR**

32.1 If the Contractor fails to comply with any decision or direction given by the Engineer pursuant to GC17, GC23, GC25, GC30 or GC31, the Engineer may employ such methods as he deems advisable to do that which the Contractor failed to do.

32.2 The Contractor shall, on demand, pay the Owner an amount that is equal to the aggregate of all costs, expenses and damage incurred or sustained by the Owner by reason of the Contractor's failure to comply with any decision or direction referred to in GC32.1, including the cost of any methods employed by the Engineer pursuant to GC32.1.

#### **GC33 PROTESTING ENGINEER'S DECISIONS**

33.1 The Contractor may, within ten (10) days after the communication to him of any decision or direction referred to in GC32.1, protest that decision or direction.

33.2 A protest referred to in GC33.1 shall be in writing, contain full reasons for the protest, be signed by the Contractor and be given to the Owner by delivery to the Engineer.

33.3 If the Contractor gives a protest pursuant to GC33.2, any compliance by the Contractor with the decision or direction that was protested shall not be construed as an admission by the Contractor of the correctness of that decision or direction or prevent the Contractor from taking whatever lawful action he considers appropriate in the circumstances.

33.4 The giving of a protest by the Contractor pursuant to GC33.2 shall not relieve him from complying with the decision or direction that is the subject of the protest.

33.5 Subject to GC33.6, the Contractor shall take any action referred to in GC33.3 within three months after the date that a Final Certificate of Completion is issued under GC43.1 and not afterwards.

33.6 The Contractor shall take any action referred to in GC33.3, resulting from a direction under GC31 within three months after the expiry of a warranty or guarantee period and not afterwards.

33.7 Subject to GC33.8, if the Owner determines that the Contractor's protest is justified, the Owner shall pay the Contractor the cost of the additional labour, plant and material necessarily incurred by the Contractor in carrying out the protested decision or direction.

33.8 Costs referred to in GC33.7 shall be calculated in accordance with GC47 to GC49.

#### **GC34 CHANGES IN SOIL CONDITIONS AND NEGLECT OR DELAY BY THE OWNER**

34.1 Subject to GC34.2 no payment, other than a payment that is expressly stipulated in the contract, shall be made by the Owner to the Contractor for any extra expense or any loss or damage incurred or sustained by the Contractor.

34.2 If the Contractor incurs or sustains any extra expense or any loss or damage that is directly attributable to

34.2.1 a substantial difference between the information relating to soil conditions at the work

site that is contained in the Plans and Specifications or other documents supplied to the Contractor for his use in preparing his tender or a reasonable assumption of fact based thereon made by the Contractor, and the actual soil conditions encountered by the Contractor at the work site during the performance of the contract, or

- 34.2.2 any neglect or delay that occurs after the date of the contract on the part of the Owner in providing any information or in doing any act that the contract either expressly requires the Owner to do or that would ordinarily be done by an owner in accordance with the usage of the trade.

He shall, within ten days of the date that an event described in GC34.2.1 or GC34.2.2 occurred, give the Engineer written notice of the event and of his intention to claim for that extra expense or that loss or damage.

- 34.3 When the Contractor has given a notice referred to in GC34.2, he shall give the Engineer a written claim for extra expense or loss or damage within 30 days of the date that a Final Certificate of Completion referred to in GC43.1 is issued and not afterwards.
- 34.4 A written claim referred to in GC34.3 shall contain a sufficient description of the facts and circumstances of the occurrence that is the subject of the claim to enable the Engineer to determine whether or not the claim is justified and the Contractor shall supply such further and other information for that purpose as the Engineer requires from time to time.
- 34.5 If the Engineer determines that a claim referred to in GC34.3 is justified, the Owner may make an extra payment to the Contractor in an amount that is calculated in accordance with GC46 to GC49.
- 34.6 If, in the opinion of the Engineer, an occurrence described in GC34.2.1 results in a saving of expenditure by the Contractor in performing the contract, the amount set out in the Articles of Agreement shall, subject to the GC34.7, be reduced by an amount that is equal to the saving.
- 34.7 The amount of the saving referred to GC34.6 shall be determined in accordance with GC46 to GC49.
- 34.8 If the Contractor fails to give a notice referred to in GC34.2 and a claim referred to in GC34.3 within the times stipulated, an extra payment should not be made to him in respect of the occurrence.

#### **GC35 EXTENSION OF TIME**

- 35.1 Subject to GC35.2, the Engineer may, on the application of the Contractor made before the day fixed by the Articles of Agreement for completion of the work or before any other date previously fixed under this General Condition, extend the time for its completion by fixing a new date, if in his opinion, causes beyond the control of the Contractor have delayed its completion.
- 35.2 An application referred to in GC35.1 shall be accompanied by the written consent of the bonding company whose bond forms part of the contract security.

#### **GC36 ASSESSMENTS AND DAMAGES FOR LATE COMPLETION**

- 36.1 For the purposes of this General Condition
- 36.1.1 the work shall be deemed to be completed on the date that a Substantial Certificate of Completion referred to in GC43.2 is issued, and
- 36.1.2 "period of delay" means the number of days commencing on the day fixed by the Articles of Agreement for completion of the work and ending on the day immediately

preceding the day on which the work is completed but does not include any day within a period of extension granted pursuant to GC35.1, and any other day on which, in the opinion of the Engineer, completion of the work was delayed for reasons beyond the control of the Contractor.

36.2 If the Contractor does not complete the work by the day fixed for its completion by the Articles of Agreement but completes it thereafter, the Contractor shall pay the Owner an amount equal to the aggregate of

36.2.1 all salaries, wages, and travelling expenses incurred by the Owner in respect of persons overseeing the performance of the work during the period of delay,

36.2.2 the cost incurred by the Owner as a result of the liability to use the completed work for the period of delay; and

36.2.3 all other expenses and damages incurred or sustained by the Owner during the period of delay as a result of the work not being completed by the day fixed for its completion.

36.3 The Owner may waive its right to the whole or any part of the amount payable by the Contractor pursuant to GC36.2 if, in the opinion of the Owner, it is in the public interest to do so.

#### **GC37 TAKING THE WORK OUT OF THE CONTRACTOR'S HANDS**

37.1 The Owner may, at its sole discretion, take all or any part of the work out of the Contractor's hands, and may employ such means as he sees fit to have the work completed if the Contractor

37.1.1 has not, within six days after receiving notice given by the Owner or the Engineer in accordance with GC10.1, remedied any delay in the commencement or any default in the diligent performance of the work to the satisfaction of the Engineer;

37.1.2 has defaulted in the completion of any part of the work within the time fixed for its completion by the contract;

37.1.3 has become insolvent;

37.1.4 has committed an act of bankruptcy;

37.1.5 has abandoned the work;

37.1.6 has made an assignment of the contract without the consent required by GC3.1; or

37.1.7 has otherwise failed to observe or perform any of the provisions of the contract.

37.2 If the whole or any part of the work is taken out of the Contractor's hands pursuant to GC37.1;

37.2.1 the Contractor's right to any further payment that is due or accruing due under the contract is, subject only to GC37.4, extinguished, and

37.2.2 the Contractor is liable to pay the Owner, upon demand, an amount that is equal to the amount of all loss and damage incurred or sustained by the Owner in respect of the Contractor's failure to complete the work.

37.3 If the whole or any part of the work that is taken out of the Contractor's hands pursuant to GC37.1 is completed by the Owner, the Engineer shall determine the amount, if any, of a holdback or a progress claim that had accrued and was due prior to the date on which the work was taken out of the Contractor's hands and that is not required for the purposes of having the

work performed or of compensating the Owner for any other loss or damage incurred or sustained by reason of the Contractor's default.

37.4 The Owner may pay the Contractor the amount determined not to be required pursuant to GC37.3.

#### **GC38 EFFECT OF TAKING THE WORK OUT OF THE CONTRACTOR'S HANDS**

38.1 The taking of the work or any part thereof out of the Contractor's hands pursuant to GC37 does not operate so as to relieve or discharge him from any obligation under the contract or imposed upon him by law except the obligation to complete the performance of that part of the work that was taken out of his hands.

38.2 If the work or any part thereof is taken out of the Contractor's hands pursuant to GC37, all plant and material and the interest of the Contractor in all real property, licenses, powers and privileges acquired, used or provided by the Contractor under the contract shall continue to be the property of the Owner without compensation.

38.3 When the Engineer certifies that any plant, material, or any interest of the Contractor referred to in GC38.2 is no longer required for the purposes of the work, or that it is not in the interests of the Owner to retain that plant, material, or interest, it shall revert to the Contractor.

#### **GC39 SUSPENSION OF WORK**

39.1 The Owner may, when in his opinion it is in the public interest to do so, require the Contractor to suspend performance of the work either for a specified or an unspecified period by giving a notice of suspension to the Contractor in accordance with GC10.

39.2 When a notice referred to in GC39.1 is received by the Contractor in accordance with GC10 he shall suspend all operations in respect of the work except those that, in the opinion of the Engineer, are necessary for the care and preservation of the work, plant and material.

39.3 The Contractor shall not, during a period of suspension, remove any part of the work, plant or material from its site without the consent of the Engineer.

39.4 If a period of suspension is 30 days or less, the Contractor shall, upon the expiration of that period resume the performance of the work and he is entitled to be paid the extra cost, calculated in accordance with GC47 to GC49, of any labour, plant and material necessarily incurred by him as a result of the suspension.

39.5 If, upon the expiration of a period of suspension of more than 30 days, the Owner and the Contractor agree that the performance of the work will be continued by the Contractor, the Contractor shall resume performance of the work subject to any terms and conditions agreed upon by the Owner and the Contractor.

39.6 If, upon the expiration of a period of suspension of more than 30 days, the Owner and the Contractor do not agree that performance of the work will be continued by the Contractor or upon the terms and conditions under which the Contractor will continue the work, the notice of suspension shall be deemed to be a notice of termination pursuant to GC40.

#### **GC40 TERMINATION OF CONTRACT**

40.1 The Owner may terminate the contract at any time by giving a notice of termination to the Contractor in accordance with GC10.1.

40.2 When a notice referred to in GC40.1 is received by the Contractor in accordance with GC10, he shall, subject to any conditions stipulated in the notice, forthwith cease all operations in performance of the contract.

- 40.3 If the contract is terminated pursuant to GC40.1, the Owner shall pay the Contractor, subject to GC40.4, an amount equal to
- 40.3.1 the cost to the Contractor of all labour, plant and material supplied by him under the contract up to the date of termination in respect of a contract or part thereof for which a Unit Price Arrangement is stipulated, in the contract, or
  - 40.3.2 the lesser of
    - 40.3.2.1 an amount, calculated in accordance with the Terms of Payment, that would have been payable to the Contractor had he completed the work, and
    - 40.3.2.2 an amount that is determined to be due to the Contractor pursuant to GC48 in respect of a contract or part thereof for which a Fixed Price Arrangement is stipulated in the contract.
- less the aggregate of all amounts that were paid to the Contractor by the Owner and all amounts that are due to the Owner from the Contractor pursuant to the contract.

- 40.4 If the Owner and the Contractor are unable to agree about an amount referred to in GC40.3 that amount shall be determined by the method referred to in GC49.

#### **GC41 CLAIMS AGAINST AND OBLIGATIONS OF THE CONTRACTOR OR SUBCONTRACTOR**

- 41.1 The Owner may, in order to discharge lawful obligations of and satisfy lawful claims against the Contractor or a subcontractor arising out of the performance of the contract, pay any amount that is due and payable to the Contractor pursuant to the contract directly to the obligees of and the claimants against the Contractor or subcontractor.
- 41.2 A payment made pursuant to GC41.1, is to the extent of the payment, a discharge of the Owner's liability to the Contractor under the contract and may be deducted from an amount payable to the Contractor under the contract.
- 41.3 To the extent that the circumstances of the work being performed for the Owner permit, the Contractor shall comply with all laws in force in Nunavut relating to payment periods, mandatory holdbacks, and creation and enforcement of mechanics' liens.
- 41.4 The Contractor shall discharge all his lawful obligations and shall satisfy all lawful claims against him arising out of the performance of the work at least as often as the contract requires the Owner to pay the Contractor.
- 41.5 The Contractor shall, whenever requested to do so by the Engineer, make a statutory declaration deposing to the existence and condition of any obligations and claims referred to in GC41.4.
- 41.6 GC41.1 shall only apply to claims and obligations that have been received by the Engineer in writing before payment to the Contractor pursuant to TP4.8 and within 120 days after a claimant
- 41.6.1 should have been paid in full under his contract with the Contractor or subcontractor where the claim is for money that was lawfully required to be held back from the claimant; or
  - 41.6.2 performed the last of the service, work or labour, or furnished the last of the material pursuant to his contract with the Contractor or subcontractor, where the claim is not for money referred to in GC41.6.1.
- 41.7 No interest will be paid to the Contractor on any monies withheld pursuant to GC41 due to a



Contractor or subcontractor's claim for non-payment.

#### **GC42 SECURITY DEPOSIT - FORFEITURE OR RETURN**

- 42.1 The Owner may convert the security deposit, if any, to its own use, if
- 42.1.1 the work is taken out of the Contractor's hands pursuant to GC37;
  - 42.1.2 the contract is terminated pursuant to GC40; or
  - 42.1.3 the Contractor is in breach of or in default under the contract.
- 42.2 If the Owner converts the contract security pursuant to GC42.1, the amount realized shall be deemed to be an amount due from the Owner to the Contractor under the contract.
- 42.3 Any balance of an amount referred to in GC42.2 that remains after payment of all losses, damage and claims of the Owner and other shall be paid by the Owner to the Contractor, if in the opinion of the Engineer, it is not required for the purposes of the contract.

#### **GC43 ENGINEER'S CERTIFICATES**

- 43.1 On the date that
- 43.1.1 the work has been completed, and
  - 43.1.2 the Contractor has complied with the contract and all orders and directions made pursuant thereto,
- both to the satisfaction of the Engineer, he shall issue a Certificate of Final Completion to the Contractor.
- 43.2 If the Engineer is satisfied that the work is sufficiently complete to be acceptable for use by the Owner, he may, at any time before he issues a certificate referred to in GC43.1, issue a Certificate of Substantial Completion to the Contractor.
- 43.3 A Certificate of Substantial Completion referred to in GC43.2 shall describe the parts of the work not completed to the satisfaction of the Engineer and all things that must be done by the Contractor before a certificate referred to in GC43.1 will be issued.
- 43.4 The Engineer may, in addition to the parts of the work described in a Certificate of Substantial Completion referred to in GC43.2, require the Contractor to rectify any other parts of the work not completed to his satisfaction and to do any other things that are necessary for the completion of the work.
- 43.5 If the contract or a part thereof is subject to a Unit Price Arrangement, the Engineer shall measure and record the quantities of labour, plant and material, performed, used and supplied by the Contractor in performing the work and shall, at the request of the Contractor, inform him of those measurements.
- 43.6 The Contractor shall assist and co-operate with the Engineer in the performance of his duties referred to in GC43.5 and shall be entitled to inspect any record made by the Engineer pursuant to GC43.5.
- 43.7 After the Engineer has issued a Certificate of Final Completion referred to in GC43.1, he shall, if GC43.5 applies, issue a Certificate of Final Measurement.
- 43.8 A Certificate of Final Measurement referred to in GC43.7 shall

- 43.8.1 contain the aggregate of all measurements of quantities referred to in GC43.5, and
- 43.8.2 be binding upon and conclusive between the Owner and the Contractor as to the quantities referred to therein.

#### **GC44 RETURN OF SECURITY DEPOSIT**

- 44.1 After a Certificate of Substantial Completion referred to in GC43.2 has been issued, the Owner shall, if the Contractor is not in breach of or in default under the contract, return to the Contractor all or any part of the security deposit that, in the opinion of the Engineer, is not required for the purposes of the contract.
- 44.2 After a Certificate of Final Completion referred to in GC43.1 has been issued, the Owner shall return to the Contractor the remainder of any security deposit unless the contract stipulates otherwise.
- 44.3 Interest shall not be paid on security deposits.

#### **GC45 CLARIFICATION OF TERMS IN GC46 TO GC49**

- 45.1 For the purposes of GC46 to GC49,
  - 45.1.1 "Unit Price Table" means the table set out in the Tender, and
  - 45.1.2 "plant" does not include tools customarily provided by a tradesman in practising his trade.

#### **GC46 ADDITIONS OR AMENDMENTS TO UNIT PRICE TABLE**

- 46.1 Where a Unit Price Arrangement applies to the contract or a part thereof the Engineer and the Contractor may, by an agreement in writing
  - 46.1.1 add classes of labour, plant or material, and units of measurement, prices per unit and estimated quantities to the Unit Price Table if any labour, plant or material that is to be included in a Final Certificate of Measurement referred to in GC43.7 is not included in any class of labour, plant or material set out in the Unit Price Table; or
  - 46.1.2 subject to GC46.2, amend a price per unit set out in the Unit Price Table for any class of labour, plant or material included therein if an estimated quantity is set out therein for that class of labour, plant or material and a Final Certificate of Measurement referred to in GC43.7 shows or is expected to show that the total quantity of that class of labour, plant or material actually performed, used or supplied by the Contractor in performing the work is
    - 46.1.2.1 less than 85% of that estimated quantity; or
    - 46.1.2.2 in excess of 115% of that estimated quantity.
- 46.2 An amendment that is made necessary by GC46.1.2.2 shall apply only to the quantities that are in excess of 115%.
- 46.3 If the Engineer and the Contractor do not agree as contemplated in GC46.1, the Engineer shall determine the class and the unit of measurement of the labour, plant or material and the price per unit therefore shall be determined in accordance with GC49.



#### **GC47 DETERMINATION OF COST - UNIT PRICE TABLE**

- 47.1 Whenever, for the purposes of the contract it is necessary to determine the cost of labour, plant or material, it shall be determined by multiplying the quantity of that labour, plant or material expressed in the unit set out in the Unit Price Table by the price of that unit set out in the Unit Price Table.

#### **GC48 DETERMINATION OF COST - NEGOTIATION**

- 48.1 If the method described in GC47 cannot be used because the labour, plant or material is of a kind or class that is not set out in the Unit Price Table, the cost of the labour, plant or material for the purposes of the contract shall be the amount agreed upon from time to time by the Contractor and the Engineer.
- 48.2 For the purpose of GC48.1, the Contractor, when requested by the Engineer, shall submit a detailed statement of the cost to him of the labour, plant and material referred to in GC48.1 to the Engineer.

#### **GC49 DETERMINATION OF COST - FAILING NEGOTIATION**

- 49.1 If the parties or the methods described in GC46, GC47 or GC48 fail for any reason to achieve a determination of the cost of labour, plant and material for the purposes referred to therein, that cost shall be equal to the aggregate of
- 49.1.1 all reasonable and proper amounts actually expended or legally payable by the Contractor in respect of the labour, plant or material that falls within one of the classes of expenditure described in GC49.2 that are directly attributable to the performance of the contract, and
  - 49.1.2 an allowance for profit and all other expenditures or costs, including overhead, general administration costs, financing and interest charges, and every other cost, charge and expense but not including those referred to in GC49.1.1 or of a class referred to in GC49.2, in an amount that is equal to:
    - (a) 10% of the sum of the expenses referred to in GC49.2.1;
    - (b) 20% of the sum of the expenses referred to in GC49.2.2 through GC49.2.8
- 49.2 For purposes of GC49.1.1 the classes of expenditure that may be taken into account in determining the cost of labour, plant and material are,
- 49.2.1 payments to subcontractors;
  - 49.2.2 wages, salaries and travelling expenses of employees of the Contractor while they are actually and properly engaged on the work, other than wages, salaries, bonuses, living and travelling expenses of personnel of the Contractor generally employed at the head office or at a general office of the Contractor unless they are engaged at the work site with the approval of the Engineer;
  - 49.2.3 assessments payable under any statutory authority relating to worker's compensation, unemployment insurance, pension plan or holidays with pay;
  - 49.2.4 rent that is paid for plant or an allowance for depreciation of plant owned by the Contractor that is necessary for and used in the performance of the work, if that rent or allowance is reasonable and use of that plant has been approved by the Engineer;

- 49.2.5 payments for maintaining and operating plant is necessary for and used in the performance of the work, and payments for effecting such repairs thereto as, in the opinion of the Engineer, are necessary for the proper performance of the contract other than payments for any repairs to the plant arising out of defects existing before its allocation to the work;
- 49.2.6 payments for material that is necessary for and incorporated in the work, or that is necessary for and consumed in the performance of the contract;
- 49.2.7 payments for preparation, delivery, handling, erection, installation, inspection, protection and removal of the plant and material necessary for and used in the performance of the contract;
- 49.2.8 any other payments made by the Contractor with the approval of the Engineer that are necessary for the performance of the contract.

#### **GC50 RECORDS TO BE KEPT BY CONTRACTOR**

- 50.1 The Contractor shall
  - 50.1.1 maintain full records of his estimated and actual costs of the work together with all tender calls, quotations, contracts, correspondence, invoices, receipts and vouchers relating thereto;
  - 50.1.2 make all records and material referred to in GC50.1.1 available to audit and inspection by the Owner and the Comptroller General of the Government of the Nunavut or by persons acting on behalf of either or both of them when requested;
  - 50.1.3 allow any of the persons referred to in GC50.1.2 to make copies of and to take extracts from any of the records and material referred to in GC50.1.1; and
  - 50.1.4 furnish any person referred to in GC50.1.2 with information he may require from time to time in connection with such records and material.
- 50.2 The records maintained by the Contractor pursuant to GC50.1.1 shall be kept intact by the Contractor until the expiration of two years after the date that a Final Certificate of Completion referred to in GC43.1 was issued or until the expiration of such other period of time as the Owner may direct.
- 50.3 The Contractor shall cause all subcontractors and all other persons directly or indirectly having control of the Contractor to comply with GC50.1 and GC50.2 as if they were the Contractor.

#### **GC51 LITIGATION**

- 51.1 This contract shall be deemed to have been made in Nunavut and shall be governed by the laws of Nunavut as far as applicable.
- 51.2 In the event of any legal action arising out of this agreement, the Contractor, if originating such action, may sue the Government of Nunavut in the name and style of "The Government of Nunavut" and the Government of Nunavut, if originating such action, may commence the action against the Contractor in his own behalf in the name and style of "The Government of Nunavut".

#### **GC52 REQUIREMENTS FOR INUIT, LOCAL AND NUNAVUT CONTENT**

- 52.1 The Contractor shall, in the performance of the Work, employ Inuit, Local and Nunavut workers and use Inuit, Local and Nunavut content to the greatest extent possible and at a minimum, no

less than the amounts tendered by the Contractor in Appendix "B-2" of the tender. Workers shall meet all levels of proficiency, qualification and expertise as dictated by the authorities having jurisdiction and/or as defined in the contract documents.

52.2 The Contractor shall provide a schedule indicating the anticipated total monthly value of all Inuit, Local and Nunavut content and Labour to be expended in the execution of the Work. This schedule shall provide the benchmark for ensuring compliance by the Contractor with the requirements for the use of Inuit, Local and Nunavut content during the project.

52.3 For the Inuit Labour bonus or penalty, as set out in the Nunavummi Nangminiqagtunik Ikajuuti (NNI) Policy, the benchmark shall be the minimum prescribed level for Inuit Labour identified on page 4 of Appendix K of the tender.

#### **GC53 REQUIREMENT FOR COMMUNITY MEETINGS**

53.1 The Contractor shall arrange meetings on a monthly basis, or other basis as may be mutually agreed by the parties to this contract, to monitor the use of Inuit, Local and Nunavut Labour and Inuit, Local and Nunavut content. The Contractor shall give the owner 3 to 5 days notice of all meetings called under GC53. The Contractor shall take reasonable steps to ensure that these meetings include the following representatives:

- (a) A community representative who has been designated to speak on behalf of the community (if available),
- (b) A community manpower representative (if available),
- (c) The Contractor,
- (d) The Owner's representative.

53.2 The Contractor shall arrange a Community Meeting prior to the start of construction and at that meeting shall:

- (a) provide a schedule referred to in GC52.2 above to the community representative, or if no community representation is designated, shall provide a copy of this schedule to the Owner's representative,
- (b) identify specific types of workers required during the project such as plumbers, painters or electricians and how many of those workers are required and when they are required and based on information received in accordance with GC53.2 (c) maintain a list of community manpower,
- (c) request from the community manpower representative or from the Owner if no community manpower representative has been delegated, a list of workers available in the community,

53.3 The Owner shall attend all community meetings organized by the Contractor in accordance with GC53.3.2(c) and when requested by the Contractor shall:

- (a) identify and contact potential community workers who may be available to be employed on the Work, identify alternate workers if those workers initially identified are not available to work, and assist in confirming the residency of local workers.

53.4 The Contractor shall arrange Community Meeting as required by GC53.1 and at those meetings shall:

- (a) provide employment reports identifying workers used during the past month (to substantiate information provided on Appendix B-2),
- (b) provide an amended schedule referred to in GC53.2, if necessary
- (c) provide a consolidated report at the time of substantial completion, which shall confirm the

total amount of Inuit, Local and Nunavut content used. This report will identify Inuit, Local and Nunavut payroll separately. This consolidated report shall be a condition precedent to the release of payment.

#### **GC54 MONITORING THE LEVEL OF INUIT, LOCAL AND NUNAVUT LABOUR**

54.1 The contractor is responsible to insure that every worker identified as Local or Nunavut meets the qualifying requirements of being ordinarily resident in Nunavut for the past 12 months, and for Local being a Nunavut resident ordinarily residing in the subject community for the past 4 months. The contractor may be required to provide proof of residency at any time throughout the project.

54.1.1 Reasonable proof of Nunavut and Local residency shall be any of the following:

- a) is on the Nunavut Tunggavik Inc. (NTI) enrolment list and provides a physical address where residing,  
or
- b) has spent the last 12 months ordinarily resident in Nunavut and
  - i) has a valid Nunavut Health Care Card effective at least 9 months prior to start date of employment on the project;  
and/or
  - ii) other accepted proof of residency such as: a Nunavut General Hunting License, a Nunavut Driver's Licence, a lease or rental receipt, or a certified Schedule T222 Income Tax return from the previous year or proof that Income Tax was paid in the Nunavut during the previous tax year;  
and provides a physical address where residing.
- or
- c) is included on a list of approved Local or Nunavut residents verified by the municipality of their residence.

54.1.2 The Contractor is responsible to ensure that every worker identified as Inuit is on the NTI Inuit enrolment list, or would qualify to be on the list.

54.2 If requested by the Owner to do so, the contractor shall obtain a signed consent form from a worker which verifies their residency and permits the Owner to obtain any and all information required to support the worker's claim of residency and/or Inuit status. A standard consent form is attached as page 4 of Appendix "B" of the tender. A worker does not need to comply with the requirements of this clause 54.2 if the worker meets the requirements of GC54.1.1 (c).

#### **GC55 FAILURE TO COMPLY WITH PROPOSED INUIT, LOCAL AND NUNAVUT CONTENT**

55.1 The parties to this agreement recognize the high cost of living in Nunavut, and the need to build capacity of Inuit Firms and Labour in Nunavut, which is compensated for by the Owner through the provision of bid adjustments for the use of Inuit, Local and Nunavut Labour and other Inuit, Local and Nunavut content, and the provision of bonuses under the Nunavummi Nangminiaqtunik Ikajuuti (NNI) Policy. It is a priority of the Owner to maximize the opportunities for Inuit; Local and Nunavut workers and businesses to benefit from government contracts and the Owner may pay a premium in awarding its contracts to support this important objective.

Therefore, it is a fundamental requirement of this contract that the Contractor shall achieve, by the completion of the contract, at least the amounts tendered on Appendix B-2 of the tender, with the exception of decreasing Nunavut content with a corresponding equal or larger increase in Local content, specifically

- (a) the amount of Inuit Labour,  
AND
- (b) (i) the amount of Local Labour and the amount of Nunavut Labour,  
or  
(ii) the amount of Local Labour and the total amount of Local and Nunavut Labour

which the Contractor has identified in Appendix B-2 of the Tender,

AND at least

- (c) the amount of Inuit Content excluding the Labour of Inuit Firms,  
AND
- (d) (i) the amount of Local Content (excluding Local Labour) and  
the amount of Nunavut content (excluding Nunavut Labour),  
or  
(ii) the amount of Local Content (excluding Local Labour) and  
the total amount of Local and Nunavut content (excluding Local and Nunavut Labour),

which the Contractor has identified in Appendix B-2.

55.2 In the event that the amounts of Inuit, Local and Nunavut expenditures actually achieved by the Contractor are less than the amounts identified in clauses GC55.1 then the Owner MAY adopt one or more of the following remedies,

- (a) withhold from any progress payment an amount equal to:
  - (i) the difference between the amounts identified in clause GC55.1 (a), (b)(i), or (b)(ii) and the amount identified in the Schedule referred to in GC52.2 and
  - (ii) the difference between the amounts identified in clause GC55.1 (c), (d)(i) or (d)(ii) and the amount identified the Schedule referred to in GC52.2.

This amount may be released to the contractor if at the date of a subsequent request the difference has been eliminated.

- (b) deduct from the approved contract payment at the time of substantial or final completion an amount equal to:
  - (i) 25% of the difference between the amounts identified in clause GC55.1 (i), GC55.1. (ii), or GC55.1 (iii) and the amount identified in Appendix B-2 and
  - (ii) 25% of the difference between the amounts identified in clause GC55.1 (iv), GC55.1 (v), or GC55.1 (vi) and the amount identified in Appendix B-2 of the Tender.

- (c) take the contract out of the Contractor's hands, in accordance with Clause 37 and GC38

55.3 In the event that the amount of difference identified in GC55.2 is 15% or less of the amount proposed in Appendix B-2 of the tender, the Owner, at its sole discretion, may waive the provisions of clause 55.2.

55.4 In the event that the minimum prescribed level of Inuit Labour set out in Appendix K of the tender is not met, then for future tenders where there are similar minimum prescribed levels for Inuit Labour, the Contractor may be deemed not "responsible" as defined in the Government Contract Regulations.

**GC56 OBLIGATION TO PROVIDE CONTRACT SECURITY**

- 56.1 Where the contract amount referred to in the Articles of Agreement is
- 56.1.1 less than \$100,000, the Engineer may require at the expense of the Owner the Contractor to provide contract security prescribed in GC57.
  - 56.1.2 \$100,000 or more, the Contractor shall, at his own expense, provide one or more of the forms of contract security prescribed in GC57.
- 56.2 If the Contractor is required to provide contract security pursuant to GC57, the security shall be delivered to the Engineer within 14 days after the date that the Contractor receives notice that his tender or offer was accepted by the Owner.

**GC57 PRESCRIPTION OF ACCEPTABLE CONTRACT SECURITY**

- 57.1 If the Contractor is required to provide contract security pursuant to GC56, the Owner shall accept from the Contractor one or more of the forms of security prescribed in GC57.2.2 to GC57.6.
- 57.2 A Contractor shall deliver to the Owner:
- 57.2.1 A performance bond and a labor and material payment bond each in an amount that is equal to not less than 50% of the contract amount referred to in the Articles of Agreement, or,
  - 57.2.2 A security deposit in an amount that is equal to 10% of the contract amount referred to in the Articles of Agreement.
- 57.3 A performance bond and a labour and material payment bond referred to in GC57.2 shall be in a form as approved by the Federal Treasury Board (Federal Contracts) and be issued by a bonding or surety company that is approved by the Owner.
- 57.4 The amount of a security deposit referred to in GC57.2.2 shall not exceed \$250,000, regardless of the contract amount referred to in the Articles of Agreement.
- 57.5 A security deposit referred to in GC57.2.2, shall be in the form of
- 57.5.1 "A letter of irrevocable guarantee" in the form authorized by the contract authority payable to the Owner that is drawn on a bank to which the Bank Act or the Quebec Savings Banks Act applies; or
  - 57.5.2 A certified cheque or bank draft from a bank acceptable to the Owner and made payable to the Owner.
- 57.6 The "letter(s) of irrevocable guarantee" referred to in GC57.5.1 shall be
- 57.6.1 Held uncashed until 14 days prior to their expiry date, unless the expiry date is extended for a further term, beyond the contract completion date stated in the Articles of Agreement.
- 57.7 The certified cheque as referred to in GC57.5.2 shall be deposited by the Owner into the Owner's bank account.

**GC58 COMPREHENSIVE GENERAL LIABILITY INSURANCE REQUIRMENTS**

- 58.1 Comprehensive General Liability Insurance with limits of not less than two million dollars

inclusive per occurrence for bodily injury, death, and damage to property including loss of use thereof. This insurance shall be maintained continuously from commencement of the work until not less than twelve (12) months from the date of the Final Certification of Completion. The Owner is not to be added as an Insured under this policy. Such insurance shall include but is not limited to:

- 58.1.1 Premises, Property and Operations Liability;
- 58.1.2 Products and Completed Operations Liability;
- 58.1.3 Owners' and Contractors' Protective Liability;
- 58.1.4 Blanket Written Contractual Liability;
- 58.1.5 Non-Owned Automobile Liability;
- 58.1.6 Broad Form Property Damage Extension;
- 58.1.7 Use of explosives for blasting, shoring, excavating, underpinning, demolition, removal, pile driving and caisson work, work below ground surface, tunnelling and grading, as applicable;
- 58.1.8 Contingent Employer's Liability;
- 58.1.9 Person Injury Liability;
- 58.1.10 Employees As Additional Insureds;
- 58.1.11 Cross Liability With Respect To Additional Insureds;
- 58.1.12 Asbestos Abatement Liability, as applicable.

#### **GC59 AUTOMOBILE LIABILITY INSURANCE REQUIREMENTS**

- 59.1 Automobile Liability Insurance in respect of Contractor's owned and leased vehicles shall have limits of not less than two million dollars inclusive per occurrence for bodily injury, death, and damage to property. And when applicable:
- S.E.F. No. 4a Explosives Endorsement;
  - S.E.F. No. 21b Blanket Fleet Endorsement.

#### **GC60 AIRCRAFT AND WATER CRAFT LIABILITY INSURANCE REQUIREMENTS**

- 60.1 Aircraft and Watercraft Liability Insurance with respect to owned or non-owned aircraft and watercraft if used directly in or indirectly in the performance of the Work, including use of airport premises, with limits of not less than one million dollars inclusive per occurrence for bodily injury, death and damage to property including loss of use thereof and limits of not less than one million dollars for Aircraft Passenger Hazard. Such insurance shall be in a form acceptable to the Owner.

#### **GC61 GENERAL INSURANCE CONDITIONS**

- 61.1 **Deductible:** Amount of deductible on any insurance provided by Contractor shall be borne in its entirety by Contractor.



- 61.2 **Waiver of Recourse:** Contractor waives all rights of recourse against the Owner for damages to Contractor's property or property of others for which Contractor is responsible and Contractor's Insurers have no right of subrogation against the Owner.
- 61.3 **Notice of Cancellation:** All required insurance shall be endorsed to provide the Owner with 30 days advance written notice of material change, cancellation or termination. Such notices shall be addressed to: The Owner (as noted on the Contractor's Certificate of Insurance).
- 61.4 **Other Insurance:** Contractor shall provide, maintain and pay for any additional insurance which is required to be provided by the Contract Documents, or by law, or which he considers necessary to cover risks not otherwise covered by insurance specified in these conditions.
- 61.5 **Contractor's Certificate of Insurance:** The Contractor shall complete the attached form "Contractor's Certificate of Insurance", and shall within 14 days after the acceptance of the tender deliver this completed certificate to the Owner. Substitute certificates will not be accepted; the Contractor must use this certificate.
- GC62 PROPERTY INSURANCE (All "Risks" Course of Construction Insurance)**
- 62.1 Insurance has been purchased by the Owner on a very broad basis, to protect as Insureds, all those who have direct participation in the construction project, for claims which may arise as a result of loss or damage during course of construction.
- 62.2 **Coverage:** "All Risks" of physical loss or damage or destruction while said project is in course of construction, site preparation, reconstruction, repair, erection, fabrication, testing, and including all materials, equipment machinery, structures, property, fitting, fixtures, betterment, and supplies of any nature whatsoever to enter into and form part of the finished project while at the site of operations or elsewhere in Canada or the Continental United States or America, all the property of the Insureds or the property of others for which the insureds have assumed responsibility, or for whom the Insured are required to carry insurance, including while on a river or lake crossing ferry in connection with land transportation..
- 62.3 **Exclusions:** This policy does not cover goods in transit to the site. This is the contractor's risk, which he may or may not wish to insure.
- 62.3.1 This policy does not cover the following types of construction and/or maintenance contracts:
- a) Highways & Ferries;
  - b) Water & Sewer Contracts With No Buildings;
- 62.4 **Term:** From the commencement of work to the date of the Substantial Completion as certified by the Owner.
- 62.5 **Limit of Liability:** The limit of liability at the project site is the estimated full completed value of the project including, but not limited to, owner-supplied labour or materials, reasonable profit, insurance costs, overhead, taxes, labour, administrative fees and all other expenses which are incurred as additional costs as a result of a partial or total loss.
- 62.6 **Deductible:**
- 62.6.1 The Contractor shall be responsible for a deductible, which shall be equal to 5% of the considered insurable loss to a maximum of \$10,000 per occurrence.

#### END OF GENERAL CONDITIONS

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## **PART 1        GENERAL**

### **1.1        References**

- .1        National Building Code of Canada (NBC) 1995 including all amendments up to tender closing date, including any other code of Territorial or local application provided that in any case of conflict or discrepancy, the more recent requirement shall apply.
- .2        The term Engineer shall read Project Officer or Engineer throughout this document.

### **1.2        Description of Work**

Work under this contract shall include, but not be limited to, the construction of the following:

- .1        Supply, installation and connection of new 150 mm polyethylene insulated pipeline.
- .2        Supply and installation and connection of new 50 mm recirculation line.
- .3        Supply and installation of access vaults.
- .4        Supply and installation of electric heaters into existing heater houses
- .5        Supply and installation of chlorination system in south heater house.
- .6        Supply and installation of monitoring system.

### **1.3        Site Knowledge**

It is the Contractor's responsibility to familiarize himself with the site, scope of work, and actual site conditions prior to bidding on this contract. The Contractor shall have no claim on account of his failure to familiarize himself with local site conditions.

### **1.4        Codes**

Meet or exceed requirements of:

- .1        contract documents,
- .2        specified standards, codes and referenced documents.

### **1.5        Permits, Licences, Regulations and Acts**

The Contractor shall be responsible for obtaining and paying for all permits or licences as may be required for any portion of this Contract, unless noted otherwise.

### **1.6        Definition of Trades**

For convenience of reference only, the Specification is separated into titled sections. Sections are identified by title and a five digit numbering system. Responsibility as to which trade provides required materials or articles and work rests solely with the Contractor.

In the case of a dispute, the Contractor will decide which subtrade is to supply and install required materials or equipment. Extras will not be considered for differences in interpretation of the Specification as to which trades do the work.

### **1.7 Easements and Rights-of-Way**

The Contractor shall confine his work, men, materials, and equipment to the road allowances, rights-of-way, or easements made available by the Owner for carrying out this work. Where private property must be crossed, the Owner shall obtain easements and right of entry to permit construction to proceed. The Contractor shall ensure that all machinery, excavated materials, materials to be incorporated in the work, and employee access be maintained within the prescribed limits. Damages to adjacent property shall be borne by the Contractor as set out in the General Conditions of the Contract.

If the Contractor feels that additional property is required to facilitate his operations under this contract he shall obtain the appropriate written permission of the property owner and the Engineer prior to entering the property. The Contractor shall make no claim if such permission is not granted. The contractor shall not unreasonably encumber the access road.

### **1.8 Signs and Warnings**

The Contractor, shall, at his own expense, supply and maintain all requisite barriers, fences and warning signs or other precautions to protect the workmen and general public against accidents or injury. All excavations or obstructions shall be clearly marked between sunset and sunrise with proper warning flares or lights. Local or Municipal bylaws governing warning flares or lights shall be strictly observed.

### **1.9 Existing Poles and Lamps**

Any poles that require moving, solely to facilitate the Contractor's operation shall be moved and replaced at the Contractor's expense.

### **1.10 Water Supply**

The Contractor shall be responsible for the supply of all water necessary for the work.

### **1.11 Continuity of Water Dispensing**

- .1 The Contractor shall ensure that the water dispensing, treating and metering facilities are fully operation throughout the project, during normal dispensing hours. Temporary shutdowns of the water dispensing system, during normal hours of less than two (2) hours duration must be approved by the Hamlet if required for critical construction work. Prior notification and approval of the Hamlet is required.
- .2 No dispensing facility is to be operated without permanent or approved temporary metering equipment in service.
- .3 All shutdowns must be coordinated with the Hamlet and GN. The shutdowns must be performed over the weekend to reduce interference with water supply. The Hamlet and Engineer must be advised at least 48 hours in advance of a proposed shutdown, with complete details of the nature of the shutdown, i.e. piping, equipment and metering devices affected, and the proposed timing and duration of the shutdown. The Contractor must receive the approval of both the Hamlet and the Engineer before proceeding with the shutdown and shall notify the GN Public Works Project Officer prior to any major disruption of product dispensing facilities. Longer shutdowns will not be permitted.

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- .4 Prior to the initiation of construction, the Engineer shall advise the local Municipal Staff and GN of the contents of this clause. Approved temporary metering facilities shall be in operation until new facilities are accepted for permanent use. Temporary metering shall be to the approval of the GN.
- .5 The Contractor shall be responsible for any delays in water delivery resulting from facilities not being able to receive water due to the Contractor's operations and scheduling. The Contractor shall pay any and all charges resulting from such delays.

### 1.12 Restoration of Legal Monuments

Any legal monuments, iron bars, etc. destroyed or disturbed during the work shall be restored by a Dominion Land Surveyor at the Contractor's expense.

### 1.13 Site Security

The Contractor shall be responsible for site security during the contract period.

### 1.14 Documents Required:

- .1 Maintain at job site, one copy each of the following:
  - .1 Contract drawings.
  - .2 Specifications.
  - .3 Addenda.
  - .4 Reviewed shop drawings.
  - .5 Change orders.
  - .6 Other modifications to Contract.
  - .7 Field test reports.
  - .8 Copy of approved work schedule.
  - .9 Manufacturers' installation and application instructions.
  - .10 Nunavut Safety Act.

### 1.15 Work Schedule

- .1 Provide within 10 working days after Contract award, a bar chart schedule showing anticipated progress stages and final completion of work within time period required by Contract documents.
- .2 Interim reviews of work progress based on work schedule will be conducted as decided by Engineer and schedule updated by Contractor in conjunction with and to approval of Engineer.
- .3 This project is to be completed over 2 (two) years to meet the Owner's funding allocation. Materials are to be supplied to site in 2003.
- .4 Construction is to be completed in 2004.

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- .5 The Works are to be completed prior to October 2004.

### 1.16 Cost Breakdown

- .1 Submit breakdown of contract price in detail using trade categories within 14 days of award. After approval by the Engineer, cost breakdown will be used as the basis for progress payment.

### 1.17 Measurement for Payment

- .1 In accordance with the Terms of Payment as provided under the Major Works Contract, the Contractor shall prepare his progress claims considering the percentage of work complete. These will be reviewed by the Engineer prior to submission to the Owner along with recommendation regarding payment or revision of claims.
- .2 Payment will only be made for actual work completed and on materials complete and delivered to site in Cambridge Bay, Nunavut.
- .3 Mobilization and Demobilization:
- .1 Mobilization shall include the delivery and storage of all materials, equipment, personnel, etc. to the site that are required to complete the work. It shall also include the submission of miscellaneous project requirements such as schedules, shop drawings, project signage, etc.
- .2 Demobilization shall include the return of all equipment, materials, personnel, etc. from the site following the completion of the project.
- .4 No payment will be made until all shop drawings, schedules, and other submissions have been submitted to the satisfaction of the Engineer.

### 1.18 Contractor's Use of Site

- .1 Use of site is limited to those areas in which work is to be done. Obtain written authorization from Local Council authorities for use of areas outside the immediate boundaries of the construction zone.
- .2 Ensure access to existing facilities, and water supply equipment, and utilities are maintained for authorized PW&S, CG&T, DND, and Hamlet personnel.
- .3 Do not unreasonably encumber site with materials or equipment.
- .4 Obtain and pay for use of additional storage or work areas needed for operations.
- .5 Contractor to co-ordinate use of site with other Contractors working on site.
- .6 Contractor to complete work in a manner so as not to cause damage to public and private property.

### 1.19 Project Meetings

- .1 Pre-construction Meeting: