



# THE CITY OF CALGARY

## STANDARD GENERAL CONDITIONS 2012

### NOTICE

#### PROPERTY OF THE CITY OF CALGARY

#### Finance & Supply #8140

CONTACT FOR THIS AND ANY OTHER INQUIRY SHOULD BE DIRECTED TO THE CITY OF CALGARY, FINANCE & SUPPLY, CONSTRUCTION TEAM, ATTENTION: JIM G. NICHOLSON, PROCUREMENT COORDINATOR AT (403) 268-5543 OR THE DESIGNATED BUYER ON THE SPECIFIC PROJECT.

IN THE EVENT ANY INCONSISTENCY BETWEEN THIS VERSION OF THE CITY OF CALGARY STANDARD GENERAL CONDITIONS 2012 AND THE CITY OF CALGARY OFFICAL VERSION OF THE STANDARD GENERAL CONDITIONS 2012, THE CITY'S OFFICIAL VERSION WILL GOVERN.





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## G.C.1 INTERPRETATION

### G.C.1.1 Definitions

- 1.1.1 "Addendum" means a document which changes the scope of the work and is issued prior to Tender closing to provide for certain revisions as noted therein. All such revisions will become part of the Contract and the impacts on cost must be included in the Tender Price. All work is to be performed in accordance with the Contract Documents.
- 1.1.2 "Approved Equal" means equivalent material approved in accordance with the procedures set out in G.C.3.12.
- 1.1.3 "Bid" or "Tender" means the *bona fide* written submission to perform the Contract.
- 1.1.4 "Bidder" or "Tenderer" means the individual, firm, partnership, corporation or combination thereof or which as an independent entity has submitted a *bona fide* Tender on the project.
- 1.1.5 "Cash Allowance" means the net sum entered in the Tender Documents to cover the cost of, or to be paid by the Contractor for, specific materials to be supplied or work to be done.
- 1.1.6 "Change Order" ("CO") means a document issued by the Engineer or Project Manager and approved by The City, which formalizes a change of scope of the work, with information, which may have been provided in response to a Notice of Proposed Change ("NPC" or "NPC Tenderer"). Preparation of the Change Order may follow (1) submission of information provided in response to an NPC or (2) a Field Order.
- 1.1.7 "City" or "The City" means The City of Calgary, a municipal corporation of the Province of Alberta.
- 1.1.8 "Construction Completion Certificate" means the Certificate issued by the Engineer certifying that performance of the Contract has been completed, except for continuing obligations for maintenance/guarantee and the correction of faulty materials and workmanship, described in G.C.4.43 and G.C.4.44 of these Standard General Conditions.
- 1.1.9 "Contingency Allowance" means funds not approved for expenditure but set aside for budgetary purposes in the event additional unforeseen items of work are determined to be required which were not included in the original scope of the project. These funds are not payable to the Contractor unless approved by the City's Project Manager.
- 1.1.10 "*Contract*" or "*Contract Documents*" means the agreement between The City and the Contractor for the project awarded by The City, and includes the Tender Documents, any and all documents incorporated by reference in the Tender Documents, the notice of award, the purchase order, and if a formal agreement in writing (usually a Memorandum of Agreement) is signed by The City and the Contractor such document will be included along with any modifications to any of the documents or drawings set out in the formal agreement and any further documents listed in the formal agreement or incorporated by reference in the formal agreement, and any modifications mutually agreed to by the parties after the signing of the formal agreement and confirmed in writing (usually by way of an amending agreement).
- 1.1.11 "Contract Completion", "Completion", or "Construction Completion" occurs when the Contractor has completed all Contract work including deficiencies and seasonal work and the value of remaining work, as determined by the Engineer, is minimal.
- 1.1.12 "Contractor" or "General Contractor" means the party that is awarded the project by The City.
- 1.1.13 "Contract Price" or "Contract Sum" is defined as the price of the signed Contract including Contingency Allowances, Cash Allowances and G.S.T. where applicable.
- 1.1.14 "Contract Value" means the amount of the Contract awarded.
- 1.1.15 "Current Edition" means the edition as described in the Tender Documents, or if not so described the edition in effect when the tender was issued.
- 1.1.16 "Day" or "Days" means calendar day or days, respectively.



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- 1.1.17 "Drawings of Record" or "Record Drawings" means the updated plans, drawings, diagrams, illustrations, technical details, and other data provided with and included in the Contract Documents, incorporating all approved changes and modifications authorized during the construction period providing a complete record of the project as built. Copies of all design calculations where applicable must be included.
- 1.1.18 "Engineer" means a Professional Engineer or Professional Licensee within their defined scope of practice registered by the Association of Professional Engineers, Geologists and Geophysicists of Alberta (APEGGA) or equivalent professional body. The Engineer may be an employee of The City or may be an employee of a consulting firm ("Consultant"). On some building projects, an architect registered by the Alberta Association of Architects (AAA) or equivalent professional body, may be designated.
- 1.1.19 "Engineering Department" means the business unit "Infrastructure & Information Services" (formerly called "Corporate Engineering office") of The City, which is headed by the Director of Infrastructure & Information Services.
- 1.1.20 "Field Instruction" ("FI") is a clarification of the Contract Documents which does not change the Contract Value.
- 1.1.21 "Field Order" ("FO") means a document issued during construction, by which the Engineer makes changes in the work. This document is used in an urgent situation and the Engineer may subsequently prepare a Change Order.
- 1.1.22 "Final Maintenance Certificate" means the Certificate issued by the Engineer to the Contractor at the end of the maintenance period certifying that performance of the Contract has been completed including maintenance and the correction of faulty materials and workmanship.
- 1.1.23 "Final Payment" means the payment of all money due and payable to the Contractor when the Engineer has certified that the Contractor has completed and fulfilled the terms and conditions of the Contract.
- 1.1.24 "Force Account Rate" means the applicable hourly rate for Force Account work, as set out in a booklet or rate book of The City or as otherwise adopted by The City.
- 1.1.25 "Force Account work" means work not specified in the Contract, or of a class not included in the Contract, that is required to achieve the intent or scope of the Contract and is approved by the Project Manager or the Engineer on an hourly rate basis.
- 1.1.26 "General Conditions", hereinafter abbreviated as "G.C.", means the Standard General Conditions as described in the Tender Documents.
- 1.1.27 "Incorporated in the work" means when the equipment or materials have been installed or placed in their final location suitably enclosed if necessary, in an undamaged state. Equipment does not necessarily have to be connected up to the auxiliary services such as power, adjacent piping or instrumentation in order to have been incorporated in the work.
- 1.1.28 "Installer" means the Contractor or its Sub-Contractor responsible for the installation under this Contract.
- 1.1.29 "Intellectual Property" means all property, works, reports, data, compilations of information, computer programs, written presentations, memoranda, research, drawings, sketches, layouts, commercial material, working papers, documents, copy, ideas, photographs and negatives, films, videotapes, video, audio and audio-visual productions and other materials in all forms and however fixed, stored, expressed or embodied, created, developed, generated, authored or produced by either party in performance under the Contract.
- 1.1.30 "Intellectual Property Rights" means all intellectual and industrial property rights including but not limited to all copyright, all copyright applications, trademarks, patents, inventions, patent applications, industrial designs, trade secrets and rights in Intellectual Property.
- 1.1.31 "Interim Completion Date" means a completion date for specified portions of the Contract, so noted because of its importance for co-ordination of the work of more than one Contract.
- 1.1.32 "Letter of Award" or "Award of Contract" means written notification of Contract Award issued by The City of Calgary Supply Management to the Successful Tenderer. The "Letter of Award" takes effect upon the date of its receipt by the successful Tenderer.



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- 1.1.33 "Maintenance Period" means that time during which the Contractor is responsible for the correction of faulty materials and workmanship, as well as the performance of any and all maintenance that is required, and starts upon Contract Completion and continues for a period of two years.
- 1.1.34 "Manufacturer" means the person or firm supplying equipment or material or both to the project, and may include a supplier or distributor.
- 1.1.35 "Net Cost" means the proven cost of any work or product, materials, plant and labour taking into account actual workers' pay, Workers' Compensation coverage costs, Canada Pension Plan, Workers' premium for Employment Insurance, holiday pay and medical benefits, payments to a proportionate part of the wages of foremen, construction plant and tools, equipment rental, all as applicable to the item being costed, but does not include any costs for profit, administration, or G.S.T.
- 1.1.36 "Notice of Proposed Change" ("NPC") or "Contemplated Change Notice" ("CCN") means a document that shows potential changes to the scope of the work and is issued after Award of Contract. It does NOT constitute an order to perform the change but is a notice of a proposed change only. Within fourteen (14) days after receipt of an NPC, the Contractor will submit to the Engineer a statement of any cost adjustment and effect upon the construction schedule required by the proposed change. The Engineer will generate a Change Order following approval of the NPC.
- 1.1.37 "Notice to Proceed" means the written notification provided by The City to the Contractor, which must be obtained before the Contractor can move onto the Site. The Notice to Proceed will not be issued until the following requirements of the Tender Documents have been fulfilled: The City has approved the bonding and insurance documents from the Contractor; and the Engineer and Contractor have mutually accepted the Contractor's schedule, as modified with the Engineer's comments, showing work to be commenced in the first 90 days.
- 1.1.38 "Other Contractor" means any person, firm or corporation employed by or having a contract directly or indirectly with The City other than through the Contractor and not a party to the Contract.
- 1.1.39 "Owner" means The City of Calgary.
- 1.1.40 "Project Manager" means the employee of The City, or the consultant engaged by The City, who is responsible for overall administration of the work.
- 1.1.41 "Shop Drawings" means drawings, diagrams, illustrations, schedules, performance charts, brochures and other data which are to be provided by the Contractor to illustrate details of portions of the work.
- 1.1.42 "Specifications" means Standard Specifications, Project Specifications, and any supplementary specifications, or supplementary requirements thereto as described in the Tender Documents.
- 1.1.43 "Sub-Contractor" or "Subcontractor" means a person, firm or corporation having a contract or entering into an agreement or purchase order with the Contractor for the execution of a part or parts of the work, or for furnishing to the Contractor services, materials or equipment called for in the Contract.
- 1.1.44 "Substantial Completion Certificate" or "Substantial Performance Certificate" means a certificate issued by the Contractor as described in G.C.6.8.6.
- 1.1.45 "Special Conditions" means any additional conditions or information included with the Tender Documents to modify or add to the General Conditions.
- 1.1.46 "Tender Documents" means the Documents listed in G.C.2.1 of these Standard General Conditions and any modification thereof or addition thereto incorporated by an addendum before the close of the tender.
- 1.1.47 "Tender Price" or "Total Tendered Price" means the total price including Contract Price, as well as any Contingency Allowance, Cash Allowance, and G.S.T.



## **G.C.1.2 General**

- 1.2.1 Headings and titles in the Contract are inserted for convenience only and are not explanatory of the clauses with which they appear.
- 1.2.2 All references in the Tender Documents to statutes and regulations thereto and City Bylaws are deemed to be the most recent amendments thereto or replacements thereof.
- 1.2.3 Where reference in the Tender Documents is made to a City representative, such representative shall throughout the duration of the Contract, have the authority to act on behalf of The City to the extent expressly provided in the Tender Documents.

## **G.C.2 PRE-TENDER INFORMATION**

### Information to Tenderers

The directions contained hereunder apply to the project for which Tenderers were called in the Notice to Tenderers and provide instructions as to the manner in which Tenders are to be completed. This Information to Tenderers will be included as part of the Contract Documents making up the Contract which will be executed by The City and the successful Tenderer and will bind the successful Tenderer and The City to the extent and applicability of its provisions. In order to ensure consideration of the Tender, it should be placed in an envelope marked with the Tender number and the Project Title as the same are set out in the Notice to Tenderers and forwarded to the Manager, Supply Management in accordance with the closing time and date stated in the Tender Documents.

### **G.C.2.1 Contents of Tender Documents**

2.1.1 The Tender Documents referred to in the Notice to Tenderers consist of:

- List of Contents
- Addenda (if any issued)
- Notice
- Notice to Tenderers
- Form of Tender
- Bidders Information Sheets
- Bid Bond
- Consent of Surety Company to Furnish Bonds
- Contract Performance Bond
- Labour and Material Bond (if applicable)
- Waiver
- Standard General Conditions (incorporated by reference)
- Force Account Rates (incorporated by reference)
- Special Conditions of the Contract
- Project Specifications
- Project Drawings (if applicable)
- Contractors Environmental Responsibility Package ("CERP") and acknowledgment form
- Memorandum of Agreement, and
- Other project specific documents or attachments.

2.1.2 If included in the Notice or other Tender Documents, the provisions of the Current Edition of:

- (a) Standard Specifications, Roads Construction
- (b) Standard Specifications, Sewer Construction
- (c) Standard Specifications, Waterworks Construction
- (d) Standard Specifications, Landscape Construction
- (e) Streetlighting



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are incorporated by reference in the Tender Documents to the same extent and with the same effect as if the said Standard Specifications were incorporated in full and bound with the Tender Documents. Whether or not a Tenderer submitting a Tender has obtained a copy of the aforesaid Standard Specifications prior to submitting the Tender, the offer contained therein will be deemed to be based on and include all of the applicable provisions of the said Standard Specifications and the successful Tenderer to whom the contract is awarded shall be bound by every obligation and undertaking applicable to the Contractor contained in the said Standard Specifications to the same extent and with the same effect as such party is bound by the provisions actually set out and bound with the Tender Documents. When the formal agreement document is made up after the award of the Tender it will contain the said Standard Specifications as well as the Tender Documents which will be incorporated by reference as set out in the Waiver Form.

### **G.C.2.2 Manner of Resolving Inconsistencies or Conflict in Documents**

- 2.2.1 The Tender Documents are complementary and what is called for by any one will be as binding as if called for by all. The intention of the Tender Documents is to include all labour, equipment, and materials reasonably necessary for the proper execution of the work. The intention is that materials or work shown on the drawings but not covered by the general specifications must be supplied unless distinctly noted otherwise on the drawings or elsewhere in the Tender Documents. Descriptions of materials or work in words which have well-known technical or trade meanings, will be deemed to incorporate such recognized standards.
- 2.2.2 In case of any inconsistency or conflict between the provisions of the Tender Documents, the provisions of such documents and addenda thereto will take precedence and govern in the following order:
- (a) Addenda (if any)
  - (b) Notice to Tenderers
  - (c) Special Conditions
  - (d) General Conditions
  - (e) Project Specifications
  - (f) Standard Specifications
  - (g) Drawings (if any)
  - (h) Notice
  - (i) Memorandum of Agreement (if any)
  - (j) All other Tender Documents
- 2.2.3 Figured dimensions on a drawing take precedence over measurements scaled from the drawing, and large scale drawings take precedence over those of smaller scale. Supplementary drawings and project specifications supersede their antecedents. In case of conflict between figured dimensions on a drawing and the dimensions of a specified product, the dimensions of the specified product will govern.
- 2.2.4 The Tender Documents, and any additional documents agreed to by the parties and confirmed in the Memorandum of Agreement, will become the Contract Documents and represent the entire agreement between The City and the Contractor and supersede all prior negotiations, representations or agreements, either written or oral. The Contract Documents may be amended only by written instrument executed by both parties.
- 2.2.5 In the event of any inconsistency or conflict between the provisions of the Contract Documents, the provisions of such documents will take precedence and govern in the following order:
- (a) Memorandum of Agreement (if any)
  - (b) Letters of Clarification (if any)
  - (c) Addenda (if any)
  - (d) Notice to Tenderers
  - (e) Special Conditions
  - (f) General Conditions
  - (g) Project Specifications
  - (h) Standard Specifications
  - (i) Completed Form of Tender
  - (j) Drawings (if any)
  - (k) Notice
  - (l) All other Contract Documents

or if the above order is not sufficient to resolve the inconsistency or conflict, then the following means may be used in the order listed:



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the most recent provision; or  
the most specific provision.

In addition and in any event the parties will endeavor to interpret the Contract Documents, both individually and collectively, so as to give effect to the intentions of the parties and the carrying out of the work in a timely, effective, and cost effective manner.

### **G.C.2.3 Addenda**

- 2.3.1 The Tender must be based on the Tender Documents issued initially, as well as all documents which are included by reference therein and all addenda issued by The City before the close of Tenders. The Tenderer shall complete the document for acknowledging the receipt of any addendum or addenda included in the Form of Tender. The City may refuse to consider any Tender in which the Acknowledgement is not completed.
- 2.3.2 Where addenda have been added to the Tender Documents, the latest addendum will take precedence and govern the others which preceded it.

### **G.C.2.4 Standard Specifications**

Where the Standard Specifications listed in G.C.2.1.2 are included in the Notice or the other Tender Documents, every party wishing to tender on this project must obtain one set of the Current Edition of each of the following Standard Specifications applicable to the project:

- (a) Standard Specifications, Roads Construction
- (b) Standard Specifications, Sewer Construction
- (c) Standard Specifications, Waterworks Construction
- (d) Standard Specifications, Landscape Construction
- (e) Streetlighting

### **G.C.2.5 Printed Form of Tender and Revisions**

- 2.5.1 Only Tenders completed on the Form of Tender supplied by or on behalf of The City with the Tender Documents, or an unaltered copy thereof, will be considered. See G.C.3.5 to 3.12 for specific details on completion.
- The Tenderer shall execute the Form of Tender as provided in G.C.3.1 hereof and complete and include each schedule to the Form of Tender as indicated therein.
- 2.5.2 Revisions provided to The City to any Bid submitted will not be considered. The original Bid may be withdrawn prior to official tender opening (see G.C.3.2). Any modifications to a Bid may only be made by way of a complete and formal Bid submitted in a timely manner in accordance with the Tender Documents.

### **G.C.2.6 Bid Bond or Bid Security**

- 2.6.1 The Tenderer is required to submit a Bid Bond in an amount not less than ten percent (10%) of the value of the Bid, or such other amount as may be required by the Tender Documents, issued by a surety company satisfactory to the City Solicitor and licensed to issue such bonds acceptable in the Province of Alberta for the Bid Deposit required by the Tender Documents. The Bid Bond must be on the form included in the Tender Documents or in a form containing the same or more stringent obligations on the part of the surety and the Tenderer and in no case is the Bid Bond to allow the surety to call for new Tenders upon the default of the Tenderer or failure of the Tenderer to execute the Tender Documents. If the Tenderer does not use the form of Bid Bond supplied with the Tender Documents The City's decision as to whether the Bid Bond supplied by the Tenderer is adequate will be final and The City at its discretion may consider the Tender or refuse to consider the Tender or may recommend the Tender subject to any conditions which The City requires.
- 2.6.2 In addition to G.C.2.6.1, The City may accept the following in lieu of a Bid Bond:
- (a) a Bank Draft, or
  - (b) an Irrevocable Letter of Credit/Guarantee



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that is issued by a Canadian bank and is acceptable to the City Solicitor.

A Bank Draft supplied by an unsuccessful Tenderer will be returned; however, in no case will The City pay any interest whatsoever. The Bid Bond or Irrevocable Letter of Credit/Guarantee is not normally returned to unsuccessful Tenderers and will be returned only on written request to The City. The Bid Bond or Irrevocable Letter of Credit/Guarantee for the successful Tenderer will be retained by The City but on written request will be returned after the Contract has been executed by both parties and all bond and insurance requirements have been met.

The Bank Draft, if any, for the successful Tenderer will be returned by The City after the Contract has been executed by both parties and all acceptable bonding and insurance requirements have been met. No interest will be payable.

### **G.C.2.7 Submission of Bid Breakdown**

Unless the Tender Documents show that a Bid breakdown is not applicable or not required, a Bid breakdown must be submitted pursuant to the Contractor's undertaking contained in the Tender Documents as defined in G.C.2.1, when directed by the Project Manager, or, in any event, within fifteen (15) days after award of the Contract. The Contractor must submit to the Project Manager a breakdown of its tendered price, showing the various operations, the total of such items to equal the aggregate price Bid. The Contractor shall also submit such other information relating to the tendered price as may be required and shall revise the Bid breakdown as may be reasonably necessary.

### **G.C.2.8 Time for Awarding Tenders**

2.8.1 Unless otherwise provided by a Special Condition, or otherwise agreed and confirmed in writing, Tenderers are required to hold tendered prices open for acceptance for a period of sixty (60) days.

2.8.2 While The City feels it is desirable that offers be firm for acceptance for the period so specified, in view of various approvals that may have to be obtained before an acceptance can be made, recognition is made of the difficulty encountered by Tenderers in obtaining commitments that will allow them to Bid in this manner. The following is therefore the position of The City with respect to consideration of offers and processing of awards:

- (a) Each Tenderer is requested to quote firm prices for acceptance within the period specified by the Tender Documents.
- (b) Tenders which are limited by the Tenderer to acceptance within a shorter period, but not less than thirty (30) days, and supported by a Bid Bond and Consent of Surety or other form of Bid security if permitted pursuant to G.C.2.6.2, will be considered.

Tenderers so limiting their Tender shall

- (i) when completing the Form of Tender clearly designate the date beyond which the Tender is not valid for acceptance by The City, and
  - (ii) be responsible for making the appropriate changes to Bid Bond and Consent of Surety or other form of Bid security if permitted pursuant to G.C.2.6.2.
- (c) Appropriate sections of Tender Documents referring to time limitations for acceptance shall be regarded as subject to any limitation on time submitted by the Tenderer.
  - (d) The City shall not be liable for any real or perceived loss or expense incurred by any Tenderer, whether successful or not, arising from or in any way connected with the failure of The City to award a Tender within the specified acceptance period of the lowest acceptable Tenderer. The City may award the Tender to that Tenderer at a date later than specified in the Tender if Tenderer agrees to extend its acceptance date and provides the necessary bonds incorporating the extended acceptance date, or may award the Tender to another Tenderer who has not so restricted its Tender, as may be in The City's best interest.
  - (e) Each Tenderer's attention is specifically drawn to the following:
    - (i) When the successful Tenderer receives written notification of Contract award in accordance with G.C.2.10.1, a Contract is already made at law between The City and the



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Tenderer. At that time, the successful Tenderer as Contractor is in a position to order materials and complete sub-contracts without waiting for formal documentation.

- (ii) Existence of the contractual right of The City to require performance of the Contract begins with the award of the Contract, and not with provision by the Contractor of any bond or of any insurance required by the Contract.

### G.C.2.9 Acceptance or Rejection of Tenders

2.9.0 Each Bidder is solely responsible for ensuring that its submission is received and time stamped at:

The City of Calgary, Supply Management  
Manchester Building "U", 2<sup>nd</sup> Floor Reception  
677 – 25<sup>th</sup> Avenue S.E.  
Calgary, Alberta T2G 4K8

before the stated closing time in the tender package. Receipt of each submission will be confirmed by The City of Calgary time clock stamp, located in Supply Management at the above address only. No other time clock stamp will be considered valid. The City of Calgary is not responsible for any submission received or time stamped after the stated closing time, and will not consider any such submission.

2.9.1 The City reserves the right to reject any or all Tenders. The lowest or any Tender will not necessarily be accepted. Without limiting the generality of the foregoing any Tender which:

- (a) is incomplete, obscure, irregular, or unrealistic;
- (b) has one or more errors, erasures, or corrections;
- (c) omits a price on any one or more items in any Schedule;
- (d) fails to complete the information required in any Schedule or tabulation;
- (e) is accompanied by a Bid Bond in an unsatisfactory form or insufficiently executed or of an insufficient amount, or an insufficient or unacceptable Bid security when alternative forms of Bid security are permitted pursuant to G.C.2.6.2; or
- (f) is otherwise non-compliant;

may at The City's sole discretion be rejected. Further, a Tender may be rejected on the basis of a Tenderer's level of expertise or experience, past performance, financial capabilities, completion schedule, prime contractor capabilities, or non-compliance with any material Federal or Provincial legislation or Municipal bylaw or permit.

2.9.2 It is a condition of tender acceptance that the Tenderers agree to authorize credit checks in accordance with standard City policy. To enable The City to initiate credit checks prior to award of tender, a "Request for Credit Authorization" form, when received, shall be completed and returned to The City within twenty-four (24) hours of receipt by the Tenderer.

2.9.3 Any liability of The City as a result of or in connection with the acceptance of the Bid of any Bidder or the rejection of the Bid of any Bidder, or the rejection of all Bids, shall be limited to the lesser of the reasonable costs of the preparation of the Bid of the Bidder or the Bidders claiming damages, or the sum of \$250,000 cumulatively in respect of the aggregate of the claims by any and all Bidders.

2.9.4 As it is the objective of The City to obtain a Tender most suitable to the interests of The City and what it wishes to accomplish,

- (a) The City may accept or waive a minor and inconsequential irregularity, insufficiency, or non-compliance; and
- (b) The determination of what is or is not a minor and inconsequential irregularity, the determination of whether to accept, waive, or require correction of any irregularity, and the final determination of the validity of any Tender, will be at the sole discretion of the Manager of Supply of The City.

2.9.5 In the event all Bidders are over the budget, subject to the Special Conditions providing for and when the budget is posted or otherwise disclosed, The City reserves the right to negotiate with the lowest compliant Bidder.

2.9.6 The City may provide Additions to the Contract price sheets or Deletions to the Contract price sheets as part of the tender package. The City may choose to add or delete any item or items, schedule or any



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portion of a schedule as deemed to be in the best interest of The City. The City will only consider additions to or deletions from the lowest base compliant Bid.

### 2.9.7 Bid on Procurements for Goods, Services or Construction with Parties with Disputes

2.9.7.1 The City, acting through its Manager of Supply Management in consultation with the City Treasurer and City Solicitor, may in its absolute discretion after considering the criteria outlined in G.C.2.9.7.2, reject a Bid, tender, quotation or proposal if the Bidder, or any officer or director of the Bidder is engaged, either directly or indirectly through a corporation, an affiliate, or personally, in a dispute against The City in relation to:

- (a) any other contract or services;
- (b) any other matter arising from The City's exercising its powers, duties or functions.

2.9.7.2 In determining whether or not to reject a Bid, tender, quotation or proposal under this clause, the Manager of Supply Management, the City Treasurer and City Solicitor will consider:

- (a) whether the dispute is likely to adversely affect the Bidder's ability to work with The City, its consultants and representatives;
- (b) whether The City's experience with the Bidder indicates that The City is likely to incur increased staff and legal costs in the administration of the Contract if the Contract is awarded to the Bidder;
- (c) whether the Bidder has failed to satisfy an outstanding debt to The City or one of its boards or corporations; and
- (d) whether there are reasonable grounds to believe it would not be in the best interests of The City to enter into a Contract with the Bidder.

### G.C.2.10 Acceptance of Tender and Its Effect

2.10.1 No act of The City other than a notice in writing signed by The City Clerk or Manager, Supply Management or designate will constitute an acceptance of a Tender. Such acceptance by The City shall bind the successful Tenderer to execute in a manner satisfactory to the City Solicitor the Tender Documents, to furnish the bonds and insurance material required by the Tender Documents or to be responsible for the damages provided in G.C.3.14. The other rights and obligations contained in the provisions of the Tender Documents will only enure to the benefit of and be binding upon the parties upon the formal execution of the Contract.

2.10.2 If The City has called for the Tenders to be made for payment on a unit price basis or partly on a unit price basis, the Tenderer shall be deemed to have offered to perform all of that part of the work for which the unit prices have been called at the said unit prices as are set out in the Form of Tender. The City will establish the total cost contained in the Tenders received by multiplying such unit prices by the number of units in each case. When The City determines that a mathematical error exists in the Tender Document, The City shall assume the error has been made in the Tenderer's calculation and The City, may, without consulting the Tenderer, correct the calculation accordingly.

2.10.3 Notwithstanding the provisions of the first paragraph of G.C.2.10 or any other part of the Contract Documents, if the Engineer or The City, after acceptance of a Tender by The City, but before execution of the Contract Documents objects to any Subcontractor proposed to be employed by the successful Tenderer in the performance of the Contract, and the Tenderer refuses or neglects to nominate another Subcontractor acceptable to the Engineer and The City, The City may rescind its acceptance of the Tender. In such event, neither The City nor the successful Tenderer will have any rights or obligations in respect of the acceptance of Tender, and The City may award the Tender to another Tenderer.

### G.C.2.11 Refund of Tender Document Deposit

"Not applicable"



### **G.C.2.12 Return of Bid Bond or Bid Security**

Unless forfeited because of improper withdrawal of a Tender after the official time for opening of Tenders, before the Tender has been awarded, or if the project has been abandoned either temporarily or permanently, the Bid bond or Bid security furnished with the Tenders may be obtained by all but the three lowest formal Tenderers within three (3) days following the opening of the Tenders. Subject to G.C.2.6, any Bid security (other than a Bid bond) for each of the three lowest formal Tenders which have not been rejected because of irregularities will be returned within two (2) days after the award of the Contract or, in any case, within ninety (90) days of the opening of the Tenders.

### **G.C.2.13 Site Information**

- 2.13.1 The Tenderer shall be deemed to have satisfied itself by careful examination of the nature and location of the work, the soil structure and topography of the site, the nature and quantity of materials required for the performance of the Contract, the equipment and facilities needed preliminary to and during the performance of the work and all other matters which can in any way affect the work.
- 2.13.2 The Tenderer's obligation to familiarize himself with the soil structure and topography of the site is not lessened or removed by reason of any soils report, data, test hole drilling report or other soil information made available or supplied with the Tender Documents. Any data or reports so provided are for information only and neither The City nor the Engineer accepts or assumes any responsibility for the contents or accuracy of the soil information provided.
- 2.13.3 The Tenderer shall promptly, and in any event not later than five (5) business days after discovery, notify the Engineer in writing if the subsurface conditions at a site differ substantially or materially from those indicated in the Tender Documents or soil information.
- 2.13.4 The Tenderer shall not disturb any subsurface conditions following discovery, as described in G.C.2.13.3, until authorized by the Engineer.
- 2.13.5 If the Engineer investigates and determines subsurface conditions differ substantially or materially from those identified in the soil information or Tender Documents, the Engineer shall issue appropriate instructions for changes in the work and, as necessary, to the Contract Documents.

### **G.C.2.14 Omissions and Discrepancies**

If the Tenderer finds discrepancies in or omissions in the Tender Documents or if the Tenderer is in doubt as to the meaning thereof he should at once notify the person(s) designated in the Notice, and the person(s) so notified may issue addenda to all Tenderers. The Tender Documents supersede all communications, negotiations and agreements either written or oral relating to the subject or matter of the Tender made prior to the date of the Tender and no changes shall be made to the Tender Documents except by written addenda.

### **G.C.2.15 List of Sub-Contractors, Suppliers, Key Personnel**

- 2.15.1 If required by the Tender Documents, the Tenderer shall submit to the Manager, Supply Management within twenty-two (22) hours of Tender close, names of the Subcontractors and suppliers proposed for the work.
- 2.15.2 The Tenderer shall, when requested, provide a list of key personnel, complete with resumes, to The City. All staff must be competent to perform assigned duties. The City may request the Tenderer to substitute any staff which, in The City's opinion, is unacceptable.

### **G.C.2.16 Law**

The work must be done in accordance with the law in force in the Province of Alberta. This includes the Agreement on Internal Trade and NWPTA, being the New West Partnership Trade Agreement between the governments of British Columbia, Saskatchewan, and Alberta. No action at law or in equity may be commenced or continued on any matter arising out of or connected with the Contract in any court other than a court of competent jurisdiction in the Province of Alberta or on appeal to the Federal Court of Appeal or Supreme Court of Canada from the appropriate court in the Province of Alberta.



### **G.C.2.17 Assignment**

The Contractor shall not assign the Contract or any portion thereof without the written consent of the Manager, Supply Management, which consent The City is not obliged to give.

### **G.C.2.18 Minimum Wages**

2.18.1 The Contractor shall comply with all of the provisions of the *Employment Standards Code (Alberta)*, which are or could be applicable to performance of this agreement by the Contractor. If The City receives a complaint that the Contractor is not paying its employees as provided by the Code, and it is established to the satisfaction of The City that the Contractor is not complying with such provisions relating to payment of its employees, The City may retain from any amount owing to the Contractor under this or under any other contract sufficient money in the opinion of The City to pay all of the employees of the Contractor the amounts or amounts to which in the opinion of The City based on the evidence presented to it any such employee or employees are entitled. The amount which The City may retain pursuant to G.C.2.18 is in addition to and not in substitution for any amounts which The City is required or allowed to deduct from amounts owing to the Contractor under any provisions of this or any other contract between the parties hereto or of any statute of Canada or of the Province of Alberta or any regulations made under any such statute.

2.18.2 The City may retain such amounts until the Contractor has produced written evidence satisfactory to The City that all such outstanding amounts due to its employees have been paid. In addition to the amount which is to be retained for the benefit of such employees, The City may also charge to the Contractor, a reasonable overhead cost to The City for the additional accounting and other services incurred by The City in connection with the enforcement of this clause and may deduct such amount from any amounts due to the Contractor under the Contract or under any other agreement. Without limiting the provisions of any other clause of the Contract, the Contractor shall bind its Subcontractors to the provisions of this clause, and The City may on the same conditions deduct from any amount due to the Contractor any amount owing to employees of the Sub-Contractor engaged by the Contractor in the performance of this agreement. The rights granted hereunder are in addition to, and not in substitution for:

2.18.2.1 Any other provisions of the Contract relating to the working conditions which the Contractor is obliged to provide for its employees, and

2.18.2.2 Any right which the said employees may have against the Contractor pursuant to the provisions of any Federal or Provincial statute in relation thereto.

2.18.4 If the *Employment Standards Code (Alberta)* is amended or is replaced by a similar statute, the provisions of the amending statute or of the statute replacing the said Code will apply to this clause as though the amended or replaced provisions had been specifically set out herein. Nothing in G.C.2.18 will oblige or be deemed to oblige The City to exercise any of the powers conferred hereby.

### **G.C.2.19 Hours of Work**

2.19.1 The Contractor shall not work on Sunday or on any other day normally observed as a holiday in The City of Calgary without the approval of the Project Manager.

2.19.2 The Contractor shall comply with the provisions of the Community Standards Bylaw.

2.19.3 Hours of work allowable are 7:00 hours to 22:00 hours, Monday to Saturday. Sunday or holidays work hours if approved by The City will be 9:00 hours to 22:00 hours.

2.19.4 The Contractor shall take precautions to minimize the public exposure to noise.

2.19.5 The Special Conditions may require the successful Tenderer to work up to sixteen (16) hours a day without any increase in the unit rates paid or any additional compensation for overtime.

### **G.C.2.20 Separate Contracts**

The City may make other contracts in connection with the undertaking or project of which the work under the Contract is a part. If The City does make such additional contracts, the Contractor must coordinate its work with the work of the Other Contractors. Where any part of the Contractor's work hereunder depends for its proper execution or result upon work of the Other Contractor who is not a party to this Contract, the Contractor shall



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report promptly to the Engineer any defect or insufficiency in the work of the Other Contractor that may interfere with the proper execution of the Contractor's performance of the Contract. Should the Contractor fail either to inspect the work of the Other Contractor on which this Contractor's work depends or to report the same as herein provided, the Contractor shall be as responsible for the defective or unfinished work to the same extent as if the defective or unfinished work had been the Contractor's own work. This provision shall not apply to defects of the Other Contractor's work which in the opinion of the Engineer would not be apparent at the time of commencement of the Contractor's work. Nevertheless, if during the performance of the Contractor's obligations, a defect which was not previously apparent should become apparent, then the Contractor shall at that time report it forthwith to the Engineer.

### **G.C.2.21 City Service Connection Charges (Water, Sanitary Sewer, Storm Sewer)**

The Tenderer is not required to include the cost of permanent City service connection or disconnection fees in the Tender. However, the Tenderer shall be responsible for all aspects of coordination of the construction work.

### **G.C.2.22 Vendor Performance Evaluation**

The successful Tenderer will be evaluated on its performance during the Contract. If performance concerns arise during construction, a meeting or meetings may take place to discuss and resolve the issues. The Project Manager will document the outcome.

Vendor performance may be evaluated at any time, and may be evaluated more than once. A final Vendor Performance Evaluation form should be completed by the Project Manager at the completion of the Contract, and should be part of the process for the release of holdback. A copy of the completed Vendor Performance Evaluation form will be provided to the successful Tenderer by The City. Information contained in this form and any supporting documentation may be used in future tender evaluations and award recommendations.

Should the Tenderer view any of the information contained in the Vendor Performance Evaluation form to be at variance with its own evaluation of its performance, then the Tenderer shall, within ten (10) days of receipt of the Vendor Performance Evaluation form, give notice in writing to the Manager of Supply Management, and set out the items which the Tenderer takes exception to.

If, in the opinion of The City, performance ratings indicate a meeting between the Contractor and The City may be warranted to discuss performance concerns, The City will invite the Contractor to meet and discuss performance.

These discussions will focus on specific issues and the outcome will be summarized in a confirming letter. The Contractor may be invited to respond by letter as to the measures it proposes to make with the intention of correcting or mitigating the concerns.

## **G.C.3 INSTRUCTIONS TO TENDERERS**

### **G.C.3.1 Tenders to be Under Seal**

- (a) The Tender is to be signed and sealed. If the Tenderer is a corporation, the Tender should be signed by one or more duly authorized officers of the corporation and under its corporate seal. If the Tenderer is an individual person, the Tender should be signed by that person. If the Tenderer is an association of persons or a firm not incorporated, each member of the association or firm should sign and if applicable affix its seal to the Tender. If the Tenderer is a Cooperative incorporated under the *Cooperatives Act*, and if the Tenderer has a corporate seal the Tender should be signed by one or more duly authorized officers of the corporation and under the Cooperative's corporate seal.
- (b) If a corporation or other legal entity does not have a seal, or if the seal is unavailable, the corporation or entity should provide reasonable documentation to confirm that the person signing on behalf of the entity has authority to bind the legal entity. Affidavits of authority and execution will normally constitute reasonable confirming documentation.

### **G.C.3.2 Tenders Irrevocable**

Once the Tenders have been officially opened, each Tender will be irrevocable until the earlier of the day the Tender is considered and awarded by the Manager, Supply Management, or sixty (60) days after closing. The



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period that the Tender is irrevocable may be longer if so required by reason of being an Alternate Design under G.C.3.6, or by a Special Condition or other requirement in the Tender Documents, or if mutually agreed to by the Bidder and The City. Until the date and time of closing, any Tenderer may withdraw its Tender without penalty or forfeiture. No Tender will be returned to a Bidder before close of tender on the verbal request of the Bidder. Sealed Tenders will be returned before the closing time only if the request is submitted in writing and is in a form acceptable to the Manager, Supply Management. Following closing, if any Tender is withdrawn prior to the date of award, The City may retain the Bid bond or Bid security that accompanied such Tender.

### **G.C.3.3 Consent of Surety**

3.3.1 The Tenderer shall provide with its Tender a Consent of Surety on the form included in the Tender Documents, or in a form containing the same or more stringent obligations on the part of the surety and the Tenderer, executed under seal by a Surety satisfactory to the City Solicitor and allowed by the laws of the Province of Alberta to issue bonds in Alberta. Surety listing is available from the Office of the Superintendent of Insurance of Alberta, Alberta Finance, Government of Alberta. If the Contract is awarded to the Tenderer, the Surety Company shall furnish:

- (a) a Contract Performance Bond, and
- (b) if the Notice so directs, a Labour and Material Payment Bond

each in an amount of not less than fifty percent (50%) of the Total Tendered Price and containing all of the provisions set out in the Consent of Surety and in the Contract Performance Bond, and where required, the Labour and Material Payment Bond appearing in the Contract Documents. The Performance Bond will secure the faithful performance of the obligations of the Contract until the completion of the construction required in the Contract and during the period of maintenance or guarantee set out in G.C.4.44 of these General Conditions of the Contract. If a Labour and Material Payment Bond is required, it will secure payment to all Sub-Contractors, employees, workmen and suppliers of material in connection with the performance of the Contract. If the Tenderer is awarded the Contract, the Tenderer shall provide such Bond or Bonds along with documentation evidencing all policies of insurance required by the Contract Documents at or before the execution of the Contract by the parties hereto. The required Contract Performance Bond, and if required by the other Contract Documents the Labour and Material Payment Bond, must be in the form supplied by The City or a form that is acceptable to the City Solicitor.

3.3.2 The City may accept the following in lieu of a Consent of Surety for each bond that is required:

- (a) a Bank Draft or a certified cheque, or
- (b) an Irrevocable Letter of Credit/Guarantee, or
- (c) a letter confirming that either (a) or (b) can be provided

from a financial institution acceptable to the City Solicitor, in an amount not less than fifty percent (50%) of the Total Tendered Price.

In either case (a) or (b) The City may require additional documents to the above, to ensure full and proper project completion. The failure to provide the additional documents may result in the rejection of the Tender.

3.3.3 In the event of a material extension of the award, Contractor must obtain and provide to The City an appropriate rider or extension to any applicable performance security and any applicable labour and material payment security, or provide additional security to maintain a security level of not less than 50% of the Total Tendered Price as stipulated in G.C.3.3.1. The cost of such rider or extension or additional security will be a reimbursable expense.

### **G.C.3.4 Contractor's Insurance**

3.4.1 During the term of the Contract and at all times when the Contractor is performing any part thereof and during the times provided for correction of work after final payment in G.C.4.43 and for maintenance in G.C.4.44 of these General Conditions, the Contractor shall:



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- 3.4.1.1 Maintain with an insurance company or companies satisfactory to the City Solicitor and allowed by the laws of the Province of Alberta to provide insurance in Alberta, the undermentioned types of insurance policies in forms satisfactory to the City Solicitor:
- (a) Commercial general liability ("CGL") insurance for bodily injury (including death) and property damage in an amount of not less than TWO MILLION DOLLARS (\$2,000,000.00) inclusive limit for any one occurrence. This CGL insurance must be written to a minimum of the current IBC 2100 form, or the most recent version, and such insurance policy must include:
    - (i) The City as an Additional Insured;
    - (ii) a cross liability clause;
    - (iii) products and completed operations coverage of no less than 24 months;
    - (iv) broad form contractual liability coverage;
    - (v) non-owned automobile liability coverage;
    - (vi) operation of attached machinery clause;
    - (vii) the waiving of every right of subrogation by the said insurance company or companies against The City arising out of or in any way connected with the performance of the Contract;
    - (viii) a provision that the rights of The City under any provision of the said policy will not be prejudiced by any default or violation by the Contractor or by any other person insured by that policy; and
    - (ix) any other specific clauses or coverages as may be required by the City Solicitor and described in the applicable Special Conditions;
  - (b) Automobile third party liability insurance (Owner's Form) for bodily injury (including death) and property damage in an amount of not less than TWO MILLION DOLLARS (\$2,000,000.00) inclusive limit for any one occurrence insuring each and every automobile used in the performance of the Contract and such insurance policy will include specific clauses or coverages as may be required by the City Solicitor and described in the applicable Special Conditions;
- 3.4.1.2 Secure an endorsement to each of the insurance policies mentioned in G.C.3.4.1.1 showing that said insurance will not be cancelled or materially altered without at least thirty (30) days written notice to The City;
- 3.4.1.3 Covenant and agree that The City's insurance requirements mentioned above will not be construed to and will in no manner limit or restrict the liability of the Contractor or its responsibility under G.C.4.14;
- 3.4.1.4 Be solely responsible for the payment of every deductible amount provided in any policy of insurance furnished pursuant to the Contract;
- 3.4.1.5 Furnish to The City prior to commencing any work or operation under this Contract documentation satisfactory to the City Solicitor evidencing such insurance and also furnish documentary evidence satisfactory to the City Solicitor of the renewal or continuance of such insurance within ten (10) business days of any expiry date(s) thereof;
- 3.4.1.6 Accept that The City's insurance requirements must, as mentioned in G.C.3.4.1.1 above, be in forms satisfactory to the City Solicitor and that if the City Solicitor finds it necessary for all or any of such insurance requirements to be in forms different from those as maintained by the Contractor then the Contractor shall comply accordingly with the City Solicitor's findings and forward to The City the relevant insurance documentation. If the Contractor has not maintained the insurance required by this clause and furnished the City Solicitor with all of the material required by this clause The City may without waiving, relinquishing or abridging any right it has under the Contract obtain such insurance as may be required to protect and indemnify The City to the same extent as required under this clause and charge the cost thereof to the Contractor and at The City's sole option set off such cost against any amount due from The City to the Contractor;



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- 3.4.1.7 Be solely responsible for and indemnify The City against any loss or damage to the Contractor's tools, materials or equipment or any portion of the Work hereunder not accepted and occupied by The City except and to the extent that such responsibility is specifically accepted by The City pursuant to a provision of the Contract;
- 3.4.1.8 As described in more detail in G.C.4.10, maintain an account in good standing with the Workers' Compensation Board of the Province of Alberta covering all activities of the Contractor hereunder and pay all assessments thereunder. If the Contractor or Subcontractor is in an exempt industry or does not qualify for Workers' Compensation coverage in Alberta, the Contractor or Subcontractor must provide an employer's liability extension to its CGL policy.

### **G.C.3.5 Tenderers to Bid to City of Calgary Terms and Conditions**

- 3.5.1 (a) All Tenderers must Bid to The City's specified terms and conditions.
- (b) Any Tenderer taking exception to any of The City's specified terms and conditions, and wishing to Bid to a qualified or alternate term or condition, may only do so providing that:
- (i) The Tenderer has first tendered a price based on The City's terms and conditions verbatim, and
  - (ii) The Tenderer's offer of qualified or alternate terms or conditions must clearly define the details of any such changes, and set out individually and in full detail the additional or reduced amount that applies to each change.
- (c) In evaluating Tenders, selection of the successful Tenderer will be on prices tendered to The City's terms and conditions verbatim. If that Tenderer has offered additional or reduced amounts based on qualified or alternate terms and conditions, The City may accept or reject such alternate terms and conditions as may be deemed in The City's best interests.
- (d) The words "terms and conditions" used in this clause refer only to that portion of the Tender Documents setting out the requirements other than the detailed work or Project Specifications.

### **G.C.3.6 Bids on Alternate Designs to Tender Design**

- 3.6.1 The City acknowledges that there may be designs other than what is described in the Tender Documents, and unless indicated otherwise in the Tender Documents will consider such alternates prior to award of Tender provided that the Tenderer:
- (a) has tendered a price based on the Tender Documents, and is the low Tenderer;
  - (b) has tendered a total price based on the alternate design and has completed the Summary for Form of Tender for Alternate Bid included in the Tender Documents. This Summary must be completed whether or not the Alternate Design refers to part or all of the project;
  - (c) has included sufficient information on the alternate design to permit The City to quickly and easily assess the alternate proposal;
  - (d) has provided an alternate design prepared by a Professional Engineer registered in the Province of Alberta.
- 3.6.2 In the event that The City accepts the proposed alternate design, the Tenderer shall be responsible for providing general Engineering services or resident Engineering services or both during construction as required by The City.
- 3.6.3 On completion of the construction, the Tenderer shall supply The City with one reproducible set of "Drawings of Record" and two copies of properly signed and stamped design calculations.
- 3.6.4 For the alternate design Bid to be properly evaluated The City requires that the Bid submitted by the Tenderer be open for at least sixty (60) days.



### **G.C.3.7 Disclosure of Interest**

- 3.7.1 In accordance with approved policy of City Council, each supplier or Contractor must, as a condition of supplying goods and services to The City, make full disclosure of any of the following existing business relationships with any member of Council, Executive Officer, or any employee of The City who makes recommendations concerning the award of Tender, or the spouse or immediate relative of any such person.
- (a) If a private company - Details of ownership of shares by any of the above.
  - (b) If a public company - Details of any ownership of shares, in excess of one percent (1%) of total shares issued, by any of the above.
  - (c) If a partnership - Details of any partnership arrangement of any of the above.
  - (d) Details of any directorship of any of the above, unless the directorship is only by reason of the individual being a member of Council, and who has Council's authorization to vote.
  - (e) Details of any direct or indirect pecuniary interest of any of the above in the supply of such goods and services.
- 3.7.2 Disclosure, where any is required, must be made in writing at time of bidding, or prior to supplying goods or services on a purchase order should it not be the result of acceptance of a written offer.
- 3.7.3 If any Contractor or supplier fails to disclose an interest or the interest is falsely or insufficiently reported, The City reserves the right to terminate or suspend the Contract.
- 3.7.4 For the purposes of G.C.3.7, "immediate relative" means a person who is related to an identified person in any of the categories identified below, including:
- (a) through a blood relationship as a parent, grandparent, aunt, uncle, child, or grandchild;
  - (b) through marriage or other legal process, including adoption, is a spouse, parent, grandparent, child or grandchild; or
  - (c) through co-habitation is connected to a co-habiting person or any parent, grandparent, child or grandchild of such person.
- 3.7.5 Without limiting the other requirements in G.C.3.7, the Tenderer must also provide timely disclosure of any actual or potential conflict of interest that exists or would arise if it were to be awarded this Tender. Any failure to do so may result in the suspension or cancellation of the award or termination of the Contract.

### **G.C.3.8 Allowances for Lump Sum Contracts**

If the Tender is for a lump sum Contract, the Tenderer shall first determine the amount for which he is willing to perform completely all of the requirements of the Tender Documents. The Tenderer shall enter this amount in the appropriate space on the Summary for Form of Tender.

After this amount has been entered the Tenderer shall add the Contingency Allowance to the Total Schedule Amount(s).

Cash Allowances if set out or indicated on the Summary Sheet must be included in the "Total Tendered Price". The Contract will be awarded on the said Total Tendered Price but the successful Tenderer will only be entitled to the Contingency Allowances or any part thereof to the extent that any applicable alterations, modifications, additions or extras qualify for extra payments under the Contract Documents, these items have been done, and these items and the corresponding extra payments have been approved by the Engineer.

### **G.C.3.9 Allowances for Unit Price Contracts**

If the Tender is for a unit price Contract, the Tenderer shall add up the total amounts from all of the schedules and shall enter this amount in the appropriate space on the Summary for Form of Tender. After this amount has been entered, the Tenderer shall add the Contingency Allowance to the Total Schedule Amount. Cash Allowances as set out or indicated on the Summary Sheet shall be included in the "Total Tendered Price". The



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Contract will be awarded on the Total Tendered Price but the successful Tenderer will only be entitled to the Contingency Allowance or any part thereof to the extent that any applicable alterations, modifications, additions or extras qualify for extra payments under the Contract Documents, these items have been made or done, and these items and the corresponding extra payments have been approved by the Engineer. The Tenderer to whom the contract is awarded will be paid at the unit price rate on the actual quantities of Work done.

**G.C.3.10 Combined Lump Sum and Unit Price Contracts**

Where a Tender calls for both lump sum and for unit prices for portions of the Work, then a combined Contingency Allowance should be indicated on the Summary for Form of Tender.

**G.C.3.11 Application of Commodity Taxes to Contracts**

- 3.11.1 (a) Goods and Services Tax ("G.S.T.") should be excluded from all unit prices and schedule amounts. G.S.T. content in tax included prices is to be calculated, deducted from the schedule amount and shown as a separate total amount in the "Add G.S.T." space on the Summary for Form of Tender (yellow sheet).
- (b) G.S.T. applies to the Contingency/Cash Allowance amounts which are to be included in the "Add G.S.T." space on the Summary for Form of Tender.

Comparison of Bids will be made on the basis of the tendered price.

- 3.11.2 Where The City calls for Tenders on contracts on which G.S.T. Zero-Rated or Exempt materials or services are being provided, the Tenderer shall indicate such Zero-Rated or Exempt materials or services on each schedule to the Tender. The City may refuse to consider a Tender which does not separate the following costs from all other costs:

- (a) The materials costs of all Zero-Rated goods and services.  
(b) The cost of all Exempt goods and services.

- 3.11.3 It is the responsibility of each Tenderer to ascertain before submitting its Tender whether or not any portion of the project to be constructed under the Contract qualifies for Goods and Services Tax Relief. Tenderers should contact:

Canada Revenue Agency ("CRA")  
Attention: GST Inquiries  
Harry Hays Building, Room 172  
220 - 4th Avenue S.E.  
Calgary, Alberta T2G 0L1

Or call: 1-800-959-5525

to obtain this information.

- 3.11.4 If the Contractor is unable to recover G.S.T. on any item found by the CRA not to be Zero-Rated or Exempt from Sales Tax, no additional amount will be paid by The City.

- 3.11.5 In general, the following categories of goods or services qualifying for specific tax or duty relief may be used as a guideline:

3.11.5.1 Schedule VI (Zero-Rated Supplies) to the *Excise Tax Act* which lists certain prescription drugs, medical devices, basic groceries, agriculture and fishing supplies, transportation services, financial services and certain non-taxable importations. In general, Tenderers should consider all of the Zero-Rated supplies as clearly outlined in Schedule VI; in particular section 5 of part IV Agriculture and Fishing zero-rates a supply of fertilizer in bulk or in a container containing at least 25 Kg of fertilizer where the total quantity of fertilizer supplied at that time is at least 500 Kg.

3.11.5.2 Schedule V (Exempt Supplies) to the *Excise Tax Act* which lists certain supplies of real property excluding municipal real property (2004 Amendment), health care services, educational services and financial services.



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- 3.11.6 G.S.T. on Progress Billings - The successful Tenderer shall invoice The City on progress billings clearly indicating the net billing after deduction of the holdback pursuant to G.C.6.8 as a G.S.T. excluded amount. G.S.T. shall be clearly indicated as a separate amount on each progress billing.
- 3.11.7 G.S.T. on Holdbacks - The successful Tenderer shall exclude G.S.T. from the amounts held back from progress billings pursuant to G.C.6.8 Liens and Holdbacks. In accordance with subsection 168(7) of the *Excise Tax Act*, G.S.T. on the amount held back is payable by The City to the Contractor on the earlier of the day the holdback is paid out or the day the holdback expires.
- 3.11.8 Customs duty remissions may also apply on certain imported machinery possibly included here where same is either not available in Canada or when such importation is in the public interest as provided in the *Financial Administration Act* and when approved by the Federal Department of Industry, Trade and Commerce.
- 3.11.9 Unless otherwise specifically stipulated, where necessary the Contractor shall undertake all needed operations, and pay all relevant charges, for clearing any imported equipment or materials through the Canada Border Services Agency.
- 3.11.10 Unless otherwise specifically stipulated, if the Contractor or its supplier manufactures or purchases any goods involved in the Contract outside of Canada, the Contractor must ensure that he or its agent or representative is the "IMPORTER OF RECORD" for customs purposes.
- 3.11.11 In the event The City elects to exercise its option to delegate specific responsibility for importations to a person or entity other than the Contractor, as provided in G.C.3.11.9 and G.C.3.11.10, The City or its representative shall facilitate customs clearance. The Contractor shall provide all information and documentation required by customs to enable The City or its representative to complete the importation process without delay.
- 3.11.12 The City will not be liable for and the Contractor or its supplier shall indemnify The City in respect of any special or dumping duties which may be levied by the CRA or Canada Border Services Agency, or otherwise, upon any imported goods required in the supply of materials in this order and in performance of the Contract.
- 3.11.13 The cancellation, reduction or remission of any special or dumping duty included in prices must be to the advantage of The City.
- 3.11.14 Without restricting the generality of the provisions set out in G.C.4.14 (Indemnity), The City will not be liable for, and the Contractor or its supplier shall indemnify The City in respect of, any interest charges or penalties arising as a result of errors in tariff classifications or duties which may be levied by the Canada Border Services Agency, under the provision of the *Customs Act*, upon any imported goods required in the supply of materials in the performance of the Contract.

### **G.C.3.12 Approval of Materials or Equipment**

- 3.12.1 Where the Tender Documents call for the use of "trade name" materials or equipment the Tenderer may apply for approval of additional "trade name" items.
- Where trade names are not used, approval is required for materials or equipment which are at variance with the Tender Documents.
- 3.12.2 Where "or equal" is specified in the Tender Documents, the Tenderer should apply for approval of "or equal" materials or equipment so as to have the status of "Approved Equal".
- 3.12.3 The Tenderer should obtain approval at least seven (7) calendar days prior to the Tender closing date.
- 3.12.4 Detailed specifications, plans, and where applicable, samples, must accompany all applications for approval. The Tenderer shall itemize all features that are at variance with the Tender Documents.
- 3.12.5 In all other respects, the materials and installation must comply with the requirements of the Tender Documents. The Tenderer will not be entitled to compensation for any material or installation that fails to meet the requirements of the Tender Documents in all other respects.
- 3.12.6 Any approval must be obtained by the Tenderer from the Engineer, in writing. Any approval so granted pursuant to the terms of this General Condition will be for this Tender only.



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- 3.12.7 The City will only consider requests for the status of “Approved Equal” from the Tenderer that will be submitting the Bid. The City and the Engineer will not consider applications for “Approved Equal” status from suppliers of materials or equipment that will not be bidding directly to The City.

### **G.C.3.13 Liquidated Damages**

- 3.13.1 Where the Tender Documents provide any date or dates for completion of substantially all of the Contract, or any specified portions of the Contract (“Interim Completion Date”), and where the Tender Documents provide that liquidated damages will apply and specify the relevant rate or amount, then liquidated damages will be applicable to any failure to meet any such date specified.
- 3.13.2 If applicable, liquidated damages or a liquidated damage rate for delay in achieving any Interim Completion Date or Substantial Performance will be calculated to cover the anticipated additional costs to The City due to such delay, including without limitation the costs of City staff and consultants, site management, and other related claims due to such delay, and will be confirmed in the Tender Documents (such as the Notice to Tenderers or Special Conditions or both).
- 3.13.3 The Tender Documents may also provide for the assessment and refinement of liquidated damages or a liquidated damage rate by The City and the Engineer, with input from the Contractor, approximately one month prior to each Interim Completion Date as well as the date for Substantial Performance of the Contract.
- 3.13.4 For any breach of Contract for which liquidated damages or a liquidated damage rate has not been specified, The City may claim damages on the basis of the actual loss sustained.

### **G.C.3.14 Execution of Formal Agreement**

If The City requires a formal agreement, the Contractor shall execute the Contract Documents including the Drawings, if any, within a reasonable period after they are received from The City. Execution of the Contract Documents should be carried out in a manner similar to what is described in G.C.3.1 for the execution of the Tender. The executed Contract Documents should be promptly returned to The City. Failure or refusal to execute and return the Contract Documents to The City will constitute a breach of the agreement effected between the parties by the award of the Tender. The City at its option may do any one or more of the following:

- (a) consider the Tenderer has abandoned the Contract, whereupon The City will be entitled to retain the Bid Deposit as liquidated damages,
- (b) take such action at law as it is entitled to under the Contract and establish damages suffered by The City,
- (c) proceed in such manner as The City determines to be appropriate and in its best interest in the circumstances.

If The City claims damages for breach of contract against the Contractor the claim may include, but not be limited to, loss sustained by The City as a result of delay to or interference with The City’s construction program.

### **G.C.3.15 Permits and Licenses**

The successful Tenderer shall obtain and pay for all permits and licenses required by the Province of Alberta, The City of Calgary, or any other authority, required to enable him to do all things necessary to perform the Contract. Without restricting any remedies available to The City, failure to obtain any required permits or license may result in:

- (a) forfeiture, as liquidated damages, of any Bid security or performance security provided by the Tenderer to The City up until the date of failure to obtain any necessary permit or license, and
- (b) the Tenderer paying to The City all monies paid by The City in connection with the tender up until the date of failure to obtain any necessary permit.

### **G.C.3.16 Extensions or Basis for Separate Awards**

- 3.16.1 Length of Agreement



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If so noted in the Special Conditions, in addition to requesting pricing for the tendered project, The City may also request pricing based on the current project, with the option to extend the current award for additional periods. Rules and procedures for award extension will be described in the Special Conditions.

### 3.16.2 Use of Pricing for Other Projects for Lump Sum or Unit Price Contracts or both Lump Sum and Unit Price Contracts

If approved by the Manager, Supply Management, The City may use pricing offered on one tendered project (a project awarded in the past 36 month period) as the basis for approving an award on other similar projects, without tendering subject to approval by the Manager, Supply Management of a business case detailing the applicable NWPTA exemption.

In all cases, pricing offered on the originally accepted tender will be used as a basis for negotiating price changes.

## G.C.4 OBLIGATIONS OF THE CONTRACTOR

### G.C.4.1 Engineer and Contractor

- 4.1.1 The Contractor must at all times control of the work, subject to G.C.5.8 – Emergencies and G.C.4.11 – Occupational Health and Safety (in situations where another party has been designated as prime contractor). The Contractor must effectively direct and supervise the work to ensure conformity with the Contract Documents. The Contractor is solely responsible for all construction means, methods, techniques, sequences and procedures and for coordinating the work in its entirety.
- 4.1.2 The Contractor is solely responsible for the design, erection, operation, maintenance and removal of temporary structures and other temporary facilities and the design and execution of construction methods required in the work. The Contractor shall engage and pay for registered professional engineers or personnel skilled in the appropriate discipline to perform those functions where required by law or by the Contract Documents and in all cases where such temporary facilities and their method of construction are of such a nature that professional engineering skill is required to produce safe and satisfactory results.
- 4.1.3 The Contractor shall not employ on the work any person who is, in the opinion of the Engineer or Project Manager, unfit for the work or unskilled in the work assigned to him.
- 4.1.4 The Engineer is, in the first instance, the interpreter of the Contract Documents and the judge of its performance. The Engineer shall use its powers under the Contract to enforce its performance by the Contractor and Owner.
- 4.1.5 No interference, or taking part in the work, as directed by the Engineer, by The City under any of the provisions of the Contract and no issuance or making of any account, statement, estimate or certificate by the Engineer referred to in the Contract, and no approval of any such account, statement, estimate or certificate by The City and no payment, whether in part or in full, which may be made by The City to the Contractor, or on its account, and no acceptance, taking over, using or operating of any part or parts of the work by The City, or any person or persons through or under The City will in any way affect the obligation, responsibility or liability of the Contractor under the provisions of the Contract.
- 4.1.6 If the Contractor considers any decision of the Engineer to be at variance with the Contract Documents or to be in error, the Contractor must give written notice within seventy-two (72) hours to the Project Manager of that business unit of The City which is responsible for the work, as identified in the Notice, setting out the decision of the Engineer and the provision of the Contract Documents which the Contractor feels to be in conflict with the decision.
- 4.1.7 If the Engineer ceases to be employed or engaged by The City, The City shall appoint a replacement, whose status under the Contract shall be that of the former Engineer.
- 4.1.8 If an Engineer has not been designated, the powers and responsibilities of the Engineer described in these General Conditions may be carried out by the Project Manager for The City.



## **G.C.4.2 Contractor to Check Plans and Contract Documents**

The Contractor shall with due diligence verify all dimensions, quantities, and details described in the Specifications and shown on the Drawings, Supplementary Drawings, Schedules or other data received from the Engineer or contained in any of the Contract Documents including any addenda. The Contractor shall notify the Engineer of all errors, omissions, conflicts and discrepancies found in the Contract Documents. Failure to discover or correct errors, conflicts or discrepancies which ought to have been discovered by due diligence, shall not relieve the Contractor of full responsibility for unsatisfactory work, faulty construction or improper operations resulting therefrom, nor from rectifying such conditions at the Contractor's expense.

## **G.C.4.3 Land**

The City shall provide the lands upon which the work under the Contract is to be done. The Contractor shall provide whatever additional land that may be required for the erection of temporary construction facilities and storage of materials, together with right of access to such additional land.

## **G.C.4.4 Progress Schedule**

4.4.1 Within fifteen (15) days after the award of the Contract, the Contractor shall submit a proposed schedule showing the anticipated time of commencement and completion of each of the various operations to be performed under the Contract. This schedule shall include all necessary and appropriate information regarding the sequence and correlation of work, and an estimated time required for the work. The Contractor shall revise the proposed schedule as requested by the Project Manager and after approval, the Contractor shall strictly adhere to the revised schedule unless upon written permission of the Project Manager, the schedule is changed.

4.4.2 If the Contractor fails to adhere to the approved progress schedule, he must promptly adopt acceptable additional means and methods of construction at no additional cost to The City, that will make up for the time lost and assure completion in accordance with the approved schedule.

4.4.3 Notwithstanding the provisions of this clause, The City may proceed in accordance with G.C.5.6 and G.C.5.7 of these General Conditions.

## **G.C.4.5 Intellectual Property**

4.5.1 The Contractor represents and warrants that it has the sole and unrestricted right, title and interest or good and sufficient power, authority and right to use any Intellectual Property required for any product or equipment or work required for the performance of the Contract.

4.5.2 The Contractor shall pay all fees associated with the use of the Intellectual Property including but not limited to license fees and royalties required for any product or equipment or work required for the performance of the Contract.

4.5.3 The Contractor agrees to indemnify, defend and save harmless The City and all of its employees, officials, officers and authorized representatives from and against all claims, demands, losses, costs, damages, actions, suits or proceedings arising out of the Contractor's performance of the Contract which are attributable to an infringement or an alleged infringement by the Contractor, or anyone for whose acts he may be responsible, of any Intellectual Property Right.

4.5.4 Notwithstanding G.C.4.5.3, if The City is enjoined or there is a reasonable likelihood that it may be enjoined as a result of an injunction or claim from using any Intellectual Property that is incorporated into or associated with any product or equipment or work by the Contractor which is attributable to an infringement or alleged infringement by the Contractor, the Contractor, at its sole expense, shall:

- (a) procure the right for The City to continue using the infringing or allegedly infringing Intellectual Property; or
- (b) replace or modify the Intellectual Property to make it non-infringing, so long as such replacement or modification does not adversely affect the performance or use of the product or equipment or the work generally, all subject to the prior approval by The City; or
- (c) if neither (a) or (b) is commercially reasonable, the Contractor shall pay The City the lesser of the amount equal to fees paid for the product or equipment or the work or the amount of the damages and expenses suffered by The City.



## G.C.4.6 Explosives and Blasting

- 4.6.1 When explosives are used, the Contractor shall be responsible for their handling, storage and transportation in accordance with City Bylaws, the *Explosives Act (Canada)* and the regulations made thereunder, the *Transportation of Dangerous Goods Act (Alberta)*, the *Occupational Health and Safety Act (Alberta)*, as amended, including the *Occupational Health and Safety Code 2009*, (including Part 33), and any regulations thereunder (hereinafter referred collectively to as the "OH&S Legislation"), and the applicable provisions respecting explosives and the transportation thereof found in the current Calgary Fire Prevention Bylaw and any amendments thereto or substitutions thereof. In the event of any conflict, the Contractor shall comply with the more stringent provision.
- 4.6.2 Notwithstanding the above, no blasting may be carried out within one hundred and fifty (150) metres of any water storage reservoir, water storage tank or pumping station without the prior written approval of the Engineer and the owner of utility. No blasting may be carried out within three (3) metres of any underground utility without the prior written approval of the Engineer.
- 4.6.3 Notwithstanding G.C.4.6.1 and G.C.4.6.2, the Engineer or the owner of a utility located within the distances set out in G.C.4.6.2 may require the Contractor to present him with a report by a competent consulting Engineer containing sufficient information to demonstrate that any proposed blasting will be done in a reasonable and safe manner.

## G.C.4.7 Work Adjacent to Pipelines

The Contractor shall comply with and ensure that its Sub-Contractors comply with all requirements of the *Pipeline Act* and all regulations thereunder, Part 32 of the *Occupational Health and Safety Code 2009* and Energy Resources Conservation Board Guide 30 Guidelines for Safe Construction Near Pipelines (collectively referred to as the "Provincial requirements"). If any of the requirements of these Standard General Conditions is inconsistent with the Provincial requirements, the Provincial requirements will govern.

- 4.7.1 Prior to any work being carried out adjacent to a pipeline, the Contractor must provide all of its employees and Sub-Contractors that will be working around pipelines with the following information:
- (a) The proper procedure for the location of pipelines;
  - (b) An appropriate emergency plan that meets the requirements of G.C.4.13 and includes a list of field location telephone numbers, Alberta One Call, and a list of Emergency telephone numbers;
  - (c) The estimated or expected location and elevation of all pipelines on the site;
  - (d) The nature of the materials in the pipelines or, if no longer in use, the nature of the materials previously in the pipelines;
  - (e) Any health and safety risks and any dangers associated with striking, scraping or in anyway damaging the pipelines; and
  - (f) The proper procedure for reporting any damage or disrepair of a pipeline.
- 4.7.2 Prior to any work being carried out adjacent to a pipeline, the Contractor is responsible for obtaining and distributing to all parties involved in the construction complete plans showing exact or expected locations and elevations of all pipelines on the site.
- 4.7.3 The expected locations and elevations of all existing pipelines must be clearly marked on the job site. The Contractor is responsible for ensuring that all markers for pipeline locations are in place at all times during construction, and is responsible for ensuring that markers are highly visible and consist of flagged stakes, snow fencing or equivalent.
- 4.7.4 Pipelines must be hand-exposed at selected points on the construction site, especially where pipeline crossings occur or the pipeline is to be exposed. Equipment must be kept at predetermined distances above the line and parallel to the line. Notwithstanding locations and elevations provided on plans it is the sole responsibility of the Contractor to verify accuracy by hand exposing the pipeline or to verify accuracy by using other non-destructive means acceptable to the Engineer and pipeline operator. The Contractor shall provide notice to the pipeline operator and invite a representative to be present during such exposure activities.



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- 4.7.5 For any work in the area of a pipeline, the Contractor must contact the pipeline operator at least forty-eight (48) hours prior to the commencement of the work. The Contractor shall arrange for a representative of the pipeline operator to be present during certain construction operations unless the pipeline operator declines to send a representative to the worksite while construction operations are undertaken near the pipeline.
- 4.7.6 Prior to excavating adjacent to the pipeline the Contractor shall ensure that all of the following requirements are met:
- (a) the Contractor has obtained written approval from the pipeline operator to carry out the excavation;
  - (b) arrangements are made for a representative of the pipeline operator to be present on site to oversee the excavation and backfill stages and to inspect the pipeline;
  - (c) the pipeline representative has approved the excavation, utility support and backfill procedures;
  - (d) all pipeline locations have been verified and that the pipeline properly has been or is hand exposed or exposed in a non-destructive manner; and
  - (e) if required, adequate ramping has been constructed over all pipeline crossings.
- 4.7.7 If at any time a pipeline is struck, scraped, damaged, or in any way interfered with by the work, the Contractor must immediately inform the pipeline operator, The City, the Alberta Energy Resources Conservation Board, and all other applicable regulatory agencies.
- 4.7.8 If a pipeline is struck, scraped, damaged or in any way interfered with by the Contractor, The City reserves the right to immediately shut down the construction site until a meeting is held between the Contractor and the Engineer or its representative at which time the Contractor will be required to provide a full report on the pipeline damage and what steps have been taken to rectify the situation. G.C.4.35.12 (Contamination Discovery) must be followed in the event suspected or potentially contaminated ground is exposed during construction activities.
- 4.7.9 The Contractor must meet the minimum construction requirements listed below in the absence of any requirements being specified by the owner or operator of the pipeline.
- (a) All pipeline installations require a minimum of 0.80 metres of cover over the pipeline;
  - (b) All pipeline installations under road ditches require a minimum of 1.10 metres of cover over the line;
  - (c) Where heavy construction equipment will be crossing pipelines, adequate ramping over the pipeline must be constructed to the satisfaction of the owner or operator of the pipeline; and
  - (d) The relevant legislative requirements, including those referred to in the introductory words to this G.C.4.7.

### **G.C.4.8 Compliance with Legislation**

The Contractor shall comply with all relevant legislation and requirements of those federal, provincial, municipal or other governmental bodies, agencies, tribunals or authorities having jurisdiction and lawfully empowered to make or impose laws, bylaws, rules, orders or regulations with respect to the Contractor's obligations. Relevant legislation includes any applicable amendments and regulations.

### **G.C.4.9 The Historical Resources Act**

- 4.9.1 The Contractor shall comply, and shall ensure that its Sub-Contractors comply, with the *Historical Resources Act (Alberta)*, any regulations thereunder, and any applicable bylaws.
- 4.9.2 Where in the course of work under the Contract any actual or suspected archaeological or historical artifacts are unearthed, the Contractor shall immediately:
- (a) suspend all operations in the vicinity of the find;



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- (b) notify the Engineer of the location of the find and the nature of the materials, structures or artifacts found; and
  - (c) ensure that the site is preserved until its significance can be assessed.
- 4.9.3 Any material delay caused through compliance with the *Historical Resources Act (Alberta)* may result in a time extension only for performance of contract and The City shall not be obliged to pay any additional amount because of such delay.

### G.C.4.10 Workers' Compensation

- 4.10.1 The Contractor shall ensure compliance both by the Contractor itself and each Sub-Contractor with the requirements of the *Workers' Compensation Act (Alberta)* and any regulations thereunder. Contractor, as well as each Sub-Contractor it engages, must maintain an account in good standing with the Workers' Compensation Board for all employees based in Alberta. The Contractor's account must include coverage for all partners, proprietors or directors of the firm, company or corporation who are based in Alberta and will be present or may have cause to be present at the worksite. The Contractor must provide to the City verification from the Workers' Compensation Board that the Contractor has an account in good standing with the Workers' Compensation Board prior to proceeding with the work, and The City may seek further verification any time during the performance of the Contract. Notwithstanding any other provisions in the Contract Documents, The City may refuse to make a final payment to the Contractor unless the Contractor furnishes a letter or other evidence from the Workers' Compensation Board that the Contractor's account, and each Sub-Contractor's account, with the Board is in good standing.
- 4.10.2 If at any time The City receives from the Workers' Compensation Board advice to the effect that the account of the Contractor or any Sub-Contractor has ceased to be in good standing with the said Board, or that there are amounts which the Contractor or any Sub-Contractor owes to the Board, by reason of any act or omission of the Contractor or any Sub-Contractor, or of any order made by the Workers' Compensation Board, or if The City receives from the Workers' Compensation Board a demand for payment by The City by reason of any act or omission of the Contractor or any Sub-Contractor under the provisions of the *Workers' Compensation Act (Alberta)*, The City may suspend payments due to the Contractor until either:
- (a) the Contractor has obtained and submits to The City a letter of clearance from the Board indicating that the Contractor or Sub-Contractor, as the case may be, no longer owes money to the Board, or has otherwise been brought into good standing with the Board; or
  - (b) The City pays the Workers' Compensation Board the amount owing on behalf of the defaulting Contractor or any Sub-Contractor or the amount of the demand for payment in respect of the Contractor or any Sub-Contractor.
- 4.10.3 If The City is required to pay any amount to the Workers' Compensation Board of Alberta on behalf of the Contractor, or any Sub-Contractor, or by reason of any act of omission of the Contractor, or any Sub-Contractor, The City may deduct the amount from any amount owing to the Contractor under the Contract or under any other contract, or may demand a reimbursement by the Contractor to The City for the amount so paid by The City. This right shall be in addition to and not in substitution for any other right at law or in equity which The City has by reason of the failure of the Contractor to comply with the provisions of the *Workers' Compensation Act (Alberta)*.
- 4.10.4 As indicated in G.C.3.4.1.8, if the Contractor or Subcontractor is an exempt industry or does not qualify for Workers' Compensation coverage in Alberta, the Contractor or Subcontractor must provide an employer's liability extension to its CGL policy.

### G.C.4.11 Occupational Health and Safety

- 4.11.1 Unless otherwise provided in the Special Conditions, providing the successful Tenderer meets The City's requirements for assuming the role of prime contractor, the successful Tenderer for the Contract will be designated as "prime contractor" as described in the OH&S Legislation (as defined in G.C.4.6). As "prime contractor", the Contractor will ensure, as far as it is reasonably practicable to do so, that the OH&S Legislation is complied with in respect of the worksite where there are two or more employers are involved in work at the worksite at the same time.



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- 4.11.2 Where Tenderers are not required to have been pre-qualified, Tenderers who are not pre-qualified are required to submit the applicable forms and submissions with the Bidder's Information Sheets in order for The City to evaluate the capability of the Tenderer to assume the role and function of "prime contractor". Further to G.C.2.9.1 of these Standard General Conditions, The City may reject any Tender where the Tenderer fails to qualify as a "prime contractor" in the opinion of The City, acting reasonably.
- 4.11.3 Prior to accepting a Tenderer as the "prime contractor" of a worksite, The City considers the ability of the Tenderer to establish and maintain a system or process that will ensure full compliance with the OH&S Legislation, in respect of the worksite. The Tenderer's safety management system submission as a minimum, will include the following elements:
- a) hazard identification, assessment, and control;
  - b) worksite inspections and site safety (tailgate) meetings;
  - c) orientation and training;
  - d) emergency response planning;
  - e) incident reporting and investigation; and
  - f) job specific procedures and applicable codes of practice.

A more detailed, contract-specific review and disclosure of how subcontractors are integrated into the prime contractor's safety management systems and processes above, along with OH&S compliance strategies proposed for the work may be verified prior to accepting the Tenderer as prime contractor.

Tenderers may be interviewed at the business unit level as part of the contract specific review and disclosure.

Tenderers who have been pre-qualified are required to advise The City of any change to the information they provided to The City for the purpose of pre-qualification.

- 4.11.4 Unless provided otherwise in the Special Conditions, Bids will only be considered where the Bidder has received a Certificate of Recognition ("COR") or a small Employer Certificate of Recognition ("SECOR") as sanctioned by Alberta Employment and Immigration, Workplace Health and Safety, or equivalent certificate or designation under an equivalent program in a jurisdiction other than Alberta, prior to close of tenders. Accreditation should be evidenced by inclusion of a valid COR, or other certificate or designation, with the Bid. Any Bidder that does not provide such proof of accreditation may have its Bid rejected for non-compliance. The Contractor must also make all reasonable efforts to maintain this accreditation throughout the term of the Contract. It will be the responsibility of the Contractor to demonstrate the equivalency of any other certificate or designation.
- 4.11.5 The City shall identify the Project Manager responsible for the work and designate in writing a person employed by either the Contractor or The City at the worksite to ensure that the Contractor, its agents, employees, any Subcontractor, its employees and agents, and any employee of any other employer that is present at the worksite, comply with all of the provisions of the OH&S Legislation throughout the course of the Project.
- 4.11.6 The Contractor shall post and maintain at a conspicuous location or locations The City of Calgary Designation of Prime Contractor Notice, which will be provided by the Project Manager. The Prime Contractor Notice must be signed by The City and the Contractor and indicate the name of the person designated on behalf of the Contractor for this purpose. It is the responsibility of the Contractor to ensure all workers at the worksite are aware of the person designated in the Prime Contractor Notice.
- 4.11.7 Leadership for Safety Excellence, Prime Contractor training and Construction Safety Training System should have been completed by the Contractor's designate and by any person appointed as site designate.
- 4.11.8 The "prime contractor" must hold a pre-construction meeting prior to any Contractor or Subcontractor commencing any portion of the work. This meeting should include worksite safety as a standing agenda item. The agenda item will address all applicable safety legislation worksite safety policies, procedures, incident reporting, and the requirement to be in compliance therewith.
- 4.11.9 The Project Manager shall provide and the Contractor shall post and maintain at a conspicuous location or locations a list of telephone numbers appropriate for contacting key contract personnel in the event of an emergency (hereinafter "Emergency Call Card").



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- 4.11.10 In any case where, pursuant to the provisions of OH&S Legislation, an officer orders the Contractor or any subcontractor to cease work because of non-compliance with OH&S Legislation, or because the officer is of the opinion that work is being carried out in a manner that is unhealthy or unsafe to the workers engaged in the work or present at the location where the work is being carried out, The City may suspend the work until the non-compliance is corrected or terminate the Contract upon at least twenty-four (24) hours notice in writing. The Contractor shall not be entitled to any additional time for completion of the Contract by reason of the Contract being suspended as provided in this condition notwithstanding any other provision in the Contract Documents. Without limiting the generality of G.C.4.14, the Contractor shall indemnify and save harmless The City from and against all losses and claims, demands, actions payments, suits recoveries and judgments of every nature and description brought or recovered against The City by reason of the failure of the Contractor, its agents or employees or both, or any Subcontractor, its agents or employees or both, to comply with all of the provisions of the OH&S Legislation or other safety related legislation or requirements.
- 4.11.11 In the event of a serious injury or an incident having the potential of causing a serious injury as defined in the OH&S Legislation, the Contractor shall, in addition to complying with the provisions of the OH&S Legislation, notify the Project Manager or Project Manager's designate or agent immediately. The Contractor will submit a copy of the incident report, including investigation findings and corrective actions, to the Project Manager in a timely manner.

### **G.C.4.12 Sanitation**

- 4.12.1 The Contractor shall prevent the committing of any nuisance on the worksite, or on adjoining property, and shall discipline any employee or Sub-Contractor who commits a nuisance.
- 4.12.2 The Contractor shall provide and maintain sufficient sanitary facilities in accordance with the OH&S Legislation for the use of all personnel involved with the work.

### **G.C.4.13 First Aid and Emergency Response**

- 4.13.1 The Contractor shall ensure that the appropriate first aid services, supplies, and equipment are provided, maintained, and accessible at the worksite according to the requirements of the OH&S Legislation.
- 4.13.2 In addition to calling the emergency telephone numbers listed on the Emergency Call Card posted at the worksite pursuant to G.C.4.11.9, the Contractor must establish an emergency response plan for responding to an emergency that may require medical assistance, shelter in place, rescue or evacuation, according to the requirements outlined in OH&S Legislation.

### **G.C.4.14 Indemnity**

The Contractor agrees to indemnify, defend and save harmless The City and all of its employees, officials, officers and authorized representatives from and against any and all suits, actions, legal proceedings, administrative proceedings, claims, demands, damages, liabilities, loses, interest, legal fees, costs and expenses of whatsoever kind or nature, including personal injury or death and damage or loss of any real or personal property, whether arising before or after completion of the work and in any manner directly or indirectly caused, occasioned or contributed to in whole or in part, by reason of any wrongful act, error, omission, fault, or breach of the Contract of the Contractor, Sub-Contractor, or of anyone acting under the Contractor's direction or control or on its behalf in connection with or incidental to the performance of the Contract.

### **G.C.4.15 Contract Documents and Drawings on the Worksite**

The Contractor shall maintain a set of project drawings on the worksite and record accurately all significant deviations from the project drawings caused by site conditions and any changes ordered by the Engineer. The Contractor shall keep one copy of the Contract Documents, specifications and all addenda including reviewed Shop Drawings, Notices of Proposed Change and Change Orders, other modifications to the Contract, test records and permits, on the worksite in good condition. These documents and drawings must be available to the Engineer and to its representative throughout the duration of the project. The Contractor shall submit the updated project drawings to the Engineer prior to the issuance of the Construction Completion Certificate. Unless otherwise provided in the Contract Documents, the Engineer will be responsible for revising the original drawings with the information from the updated project drawings.



#### **G.C.4.16 Use of Premises**

- 4.16.1 The Contractor shall confine its equipment and apparatus, the storage of materials and the operations of its workers and Sub-Contractors, to limits set by the common law, by the applicable statutes of Alberta and Canada and regulations made thereunder, by the bylaws of The City and by permits and directions of the Engineer. The Contractor shall not unreasonably encumber the premises with construction materials.
- 4.16.2 Unless specifically authorized to do so by the Contract Documents, the Contractor shall not endanger the safety of any structure by any means whatsoever during the performance of the work. If the Contractor anticipates there being risk to any structure by the performance of the work he should bring this to the attention of the Engineer or the Project Manager and seek direction.
- 4.16.3 The Contractor shall comply with the Project Manager's instructions, including any instructions with signs, advertisements, fires and smoking.

#### **G.C.4.17 Survey Responsibilities**

- 4.17.1 The Contractor shall provide the Engineer with assistance, as required, to make any surveys and measurements, and to establish or check lines and grades.
- 4.17.2 The Contractor must arrange survey work schedules with the Engineer or its representative, such that adequate time is allowed for the necessary survey work to be done prior to its proposed construction. The Engineer will not be responsible for any delays as a result of the Contractor's failure to arrange these survey work schedules.
- 4.17.3 The Contractor shall employ a person or persons capable of performing the duties of a survey assistant.
- 4.17.4 The Contractor shall safeguard all points, stakes, grade marks, and benchmarks (collectively "survey marks") made or established on the work. The Contractor shall solely bear the expense of re-establishing any survey marks and for rectifying work improperly installed due to failing to protect or removing without authorization, any survey mark. If the Contractor requires additional staking, the Contractor shall bear the expense of such staking.

#### **G.C.4.18 Key Personnel and Site Supervision**

- 4.18.1 The Contractor shall keep on the worksite at all times when construction operations are being performed a general superintendent, foreman, and any lead of a specialized activity or lead of environmental or safety responsibilities as identified in its Bid or as has been approved in writing by the Project Manager. Once the names of the proposed superintendent, foreman and other designated personnel have been submitted, the Contractor shall not substitute any other superintendent, foreman or other designated personnel without the advance written consent of the Project Manager.
- 4.18.2 Further to S.C.4.18.1 but for greater clarity, The City reserves the right to insist upon having the key personnel of the Contractor identified in the Bid assigned to and responsible for the execution of the project. If any one such key personnel is not available or ceases to be available, any replacement person must have equivalent experience and qualifications and be approved by The City's Project Manager.
- 4.18.3 If the Contractor is unable to provide or keep on the worksite key personnel in accordance with its Bid and G.C.4.18.1 or 4.18.2, The City reserves the right to suspend or terminate the Contract.
- 4.18.4 The superintendent or foreman or other designated personnel shall represent the Contractor, and the Contractor acknowledges that any directions given to the superintendent or foreman by the Project Manager will be deemed to have been given to the Contractor.
- 4.18.5 The Project Manager shall arrange for a system which will allow the Contractor and the Project Manager to contact each other on short notice.

#### **G.C.4.19 Office Facilities for Contractor and the Engineer**

The Contractor shall provide a temporary office for its own use. The Contractor shall provide an office for the Engineer, if there is a resident Engineer on the project, of not less than seven (7) square metres, accessible only to the Engineer and its staff. The Engineer's office must be furnished with a table for drawings at least one



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metre by 1.8 metres, a small desk with at least four drawers, and two chairs. The building must have light, heat, proper ventilation, and an operational telephone. The offices must be placed on the job site and made available at least forty-eight (48) hours before the work is commenced, and be removed by the Contractor at the completion of the work.

**G.C.4.20 Signs at the Worksite**

- 4.20.1 On projects located off street and lane rights-of-way the Contractor shall erect, on the site, one freestanding sign which complies with all sign specifications detailed in the Contract Documents and includes the following information:
  - (i) the name of the job;
  - (ii) the Owner;
  - (iii) the Project Manager, and the general information number for The City 3-1-1; and
  - (iv) the General Contractor, and the General Contractor's telephone number.
- 4.20.2 For work located on street or lane rights-of-way, which is not signed with the Alberta Cities Transportation Partnership and the Roads Business Unit inquiry sign, the Contractor shall place a minimum of two (2) portable or free standing signs which include the Contractors name, telephone number and the phrase "Working to Improve Your City".
- 4.20.3 All signs must be professionally designed and made, and the layout and location of all signs must be approved by the Project Manager.
- 4.20.4 All sign must be placed so as not to interfere with any traffic flow directional sign, or permanent and temporary traffic control device. The Contractor shall monitor each sign, to ensure it is not impeding traffic flow, has not been knocked over, and has not been removed from the approved location. Monitoring should be done on at least a daily basis.
- 4.20.5 Provide and erect a project identification sign on temporary site fence. Maintain the sign in good condition for the duration of the work. Clean periodically as required.

Only post appropriate warning signs where applicable, or other types of signs for which approval or direction has been given. Any other type of sign or advertising is not permitted unless prior approval in writing has been given by The City.

Provide safety and instruction signs and notices:

Signs and notices for safety and instruction including graphic symbols conforming to CAN3-Z321-77.

Provide maintenance of site signs, and maintain approved signs and notices in good condition for duration of project, and dispose of off site on completion of project or earlier if directed by Engineer.

Provide, prior to commencement of work where hazardous or volatile materials or substances are used, a barricade for the entire area and post an adequate number of "NO SMOKING" signs.

**G.C.4.21 Installation, Maintenance, and Performance Standards for Temporary Traffic Control**

- 4.21.1 With the exception of emergency related work, all temporary traffic control installations on City streets must first be approved by the Manager of Traffic, Roads, or designate. Contact should be made through the Detour and Special Events Coordinator at (403) 268-3658. The Manager of Traffic, or designate, shall determine the type of temporary traffic control installations required, and through the Engineer shall direct the work to ensure proper co-ordination.
- 4.21.2 All temporary traffic control devices must conform to the "Manual of Uniform Traffic Control Devices for Canada", The City of Calgary "Sign Code Manual" and, current "Temporary Traffic Control Manual".
- 4.21.3 (a) The Contractor shall notify Traffic a minimum of four (4) working days in advance of when the temporary traffic controls are required at (403) 268-3658. The City shall provide temporary traffic control for the following roads as designated in Transportation System Bylaw 41M95, as amended or replaced from time to time:
  - (i) freeways;



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- (ii) expressways;
- (iii) majors;
- (iv) collectors; and
- (v) all roadways and lanes within the Central Business District.

For the purpose of this clause the Central Business District is defined as the area bounded by 14th Street West, the Bow River, 6th Street East, and 12th Avenue South.

- (b) The Contractor shall provide the temporary traffic control for the following roads as defined in Bylaw 41M95 as amended or replaced from time to time:

- (i) Residential;
- (ii) Industrial; and
- (iii) Lanes (excluding those in the central business district).

- 4.21.3.1 The Contractor shall provide worksite protection for **all** construction projects regardless of roadway classification or location, and the inspection thereof on a reasonably frequent basis (which should be at least daily in most circumstances). Worksite protection includes, but is not limited to, all devices such as barricades and flashing lights in the immediate construction area to secure the worksite from motorists and pedestrians.
- 4.21.3.2 The Contractor must carry out, or arrange for, inspections of temporary traffic control installations for **all** construction projects, regardless of roadway classification or location, on a reasonably frequent basis (which should be at least daily in most circumstances). If maintenance or washing of any temporary traffic control described in G.C.4.21.3 (a) above is required, the Contractor should either inform the City (through the Detour and Special Events Coordinator at (403) 268-3658) in order for The City to do the required maintenance or washing, or carry out the required maintenance or washing with its own forces at its sole cost and expense. The Contractor must maintain reasonable records of inspections and the actions taken as a result of the inspections.
- 4.21.4 If the Contractor fails to install or maintain its temporary traffic control devices in a condition to the satisfaction of the Manager of Traffic or designate, the construction occurring during this period may be deemed unsatisfactory and not be considered for payment, and the Manager of Traffic or designate may shut down the work until the temporary traffic control deficiencies have been corrected. Maintenance of temporary traffic control devices includes, but is not limited to, washing and hand repairs, as required. The Contractor shall monitor on a minimum daily basis (preferably ongoing) temporary traffic control devices and any deficiency must be dealt with promptly.
- 4.21.5 The prior review and approval of Traffic is required for all temporary traffic control devices which are to be used in advance of or in and around the worksite to direct traffic around the worksite. Traffic will arrange for advertising the temporary traffic control installations. All costs incurred by Traffic for temporary traffic control advertising will be borne by the City Department tendering the project. Traffic will monitor each temporary control installation and worksite at least once per week. The Contractor must also monitor, and maintain records of such monitoring of, the temporary traffic control installations and the worksite on a more frequent basis, which should be at least daily and advise Traffic of any deficiencies in the temporary traffic control installations for roads described in G.C.4.21.3(a).
- 4.21.6 At all times the Contractor shall comply with the *Traffic Safety Act (Alberta)* and any regulations thereunder. Should the Contractor damage or knock down a traffic control device, railway sign, or signal or traffic sign of any kind or a parking meter, or become aware that the same has been damaged or knocked down, the Contractor shall report the damage promptly to the Engineer and the Detour and Special Events Coordinator. Further, the Contractor shall comply with The City's Street Bylaw 20M88 whenever and to the extent such provisions of either the Act or the Bylaw are applicable to the work. If it is necessary to remove a sign which has been placed by The City on or adjacent to a public street to control, direct, warn or advise vehicles and the public using the street, the Contractor shall reinstall the sign on a secure portable stand not imbedded in the ground in a location as near as practical to the original location. The Contractor shall immediately thereafter notify the Engineer and the Detour and Special Events Coordinator of the changed location of the sign. If the Contractor observes that any such sign located by The City or temporarily relocated by the Contractor has been moved from the position in which either The City or the Contractor placed it, or has been knocked down or removed from the worksite, the Contractor shall promptly report this matter to the Engineer and the Detour and Special Events Coordinator.



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- 4.21.7 In the event of an emergency, the Contractor shall act immediately to ensure the safety of the public and on-site workers, and immediately report full details of emergency situation to the Engineer and the Detour and Special Events Coordinator.
- 4.21.8 The Contractor, whenever reasonable, shall provide and maintain reasonable access to all public and private property adjacent to the worksite. If any temporary closure of access is necessary, this must be coordinated with the Project Manager and reasonable notice must be provided to every resident and every business that will be affected.
- 4.21.9 The Contractor and the Engineer shall arrange with Calgary Transit and Traffic any re-routing of transit vehicles that is needed to accommodate the work.
- The Contractor shall advise the Engineer and the Detour and Special Events Coordinator at least two (2) weeks prior to the date when re-routing is required to be put into effect.
- Where the work of the Contractor will interfere with garbage collection, the Contractor shall notify Waste & Recycling Services at least seven (7) days in advance of the work. The Contractor shall also notify every residence and every business affected by the interference at least seven (7) days in advance of the work, by delivery of a notice form, which will be provided by Waste & Recycling Services.
- 4.21.10 Where temporary traffic control devices are supplied by the Contractor, the Contractor must maintain such devices, barricades, and lighting. If Traffic is required to maintain Contractor supplied devices, the cost of such maintenance will be charged to the Contractor through the Engineer.
- 4.21.11 The Contractor shall remove all signs, amber flashing lights, and barricades, after the temporary traffic control installation is no longer required by the Engineer or Traffic.

### **G.C.4.22 Closing of Streets or Sidewalks**

The Contractor shall prepare a schedule showing streets which are required to be closed or partially closed for the purposes of carrying out the Contract. The schedule must be submitted in writing seventy-two (72) hours in advance and approved by the Engineer before commencing any work. Work is prohibited between 6:00 and 9:00, and between 15:00 and 18:00 Monday through Friday on all streets where parking is prohibited during these hours. Any construction occurring during the prohibited periods will be deemed unsatisfactory, and not be considered for payment. Where parking is restricted at all times a special permit is required from the Manager of Traffic or designate. Closures on Saturdays, Sundays and Public Holidays can only be permitted with at least four (4) days advance notice and written approval by the Engineer.

### **G.C.4.23 Hauling Routes, Load Limits and Weigh Scales**

- 4.23.1 The Contractor's hauling units and trucks must keep to designated truck routes. Any other haul routes which are not designated truck routes must be approved by Traffic prior to the Contractor's hauling units or trucks utilizing same.
- 4.23.2 The Contractor shall comply with the axle loadings and other weight requirements currently in force in the City of Calgary.
- 4.23.3 For any Contract where payment is to be made by unit weight, the Contractor, at its expense, shall provide, install and operate an approved scale. The scale must be tested by the Measurement Branch of Industry Canada at the Contractor's expense prior to any material being weighed on the said scales and the customary certificate exhibited to the Engineer. The scale will be retested at the Contractor's expense as often as the Engineer may direct. The scale must be of a capacity sufficient to weigh any single axle or tandem loaded vehicle leaving the plant or pit in one operation.
- 4.23.4 The scale for weighing materials must be equipped with an automatic printer providing a ticket or tape with the following information:
1. net weight;
  2. date;
  3. destination of load (code no.); and
  4. truck number.



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- 4.23.5 Truck tare must be established and recorded twice daily. The first tare is to be taken prior to the first morning load and second tare prior to the first afternoon load.
- 4.23.6 The Contractor is responsible for retaining the original copies of the haul cards in the scale house until the following working day when all such cards and a detailed Summary Sheet showing daily tonnage totals, tares and truck numbers are to be provided to the Engineer or its representative on the worksite before 16:00 hours.

### **G.C.4.24 Protection of Work, Property and of the Public**

- 4.24.1 The Contractor shall be responsible for protecting the work and for protecting The City's property from all loss, damage or injury arising in connection with the Contract. In particular, but not so as to restrict the generality of the foregoing, the Contractor in having carried out any ditching or excavation operations on streets and at other locations, shall ensure that necessary and adequate precautions are taken to prevent subsidence or withdrawal of support of sidewalks and curbs, carriageways, existing utilities and other property resulting from such ditching and excavation operations. The Contractor shall be responsible for making good any such loss, damage or injury except, subject to G.C.4.2, such as may be directly due to error in the Contract Documents.

The Contractor shall also be responsible for protecting adjacent property as required by law or by the Contract Documents or where it is otherwise necessary, and make good any resultant loss, damage or injury arising in connection with the Contract.

Where the work is performed at or in the vicinity of any place to which the public has or may gain access, it is the responsibility of the Contractor to ensure that all things necessary to protect each and every member of the public from loss or personal bodily injury (including death) caused by or contributed to or in any way connected with the Contract are done diligently and expediently.

- 4.24.2 Without limiting the responsibility of the Contractor under G.C.4.24.1, if the Engineer instructs the Contractor;
- (a) to take any action which in the opinion of the Engineer is necessary or desirable to protect any member or members of the public from loss or personal bodily injury (including death) or from the danger thereof arising from or in connection with that performance of the Contract;
  - (b) to cease performing any portion or all of the Contract in a way which, in the opinion of the Engineer, may cause or increase the danger to the public, and to perform the same in a manner which, in the opinion of the Engineer, will remove or reduce to an acceptable minimum danger to the public; or
  - (c) to close off access by the public to any area in the vicinity of the work which in the opinion of the Engineer cannot be made sufficiently safe, and to provide alternative safe access for the public or those parts of it which are entitled to such access;

then the Contractor shall comply with the instructions of the Engineer to the Engineer's satisfaction. The obligations of the Contractor under this clause are in addition to and not in substitution for the obligations contained in G.C.4.11 and G.C.4.13.

### **G.C.4.25 Legal Survey and Control Monuments**

The Contractor shall ascertain the location of all survey evidence (legal or control) which will or may be affected by the work and shall notify the Engineer and the Geomatics (Legal Survey) Division, Land Information & Mapping, Corporate Services by contacting Project Engineering/Land Surveyor, Geomatics Field Solutions at (403) 268-1640 at least forty-eight (48) hours in advance of construction. Saturday, Sunday or any Statutory Holiday will not count toward the notification period. The Contractor shall not remove any such evidence unless instructed to do so by the Engineer.

The Contractor shall safeguard all such survey evidence and shall bear the entire expense of re-establishing any such survey evidence that becomes damaged or removed during the Contractor's operations.

### **G.C.4.26 Tools, Plant and Equipment**



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If at any time before the commencement or during the progress of the work, tools, plant or equipment appear to the Engineer to be unsafe, or inappropriate to secure the quality of work required, or to achieve the proper rate of progress, the Engineer may order the Contractor to increase the safety, or efficiency of tools, plant or equipment to augment them or to substitute new tools, plant or equipment as the case may be, and the Contractor must conform to such order at the Contractor's sole cost. The failure of the Engineer to make such demand will in no way relieve the Contractor of its obligation to secure the quality of workmanship and rate of progress necessary to complete the work within the time required by the Contract Documents and to the satisfaction of the Engineer.

### **G.C.4.27 Testing of Materials**

- 4.27.1 The City may conduct quality control testing to establish the acceptability of materials and workmanship used on City projects and to determine if the provisions of the Contract have been complied with by the Contractor. The City may engage private engineering consultants, in which instance they will be agents of The City on matters of quality control testing. Testing will be carried out at the discretion of The City or the Engineer and will not be subject to direction or control by the Contractor. The Contractor shall not rely on The City's testing program for its quality control, but shall instigate such testing as may be required to ensure that the work which he performs complies in all respects with the requirements of the Contract.
- 4.27.2 The Engineer may order testing or retesting of any work whether or not such work has been subject to quality control testing under G.C.4.27.1. Testing or retesting will be commissioned and controlled by The City or Engineer and will not be subject to direction or control by the Contractor. If such testing or retesting shows the work to comply with the provisions of the Contract, The City shall pay the cost of the testing or retesting or both. If such testing shows that any material portion of the work does not comply with the Contract, the Contractor shall pay all associated costs of the testing or retesting or both.
- 4.27.3 The Contractor shall ensure that The City has free right of access to any site for purposes of inspection or sampling, including plants or mills, where work is in progress producing materials for use on the project. If so requested by The City, the Contractor shall make himself available and shall assist as The City conducts quality control testing.
- 4.27.4 The Contractor at its own expense shall furnish for the Engineer's approval such samples as the Engineer may reasonably require.

### **G.C.4.28 Inspection of Work**

- 4.28.1 The Engineer shall at all times have access to the work and the Contractor shall provide proper facilities for such access and for inspection.
- 4.28.2 If the Contract Documents, the Engineer's instructions, Federal or Provincial statutes or regulations or City bylaws require any work to be specially tested or approved, the Contractor shall give the Engineer timely notice of its readiness for inspection, and, if the inspection is by any authority other than the Engineer, advise the Engineer of the date fixed for such inspection. Inspections by the Engineer will be made within a reasonable time. If any work has been covered without 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.
- 4.28.3 The Engineer may order re-examination of questioned work. If such re-examination shows the work to comply with the provisions of the Contract, The City shall pay the cost of re-examination. If re-examination shows that the work does not comply, the Contractor shall pay all associated costs.
- 4.28.4 None of the actions or failures to act listed below will relieve the Contractor from being responsible for any failure to supply materials and complete the work in compliance with the Contract Documents:
  - (a) Any inspection of the work by the Engineer or the failure of the Engineer to make any inspection or to make a sufficient number of inspections;
  - (b) Any lack of thoroughness of any inspection made by the Engineer;
  - (c) Any failure of the Engineer to observe defective workmanship or to observe or reject or condemn defective materials used by Contractor or a Sub-Contractor; or



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- (d) Any failure or inadequacy in directing attention of the Contractor, or of any other person, to the inadequacy or other deficiency as to the manner in which the Contract is being performed, or as to the inadequacy of any material or equipment used in the performance of the work or incorporated in the work.
- 4.28.5 Similarly, where The City has inspectors observing the performance of the Contract or the materials used in the work, such inspectors are acting for the sole benefit of The City and nothing that such inspectors do or fail to do will relieve the Contractor from strict compliance with all of the provisions of the Contract Documents with relation to the work, the materials being supplied or any other aspect of the Contract.
- 4.28.6 Any acceptance by the Engineer or the Owner of any portion or component of the work that uses or incorporates substituted material will not relieve the Contractor from being responsible to complete the work in compliance with the Contract Documents, unless a written approval from the Engineer is obtained pursuant to G.C.3.12.

**G.C.4.29 Location and Disruption of Existing Services**

- 4.29.1 The existence, location, elevation and condition of underground utilities is not guaranteed, and notwithstanding any other provisions in the Contract, the Contractor shall be responsible for determining through Alberta One Call (1-800-242-3447 or [www.alberta1call.com](http://www.alberta1call.com)) or other effective means the location and elevation of all sewer, water and gas mains or lines, electric light, power or telephone or fibre optic conduits, or other structures or utilities, by non-destructive means acceptable to the utility owner, and shall pay for any service supplied by providers or owners of public utilities such as Atco Gas and Pipelines Ltd. ("Atco"), Enmax Corporation ("Enmax"), Telus Corporation ("Telus"), other utilities or telecommunications companies and The City's Water Services Business Unit. The Contractor shall also be responsible for notifying the appropriate persons of its intention to carry out operations in the vicinity of any such main, line, conduit or other structure or utility, at least one (1) week in advance of any operations being carried out, including:
  - (a) The Director, Water Services in the case of water mains or lines;
  - (b) The Director, Water Services in the case of sewer lines or mains or storm water facilities;
  - (c) Telus, Shaw Communications Inc., and other telecommunications companies in the case of telecommunications conduits or lines or cable;
  - (d) Atco in the case of gas mains or lines;
  - (e) Enmax in the case of electric or power conduits or lines;
  - (f) The Director, Calgary Transit in the case of Calgary Transit installations;
  - (g) The Director, Parks in the case of irrigation systems; and
  - (h) The Director, Roads, in the case of street lighting.
- 4.29.2 Without limiting the generality of the provision of G.C.4.14, the Contractor shall indemnify and save harmless the owner of any main, line, conduit or other such structure or utility for any loss or damage which may be suffered by owner because of damage to any such main, line, conduit, or other such structure or utility, in any way caused by the operations of the Contractor in the performance of the Contract.
- 4.29.3 Where utilities are to be moved, repaired or replaced the Contractor shall make its own arrangements with the utility company or City department concerned for the alterations necessary, and will notify the Engineer of all such requirements.
- 4.29.4 Excavation in the vicinity of existing structures and any utilities must be carefully performed, and utilities which cross an excavation must be properly supported or shored to prevent settlement. Where trenching is to be done under existing utilities, such utilities must be adequately supported or shored before backfilling commences and the support or shoring left in place if appropriate. The Contractor should confirm what is appropriate with the owner of each utility involved.



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- 4.29.5 The City shall pay for any necessary alterations, repairs or replacement of any utilities which intersect the line of the proposed work, unless the Contractor is otherwise required to pay for any or all such measures pursuant to an obligation or commitment outside the Contract.
- 4.29.6 The Contractor shall make its own arrangements for any utility service it may require.
- (a) The Contractor shall protect, relocate or maintain existing active services as required. When inactive services are encountered, cap off in a manner approved by the authorities having jurisdiction over the service, and
  - (b) report existing services encountered during excavation (not previously known) to the Engineer and further instructions from the Engineer.

### **G.C.4.30 Contractor's Right to Stop Work or Terminate Contract**

- 4.30.1 The Contractor may stop work or terminate the Contract three (3) business days after written notice of its intention has been received by the City Clerk, the City Solicitor and the Engineer or Project Manager, if:
- (a) Work on the Contract is stopped under an order of a court having actual or apparent competent jurisdiction or by the actual or apparent authority of a federal, provincial or municipal government, and such order or exercise of authority is not related to an act or omission of the Contractor; or
  - (b) The City fails to pay the Contractor any sum certified by the Engineer or Project Manager as being due under the Contract within thirty (30) days of the date set out in the Engineer's or Project Manager's progress certificate as being due, or thirty (30) days after The City received the progress certificate, whichever is the later date.
- 4.30.2 Upon the Contract being terminated pursuant to G.C.4.30.1, subject to the provisions of the *Builders' Lien Act (Alberta)* The City will pay to the Contractor all amounts then due to the Contractor under the terms of the Contract, as well as any amount which the Contractor is able to establish that it is legally entitled to receive for loss of anticipated profit and the cost of any additional damage which the Contractor may have suffered by reason of termination of the Contract.
- 4.30.3 Notwithstanding G.C.4.30.1 and G.C.4.30.2, The City will not be obliged to make any payment earlier than would be required under the Memorandum of Agreement. The retention of any amount due to the Contractor which is required to be retained pursuant to the *Builders' Lien Act (Alberta)*, the Contract or any other Act or Regulation, will not create a right for the Contractor to suspend work or terminate the Contract.

### **G.C.4.31 Sub-Contracts**

- 4.31.1 The City reserves the right to disapprove any proposed Sub-Contractor. Once the names of the proposed Sub-Contractors have been submitted, the Contractor must not engage another Sub-Contractor without the prior written consent of the Project Manager.
- 4.31.2 The Contractor shall be fully responsible to The City for the acts and omissions of its Sub-Contractors, and all its employees and agents.
- 4.31.3 Nothing contained in the Contract Documents creates any contractual relation between any Sub-Contractor and The City.

### **G.C.4.32 Relations of Contractor and Sub-Contractor**

The Contractor agrees to bind every Sub-Contractor by those terms of the Contract which apply to the Sub-Contractor's work. Upon the request of The City or a Sub-Contractor, the Contractor will provide the Sub-Contractor a copy of the Contract or any Contract Documents that apply to that Sub-Contractor's work.

### **G.C.4.33 Claiming of Damages by Another Contractor**

- 4.33.1 Should the Contractor suffer damage by an act or omission of any Other Contractor employed by The City upon the work, the Contractor should make its claim in writing against the Other Contractor and at the same time advise The City in writing of the claim and furnish a copy of the claim made against the Other Contractor. The Contractor shall advise the Engineer in writing within 48 hours after the



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happening of the event which caused such damage to the Contractor. The Engineer will consider such claims and the responsibility for the damage and advise the Contractor thereof in writing.

- 4.33.2 Where the Contractor suffers loss or damage by reason of an act or omission by any Other Contractor where the contract between the Other Contractor and The City (hereinafter referred to as the “other contract”) provides that the Contractor is or may be added as a party to the other contract for the purpose of obtaining relief at law or in equity for the loss or damage suffered by the Contractor, the Contractor may, unless the Other Contractor has agreed to settle such claim, sue the Other Contractor to obtain relief for such loss or damage, upon the Engineer or Project Manager certifying to The City that the Contractor has so suffered loss or damage by reason of the Other Contractor, and the Contractor may do so whether the Contractor is designated by name or added to the other contract by implication only. The Contractor shall not name The City as a party to such action unless and until The City so agrees in writing and if, The City does so agree, the Contractor shall indemnify and save harmless The City against any loss, court costs, expense, damage or judgment arising out of such action.
- 4.33.3 Should the Contractor cause damage to the Other Contractor on the work, the Contractor shall upon notice by The City settle with the Other Contractor by agreement if it agrees to so settle. If the Other Contractor sues The City on account of any damage alleged to have been so sustained, The City shall notify the Contractor, who shall defend such proceedings at its own expense, and if any judgment against The City arises therefrom, the Contractor shall be responsible and pay the amount of such judgment and all costs incurred by The City.
- 4.33.4 If another contract, with the Other Contractor that has suffered damage by reason of any act or omission of the Contractor in the performance of the Contract, contains provisions the same as or substantially similar to the provisions of this clause then, unless the Contractor has been able to settle the claim of the Other Contractor, and if the Engineer has certified that the Other Contractor has suffered damage which, if it were a party to the Contract would give the Other Contractor a right of action under the Contract, then the Other Contractor, whether specifically named in the Contract or not, will be deemed to be a party to the Contract. Any of the obligations of the Contractor to complete the work, or any portion of it, in a particular manner or to a designated standard or within a specified time will be deemed to be obligations owed by the Contractor to both The City and the Other Contractor so as to allow the Other Contractor to sue the Contractor without naming or joining The City in any action. If the other Contractor does name or join The City in any action arising out of performance, non-performance or inadequate, insufficient or negligent performance then the Contractor shall defend the action on behalf of The City and shall indemnify and save harmless The City against any and all loss, cost, expense, claim, judgment or settlement arising out of such action.

### **G.C.4.34 Cutting, Patching and Digging**

- 4.34.1 The Contractor shall do all cutting, fitting or patching of the work that may be required, and properly tie-in such work with any work of Other Contractors shown in, or reasonably implied by, the Contract Documents.
- 4.34.2 The Contractor shall not endanger any existing work by cutting, digging or otherwise, and must not cut or alter the work of any Other Contractor except with the consent of the Engineer and then only to the extent permitted by the Engineer.

### **G.C.4.35 Environmental Control**

The Contractor must ensure that appropriate environmental controls are implemented, including, but not limited to, the following:

#### **4.35.1 Environmental Responsibilities**

The Contractor will ensure that environmental considerations are part of all project planning, activities and operations. The Contractor must be familiar with and communicate The City of Calgary’s Environmental Policy and the Contractor’s Environmental Responsibilities Package and Acknowledgement Form to all on-site personnel, including Subcontractors that are engaged in the work. The Contractor must maintain documentation and records as evidence that the environmental requirements for the work have been implemented and are being maintained. Verification of Compliance may include requests for documents and for worksite inspections.

#### **4.35.2 Environmental Training and Orientation**



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Contractors and Subcontractors working on the worksite will ensure they have documented and maintained records of environmental training and orientation as evidence of a level of awareness of environmental issues related to the work and competence appropriate to their assigned activities.

### 4.35.3 Erosion and Sediment Control

- (a) The Contractor must comply with all applicable legislation and adhere to the requirements specified in the current edition of The City of Calgary Guidelines for Erosion and Sediment Control to ensure protection of water bodies, storm water infrastructure, public and private property, and the environment.
- (b) For all sites greater than two (2.0) hectares in overall site size, an Erosion and Sediment Control ("ESC") Report and Drawings must be developed and implemented. ESC Reports and Drawings must be stamped and signed by a Professional Engineer (P.Eng.) or Professional Agrologist (P.Ag.) licensed to practice in Alberta, or by a Certified Professional in Erosion and Sediment Control (CPESC), and submitted to Water Resources (Attention: Erosion Control Coordinator). Amendments and updates to reports and drawings must be forwarded to Water Resources (Erosion Control Coordinator or the designated Erosion Control Technician) for review and approval.
- (c) For sites smaller than two (2.0) hectares but equal to or greater than 0.4 ha, assuming there are no site characteristics that indicate a higher than normal ESC concern, only a drawings submission will be required. Contact the Water Resources Erosion Control Coordinator at (403) 268-2655 to discuss.
- (d) For site less than 0.4 ha. where there are no site characteristics that indicate higher than normal ESC concerns, only good housekeeping practices will be required. Contact the Water Resources Erosion Control Coordinator at (403) 268-2655 if you have questions. Water Resources reserves the right to request a letter outlining the good housekeeping practices that will be implemented on a site.
- (e) ESC Reports and Drawings for Development Permits (DP) and Development Liaisons (DL) must be submitted to the File Manager of Urban Development. For projects where a Development Permit is not required the Contractor must submit the ESC Report and Drawings to The City Project Manager.
- (f) Regardless of the size of the worksite, where applicable Contractors must implement the following practices on all sites:
  - Consider phasing construction so that areas with high erosion potential are constructed in a minimum amount of time with permanent stabilization (e.g. landscaping) measures implemented early;
  - Divert clean runoff (e.g. pavement runoff) away from exposed soils or unstabilized areas;
  - Minimize the area of disturbed ground that is exposed to erosion at any one time;
  - Control erosion at the source by preventing soil detachment and transportation (erosion control);
  - Minimize the extent and duration of disturbance to vegetation;
  - Stabilize access and egress points to reduce off-site tracking;
  - Stabilize and contain stockpiles;
  - Control wind blown and fugitive dust;
  - Minimize compaction of native soil by appropriately locating temporary roads and materials storage;
  - Minimize exposed slope lengths by breaking up into smaller slopes via controls;
  - Provide temporary cover on exposed soils that are prone to erosion;
  - Maintain subsoil grades in a non-compacted roughened state;
  - Provide sufficient capture and storage to contain sediment-laden runoff within the site (sediment control);
  - Monitor the effectiveness of controls regularly (at least every seven days) and during or within 24 hours of precipitation (> 12 mm rainfall in any 24 hour period or precipitation on wet or partially frozen soils) or snowmelts;
  - Plan for and implement emergency measures as required;
  - Correctly install (per manufacturer/designer specifications), inspect and maintain erosion and sediment controls;



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- Prevent the release of sediment-laden water or contaminated water to waterbodies and to the storm sewers as a result of construction dewatering, surface washing, sand blasting, saw cutting, washing vehicles, washing out of concrete mixers and concrete trucks (including chutes and tools), and any other activities that could result in a prohibited discharge and;
  - Remove all temporary erosion and sediment controls when no longer required and at end of contract.
- (g) The Contractor must ensure that appropriate practices are in place to minimize erosion and manage sedimentation. These practices must be implemented, monitored and maintained during the term of the Contract. In the event, however, that an authorized City representative reasonably deems that there is an erosion or sedimentation problem or both, the authorized City representative will promptly give notice of the problem to the Project Manager and the Contractor. After being notified, the Contractor, subject to the advice of the Project Manager or the Engineer or both, shall take timely action to address the problem. Failing this, The City may take such steps as are necessary to appropriately address the problem at the expense of the Contractor. The City will notify the Contractor in writing of any such actions taken within seventy two (72) hours. Any costs incurred by The City may be set off against any sums owed by The City to the Contractor under the Contract.

### 4.35.4 Construction Site Water Management

The Contractor must:

- Install, inspect and maintain temporary drainage systems as required throughout the duration of the Contract and must remove temporary drainage systems upon completion of the Contract;
- Obtain a Drainage or Dewatering Permit from Water Resources prior to discharging impounded water (due to surface runoff or groundwater infiltration) to the storm drainage system (As per Drainage Bylaw 37M2005). For requests to discharge to the storm drainage system, the Water Resources Erosion Control Coordinator must be contacted at (403) 268-2655. For requests to discharge to the sanitary sewer, the Water Resources Industrial Monitoring Supervisor must be contacted at (403) 268-4558;
- Not allow slurry to enter into any watercourse or the storm or sanitary sewer system when undertaking saw cutting or coring activities, and the slurry must be disposed of in accordance with all applicable regulations and guidelines; and
- Not allow concrete washout or waste from drums, chutes and tools to be discharged where it could enter the storm drainage system either directly or as a result of subsequent precipitation event. In instances where concrete washout is to occur or surplus concrete is to be stored on site, a City approved containment system is required.

### 4.35.5 Soil Conservation and Stockpiles

The Contractor must:

- Provide temporary stabilization of exposed soils (e.g. mulch or other temporary cover, surface roughening) where wind erosion (dust) or water erosion or both could contribute sediment to off-site areas, including water bodies, streets, storm infrastructure, and property;
- Ensure stockpiles, in place for more than 30 days, are properly stabilized and contained in order to prevent any off-site impacts. Stockpile slopes must not be steeper than a 4H:1V ratio;
- Locate stockpiles in flat, contained areas of the worksite;
- Maintain a one metre separation between topsoil and subsoil stockpiles and care must be taken to prevent mixing of topsoil and subsoil during stripping. All storage stockpile locations must be recorded and this information must be available at the site. Additional erosion and sediment controls and practices for stockpiles are referenced in the current edition of the Guidelines for Erosion and Sediment Control;
- Control annual weeds on exposed soils before they can set seed in order to reduce the likelihood of spread;
- Ensure equipment moving from areas with weeds or non-native species into natural areas is clean and free of weeds; and
- Ensure any use of a registered herbicide is approved by the Project Manager in accordance with the City's Integrated Pest Management Program (IPM).

### 4.35.6 Tree and Plant Protection



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- (a) As required by the Street Bylaw 20M88, the Contractor must supply a Tree Protection Plan to Urban Forestry when construction or construction related activities occur on City lands (including road right of way and boulevards) within 6 metres of a City tree. To verify tree ownership or to inquire about tree protection plans, Urban Forestry can be contacted through 311.
- (b) Contractors must adhere to the Tree Protection Bylaw 23M2002.
- (c) The Contractor must plant all trees, shrubs and groundcover in conformity with the most current edition of Parks Development Guidelines and Standard Specifications, Landscape Construction Specifications.

### 4.35.6.5 Water Supply and Disposal

The Contractor must ensure that suitable and approved water supply and water disposal methods are implemented refer to G.C.4.45 and G.C.4.35.4, respectively. To obtain a Hydrant Connection (HCU) contact the Water Services & Water Resources stockroom at (403) 268-4416 or (403) 268-4712.

### 4.35.7 Site Management

The Contractor must:

- Suitably locate, secure and label chemical, fuel and lubricant storage areas to prevent and minimize the impact of any releases or contamination on-site or off-site;
- Ensure that for all hazardous materials there is 110% secondary containment capacity for the largest container plus 10 percent of the aggregate capacity of all other containers;
- Ensure hazardous materials on the worksite are managed appropriately. Site specific hazardous materials management procedures must be developed, documented and communicated to all Contractor and Subcontractor personnel;
- Prevent and control tracking of dirt offsite and within the worksite and adjacent areas, including thoroughfares and walkways;
- Take all reasonable measures to control dust within the worksite, including, but not limited to haul roads, dump sites, stockpiles and detour roads, for the duration of the Contract. This includes control of dust created by the passage of public traffic through the worksite. Dust control could include the use of non-potable water;
- Promptly remove all mud, dirt, debris and other materials deposited by construction during the construction and rehabilitation period and dispose of such material appropriately;
- Keep the worksite free from accumulations of debris or waste;
- Ensure storage of waste and material is controlled to prevent off-site migration from the worksite;
- Ensure all containers (for example drums) containing waste material resulting from any activity are identified, labelled, managed and disposed of appropriately; and
- Ensure that spill kits are present at all worksites.

### 4.35.8 Recycling and Waste Management

The Contractor must:

- Identify how waste will be reduced and diverted from the landfill or recycled. At a minimum, the Contractor will recycle cardboard, paper, wood, asphalt, concrete, metal and plastics and provide the City Project Manager written justification for not diverting any of these waste streams from landfill;
- Retain and submit copies of all waste records for materials disposed and recycled. These will be provided to the City Project Manager upon request in a summary sheet form, indicating for each product or material, the record number, the quantity or weight recycled or disposed (where reasonably practical), the destination, and how the material is classified under the Waste Control Regulation (AR 129 / 93) and the Transportation of Dangerous Goods Regulation (SOR / 2001-286);
- Provide appropriate on-site collection containers for debris and waste and remove waste materials regularly from the worksite;
- Dispose of waste material from City projects to disposal sites designated for the appropriate material. All disposal sites must be pre-approved by the Project Manager;



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- Ensure all proposed waste disposal sites are approved licensed landfills;
- Not burn or bury materials or waste on the worksite; and
- Not dispose of materials or waste into waterways, storm or sanitary sewers.

### 4.35.9 Fuelling

- (a) Contractor personnel must be present at the transfer point during fuelling operations and for the duration of the fuelling process.
- (b) Spill kits or drip pads or both must be present at location during refuelling.
- (c) Fuelling or maintenance of equipment must not take place within 30 meters of waterways including the storm sewer system or environmentally sensitive areas unless a written standard operating procedure is developed, approved by the Project Manager, and followed.
- (d) Fuelling procedures must be communicated to all onsite personnel involved in the fuelling or maintenance operations.
- (e) No servicing or repair of machinery may occur within 30 metres of an environmentally sensitive area or waterbody unless directed by The City of Calgary Fire Department Hazardous Materials Section (HazMat) or a regulatory authority.
- (f) Fuelling requirements outlined in the *Alberta Fire Code* and other legislation must be followed (e.g. prohibit smoking, appropriate labeling).
- (g) The transportation of dangerous goods is restricted in the Central Business District as detailed in Bylaw 23M2005, and amendment of Bylaw 13M2004.

### 4.35.10 Spill Prevention

The Contractor must implement and document transportation, handling and storage methods that will prevent chemical, fuel, lubricant and other hazardous substance releases on or around the site caused by construction or demolition related activity.

### 4.35.11 Release Reporting and Cleanup

The Contractor must:

- Maintain a list of key contacts and phone numbers for reporting spills and other incidents and ensure the contact list is posted in a visible location at the worksite as per G.C.4.11.9;
- Stop, contain and clean up any releases if reasonable and safe to do so;
- Immediately report all spills and releases (including sediment laden water into the storm drainage collection system and releases to the air) to the Project Manager, The City of Calgary and the Fire Department Hazardous Materials Section (HazMat) by Fax (403) 287-4202. Notify any other regulatory authorities with jurisdiction when release reporting is required. If the product enters or is heading towards a waterway or sewer system, or assistance is needed the Contractor should call the 911 and request dispatch of the Fire Department;
- Keep adequate quantities of appropriate absorbent material readily available (i.e. in reasonable proximity to the potential hazard, vehicle or equipment) for spill containment;
- Contain, remove and remedy the spill or release in accordance with the law and in consultation with The City, HazMat or any other regulatory authorities with jurisdiction as required after any spill or release;
- Provide adequate documentation concerning the containment and remedy of any spill or release and the management and disposal of contamination or hazardous materials in accordance with applicable legislation and as requested by The City;
- Refer to The City of Calgary's Corporate Substance Release Reporting Program ([www.calgary.ca](http://www.calgary.ca), key search words "substance release reporting program"); and
- When heavy equipment will be working in or immediately adjacent to environmentally sensitive areas such as waterbodies and wetlands hydraulic fluids that meet ASTM D-6046 (or equivalent) for reduced toxicity will be considered whenever practical and feasible.

### 4.35.12 Contamination Discovery



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- (a) The Contractor must immediately notify The City of Calgary Fire Department Hazardous Materials (HazMat) (911 for Emergency or for Non-Emergency (403) 264-1022) and the Project Manager of any unexpected contamination encountered during the work, Alberta Environment and Water, and any other regulatory authority with jurisdiction must also be contacted if it is known to be a reportable release.
- (b) The Contractor must promptly notify the Project Manager of any suspected or potentially hazardous building materials exposed during the work.
- (c) In the event that HazMat determines that an emergency situation exists, HazMat will assume control of the worksite in the area of the contamination. HazMat will provide the necessary services and provide direction to the Contractor as needed on how to manage and dispose of any contamination or hazardous material encountered during the work. Once the emergency situation no longer exists, control is returned to the Contractor.
- (d) If an emergency situation does not exist, or once the emergency situation is under control, the Project Manager will be responsible for any further dialogue with Alberta Environment and Water or other applicable regulatory agency and for determining the necessary steps to manage the contamination. The Contractor must work with the Project Manager to implement measures necessary to complete the work and meet Contract requirements, including possible removal and disposal of contamination or hazardous materials and proper Personal Protective Equipment (PPE) for employees on site. The City will disclose any available information regarding the nature of the contamination or the hazardous materials to the Contractor. The Contractor is responsible for providing documentation concerning the management and disposal of contamination or hazardous materials in accordance with applicable legislation and as requested by The City.
- (e) The Contractor must allow The City, or its representatives, unrestricted access to the worksite to investigate the contamination or hazardous materials.
- (f) The parties acknowledge that work at the worksite may have to be suspended until the suspected contamination or hazardous materials have been fully investigated, characterized and managed in accordance with the requirements of the applicable regulatory agencies. Costs associated with any such delay will be determined on a case by case basis.
- (g) The Contractor should refer to The City of Calgary's Contamination Discovery Response Procedure for Ground Disturbance ([www.calgary.ca/esm](http://www.calgary.ca/esm) under Contractor Environmental Responsibilities).

### **4.35.13 Offsite Disposal of Excavated Soil or Material**

Excavated soil or material, that is not otherwise required for fill or for other purposes at the worksite under the Specifications or Special Conditions, is to be disposed of offsite. Whether or not a disposal site has been designated, the Contractor must dispose of the materials at a site that is appropriate for the soil or material. The City does not make any representation or warranty as to the suitability of an excavated soil or material for offsite deposit or disposal at any particular site or for any particular purpose. For The City of Calgary Cleanfill Disposal Sampling Requirements contact Waste and Recycling Services – Environmental Control Technologist at (403) 268-8440 or email: [cleanfill@calgary.ca](mailto:cleanfill@calgary.ca).

### **4.35.14 Recycled and Imported Fill Material**

- (a) The source location of any imported or recycled fill material to be used in the work must be approved by the Project Manager prior to material being brought onsite. Analytical verification may be requested to ensure material meets applicable guideline criteria.
- (b) Any changes in the source location of the fill material must be reported immediately to the Project Manager.



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### 4.35.15 Vehicle Idling Reduction

The Contractor will familiarize itself with The City's Vehicle Idling Reduction Policy, and minimize the idling of vehicles and equipment not essential for performance of the work.

### 4.35.16 Application of Pesticides and Herbicides

For control of weed species Contractor may apply species specific pesticides as approved by the City Project Manager, in accordance with The City's Integrated Pest Management Program (IPM). The Contractor is to use City approved applicators.

In the event of a pesticide application the Contractor is to install and collect signs as per the direction of the City Project Manager.

When applying a pesticide, a Contractor must complete a pesticide application report (X135 Biocide Report or as approved by the City Project Manager) while on site during the day of application. All pesticide application reports must be submitted to the Project Manager by December 1 annually or prior to construction completion certification (CCC) – whichever comes first.

## G.C.4.36 Payments by Contractors

- 4.36.1 Unless otherwise stipulated, the Contractor shall provide all materials, labour, tools, equipment, light, power and other utilities necessary for the execution of the work.
- 4.36.2 The Contractor shall pay promptly all amounts due to any Subcontractor engaged by the Contractor.
- 4.36.3 The Contractor shall pay promptly for all tools, equipment, supplies, materials, light, power and other utilities including, but not limited to, any sum due for labour and services of any foreman, workman, labourer or other person.
- 4.36.4 The Contractor shall pay promptly for the use, rent or hire of any motor vehicles, equipment, machinery, temporary buildings, or structures erected by or for the Contractor.
- 4.36.5 The Contractor shall upon request by The City furnish evidence satisfactory to the Engineer and the City Solicitor whether any, some, or all of the payments required above have been made.
- 4.36.6 The Contractor shall indemnify and save harmless The City from and against any charges or claims in any way connected with the foregoing provisions of G.C.4.36.
- 4.36.7 The bond or bonds required of the Contractor pursuant to these General Conditions shall be so drawn as to cover the obligations of the Contractor under this clause.

## G.C.4.37 Weather

The Contractor shall at its own expense do any extra work caused by adverse weather. Subject to G.C.5.5, unless the Contract Documents otherwise provide, the occurrence of inclement or unfavorable weather conditions following the tender award shall not relieve the Contractor from the obligation to complete the Contract within the time limits set by the Contract Documents and to adhere to any schedule of work established pursuant to any provision of the Contract.

## G.C.4.38 Ownership of Drawings and Models

All originals and copies of Drawings and Contract Documents except the Contractor's copy, are the property of The City and if requested by The City, must be returned on completion of the Contract. The Contractor assigns to The City (subject to any third party's proprietary rights) all its right, title and interest including, without limitation, copyright and proprietary rights to any models, drawings or Contract Documents developed or prepared for The City (the "Deliverables"). The Deliverables exclude all third party works, software, products and Technical Elements (as defined in the following sentence), whether or not included or embedded in the Deliverables. Technical Elements include methods, processes, techniques, formulas, trade secrets, research, reports, technical data, know-how and forecasts used or generated by the Contractor, as well as data, modules, components, designs, utilities, subsets, objects, program listings, tools, models, diagrams, analysis frameworks, software scripts, templates, leading practices and specifications owned or developed by the Contractor prior to, or independently from, its engagement hereunder.



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The Contractor retains all rights to any Technical Elements together with any modifications or improvements made to the Technical Elements during or as a result of the work. Accordingly, to the extent that any Technical Elements are integrated into any Deliverables, the Contractor hereby grants to The City a perpetual, worldwide, paid-up limited license to use such Technical Elements as integrated into such Deliverables for internal purposes.

The Contractor may retain a copy of the Deliverables as reasonably required to comply with its professional obligations only. The Contractor shall not copy, use or allow a third party to use a Deliverable without the prior written consent of The City.

### **G.C.4.39 Shop Drawings**

- 4.39.1 The Contractor shall arrange for the preparation of clearly identified Shop Drawings as called for by the Contract Documents or as the Engineer may reasonably request.
- 4.39.2 Prior to submission to the Engineer, the Contractor shall review each and every Shop Drawing. The Contractor shall confirm its review of each Shop Drawing by way of a signature or stamp of a signing officer for the Contractor accompanied by the date of signing or stamping. Such signature or stamp will represent confirmation that the Contractor has carried out a duly diligent review, including determining or verifying field measurements, field construction criteria, materials, catalogue numbers and similar data, and has coordinated the Shop Drawing with the requirements of the work and the Contract Documents.
- 4.39.3 At the time of submission, the Contractor shall notify the Engineer in writing of any deviations in the Shop Drawings from the requirements of the Contract Documents.
- 4.39.4 The Contractor shall submit Shop Drawings to the Engineer for its review with reasonable promptness and in orderly sequence so as to cause no delay in the work or in the work of other Contractors. If either the Contractor or the Engineer so requests they shall jointly fix the dates for submission and return of Shop Drawings. Shop Drawings must be submitted in the form of a reproducible transparency or prints as the Engineer may direct.
- 4.39.5 The Engineer shall review and return Shop Drawings with reasonable promptness so as to cause no delay. The Engineer's review will be for conformity to the design concept and for general arrangement only, and such review will not relieve the Contractor of responsibility for errors and omissions in the Shop Drawings or of responsibility for meeting all requirements of the Contract Documents unless and to the extent a deviation on the Shop Drawings has been approved in writing by the Engineer.
- 4.39.6 The Contractor shall make any changes in Shop Drawings which the Engineer may require in order for them to be consistent with the Contract Documents and re-submit unless otherwise directed by the Engineer. When resubmitting, the Contractor shall notify the Engineer in writing of any revisions other than those requested by the Engineer.

### **G.C.4.40 Clean-Up and Restoration at Completion**

- 4.40.1 All survey stakes, signs, surplus material, equipment, tools, coverings, lumber, waste concrete, excess dirt, sod and gravel, shrubs and trees felled by the Contractor, rocks, boulders uncovered by the Contractor and all rubbish must be removed from the site immediately after the work has been completed. The site is to be left "broom-clean" or its equivalent, unless specified otherwise.
- 4.40.2 Where directed by the Engineer, the Contractor will restore to pre-construction condition and to the satisfaction of the Engineer all existing surfaces, structures, and services damaged during the work of the Contract including damage to items such as private curbs, walks, and driveways, fences, light standards, signs, and landscaping. No payment will be made for restoration unless specifically covered in the Tender and authorized by the Engineer.
- 4.40.3 Unless otherwise excepted, the Contractor will complete clean-up, including the removal of all surplus excavation from backsloping, within two (2) weeks from the time the backsloping was started, excepting main streets and bus routes, which must be cleaned up immediately after construction.
- 4.40.4 The cost of all clean-up, fills and backsloping under the Contract is deemed to be included in the Total Tendered Price.



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4.40.5 Should the Contractor fail to execute the clean-up to the satisfaction of the Engineer, any further clean-up may be done by The City and the cost deducted from any amount due the Contractor.

**G.C.4.41 Correction of Work Before Final Payment**

4.41.1 The Contractor shall promptly remove from the premises all materials condemned by the Engineer as failing to conform to the Contract Documents, whether incorporated in the work or not, and the Contractor shall promptly replace the Contractor's own materials or work and shall make good all work of other Contractors destroyed or damaged by such removal or replacement without expense to The City.

4.41.2 If the Contractor does not remove such condemned materials or work within the time fixed by written notice from the Engineer, The City may remove them at the expense of the Contractor.

**G.C.4.42 Deductions for Uncorrected Work**

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 done and the work as called for by the Contract. The difference in value will be determined in the first instance by the Engineer.

**G.C.4.43 Correction of Work After Final Payment**

Neither the issuance of Construction Completion Certificate nor payment thereunder, nor any provision in the Contract Documents, will relieve the Contractor from responsibility for faulty materials or workmanship which appear within the period set out in G.C.4.44. The City shall promptly give notice of observed defects.

**G.C.4.44 Maintenance/Guarantee**

4.44.1 Unless otherwise specified, all materials incorporated into the work must be new and undamaged. Both workmanship and materials must be of the quality specified in the Contract Documents. Subject to the provisions of the Special Conditions and to the exception provided in this condition but notwithstanding any other provision of the Contract, the Contractor shall maintain, at no cost to The City, the work and every part thereof in reasonable working order and complete repair during the period of two years from the date of issue of the Construction Completion Certificate. Notwithstanding the generality of the foregoing, the Contractor will not be liable for:

- (a) damage caused by parties who are strangers to the Contract, or
- (b) damage resulting from malicious acts of other parties, or
- (c) damage resulting directly from the operation of City snow plowing equipment, or
- (d) damage arising from settlement of streets or utilities where such streets or utilities are constructed by parties other than the Contractor, or
- (e) damage for which The City has specifically assumed responsibility in writing, or
- (f) any condition which in the opinion of the Engineer results from normal wear and tear, or
- (g) acts or omissions which in the opinion of the Engineer are beyond the control of the Contractor;

where in each case the damage or condition arose subsequent to the issuance of the Construction Completion Certificate.

4.44.2 The Contractor, upon being so directed by the Engineer by a notice in writing during the maintenance period, shall repair or replace any defect in or failure of any part of the work within the time set out in and according to the notice, all to the satisfaction of The Engineer. At the end of the maintenance period The City may give a similar notice relating to all defects and failures in the work which have appeared during the maintenance period and which have not been rectified earlier. If the Contractor fails to repair or replace the defect or failure as required by any such notice, The City may proceed to have the repair or replacement made and may charge the Contractor with the cost thereof and at The City's option deduct the amount from any amount due to the Contractor by The City either under the Contract or any other contract or otherwise or may collect the same from the Contractor by any lawful



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means available to The City. At the end of the maintenance period, after all defects and failures have been corrected to the satisfaction of the Engineer, or if there are not any defects or failures in the work, the Engineer shall issue a Final Maintenance Certificate and The City shall release the performance bond with respect thereto and shall pay any amounts withheld pursuant to G.C.6.6.

- 4.44.3 Where the provisions of this clause refer to a default or failure in the singular, the same provisions will also apply to two or more defects or failures as though each were the subject of a separate contract. The word "defect" means a lack or absence of something or condition essential to the completeness of the project or part thereof to which the notice relates and does not require that The City establish or allege that any portion of the workmanship was defective or the materials used were faulty. The word "default" means the failure of any portion of the work to remain in a good and sound condition free from defect or deterioration.
- 4.44.4 Neither any approval given by the Engineer or other representative of The City nor any payment made nor any provision of the Contract Documents will relieve the Contractor from its obligations of maintenance under this condition. The issuance of the Construction Completion Certificate may not be deemed to be, nor will it be interpreted as, a waiver of the maintenance requirements or any portion thereof unless it specifically so states.
- 4.44.5 Where applicable, the following work or services will be performed by The City during the period between the issuance of Construction Completion Certificate and issuance of the Final Maintenance Certificate:

### 4.44.5.1 Buildings

1. Janitorial or custodial;
2. Payment of utilities costs;
3. Routine maintenance (other than defects and deficiencies) and operation of mechanical equipment including water treatment, filters, etc.;
4. Replacement of lighting bulbs;
5. Maintenance of grounds (other than specific landscaping covered elsewhere); and
6. Repair of damages by vandalism.

### 4.44.5.2 Bridges and Streets

1. Snow removal, plowing, or sanding as required;
2. Spring clean up of sanding materials;
3. Repair of damage by snow plows;
4. Repair of damage by vehicle accidents; and
5. Repair of damage by vandalism.

## G.C.4.45 Authorization to Operate Fire Hydrants

- 4.45.1 Withdrawal of water from fire hydrants for any purpose other than fire fighting is prohibited, unless authorized in writing by the Director, Water Services. The Director, Water Services may provide temporary authorization for the withdrawal of water from fire hydrants for construction purposes. Construction purposes includes dust control, grading and soil compaction and the construction of new landscapes prior to the issuance of a Final Acceptance Certificate, but excludes water used for irrigation purposes.
- 4.45.2 When the use of a fire hydrant is authorized for purposes other than fire fighting, the following conditions must be adhered to:
- (a) the Contractor shall enter into a Hydrant Connection Unit ("HCU") Rental Agreement with Water Services, and such HCU may be either a Backflow Meter Assembly or a Meter Assembly used in conjunction with an approved air gap;
  - (b) the Contractor shall adhere to all provisions of the Water Utility Bylaw and all terms and conditions of the HCU Rental Agreement and the Hydrant Use Permit, and shall pay any required damage deposit, rental fee or inspection fee associated with such use;
  - (c) the Contractor shall ensure that water is taken only from hydrants for which an authorization has been granted; and



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- (d) the Contractor shall ensure that the HCU is properly connected to the hydrant and that the water meter is functioning at all times that water is being withdrawn from the water distribution system.
- 4.45.3 Water Services will provide no cost training to those people involved in operating fire hydrants pursuant to the authority set out herein. Assistance may be obtained by telephoning 311 and asking for Distribution Control.
- 4.45.4 Any improper use of a fire hydrant may result in one or more of the following:
- (a) the HCU Rental Agreement being cancelled;
  - (b) the authorization to use fire hydrants being cancelled;
  - (c) the Contractor being liable for costs attributable to the improper use, including the cost of repairs of any damaged hydrant or watermain or both, as well as the costs of repairs required to City property or the property of third parties resulting from a watermain break.
- 4.45.5 Water for construction and other non-fire purposes can also be obtained from the Bulk Water Sales Stations located at various Fire Halls throughout The City. To use these bulk water facilities, an application can be made at Utility Customer Accounts located on the 3<sup>rd</sup> floor of the Municipal Building, Monday through Friday from 8:00 am to 4:30 pm. Information may be obtained by telephoning 311 or at [www.calgary.ca/waterservices](http://www.calgary.ca/waterservices), and then clicking on Customer Service and then on Bulk Water Guide.

### **G.C.4.46 Confidentiality and Freedom of Information and Protection of Privacy Act (FOIP)**

The City acknowledges that Tenders and other documents submitted by a Tenderer will contain information in the nature of a Tenderer's trade secrets or commercial, financial, labour relations, scientific or technical information of or about a Tenderer. The City acknowledges that Tenders and other documents submitted by a Tenderer are provided in confidence and will be protected from disclosure to the extent permissible under law. The Tenderer acknowledges that The City is bound by *The Freedom of Information and Protection of Privacy Act (Alberta)* and all documents submitted to The City will be subject to the protection and disclosure provisions of this Act. The Contractor hereby authorizes The City to provide Sub-Contractors with copies of the executed Contract or Contract Documents. The Contractor further confirms that by virtue of the Contractor's obligation under G.C.4.32, the Contractor is obligated to disclose information contained in the Contract Documents to Sub-Contractors. In the event that the Contractor fails to disclose such information to Sub-Contractors and The City discloses such information pursuant to this G.C.4.46, the Contractor agrees to indemnify and hold harmless The City for any loss or expense it may incur or damage it may suffer as a result of providing the disclosure.

### **G.C.4.47 Conflict of Interest**

- 4.47.1 During the term of the Contract the Contractor must not engage in or provide, to any other person or company or entity, any service or act which would be reasonably perceived to be in conflict with the interest of The City in respect of the work or services or both being provided by the Contractor to The City.
- 4.47.2 The Contractor must provide timely disclosure of any actual or potential conflict of interest for this project, including any arising from any common ownership or association with any party that has worked on or is working on any part of the project.
- 4.47.3 Any failure to provide timely disclosure of any potential conflict of interest, or failure to avoid engaging in or providing to any other company or entity any service or act which could reasonably be perceived to be in conflict with the interest of The City in respect of the work or services or both being provided by the Contractor to The City or in violation of any legislation regarding fair competition, will be grounds for terminating the Contract with the Contractor. Any such failure may also be noted on the performance record maintained by The City for the Contractor.



## **G.C.5 OBLIGATIONS OF THE CITY**

### **G.C.5.1 Copies of the Documents**

In addition to an executed copy of the Contract, the Engineer shall furnish to the Contractor, free of charge, up to ten (10) copies of relevant construction drawings and specifications.

### **G.C.5.2 Project Survey**

5.2.1 The Engineer will establish and be responsible for the accuracy of benchmarks and monuments and designate such to the Contractor. The Engineer or the Contractor, may in addition establish baselines and other principal controlling points, lines and grades, but the Contractor shall be responsible for the accuracy of its work in relation to the Engineer's benchmarks and monuments. Any points, lines or grades established by the Contractor may be checked by the Engineer.

5.2.2 Unless indicated otherwise on the drawings, all land surface elevations indicated or specified refer to geodetic metric.

5.2.3 The Engineer shall be responsible for the accuracy of grades established by The City.

5.2.4 Unless otherwise provided in writing, The City shall provide survey work for the following projects:

- Sewer and water lines
- L.R.T. track bed and trackage
- Slope stakes for earth works
- Grade stakes for full depth asphalt pavement
- Sidewalk, curb and gutter, and bicycle paths
- Fencing, sound attenuation barriers, guard barriers and miscellaneous small structures on L.R.T. and road projects.

For all other projects, The City shall establish one benchmark and two control lines only to establish the location from which the Contractor shall work in carrying out survey work required for its execution of the project.

5.2.5 The obligation of the Contractor respecting survey responsibilities are as outlined in G.C.4.17.

### **G.C.5.3 Supplementary Drawings and Instructions**

5.3.1 When, in the opinion of the Engineer, it becomes necessary to explain more fully the work to be done or to illustrate the work further to show any change which may be required, additional drawings (sometimes referred to as "supplementary drawings") with specifications pertaining thereto will be prepared by the Engineer, and three (3) paper prints thereof will be given to the Contractor. The supplementary drawings shall be binding upon the Contractor with the same force as the drawings listed in the Memorandum of Agreement or included with the Project Specifications.

5.3.2 Instructions shall be deemed to have been duly given and received if delivered in writing to the individual, or to a member of the firm, or to an officer of the corporation for whom they are intended, or if delivered at or sent by mail to the address of the Contractor set out in the Memorandum of Agreement or any new address of which The City has written notice.

5.3.3 The Contractor shall furnish the Engineer with such information and drawings as may be required and shall not fabricate or construct the work until the information or drawings or both are approved in writing by the Engineer.

5.3.4 The Contractor, and the Engineer, if either so requests, shall jointly prepare a schedule, subject to change from time to time in accordance with the progress of the work, fixing the dates at which the various Supplementary Drawings will be required and the Engineer shall furnish them in accordance with this schedule. Under like conditions, a schedule will be prepared fixing the dates for submission of information or shop or working drawings, for the beginning of manufacture and installation of materials, and for the completion of the various parts of the work.



#### **G.C.5.4 Changes in the Work**

- 5.4.1 The Engineer may make changes by altering, adding to, or deducting from the work, and the Contractor shall carry out all such alterations, extensions or additions upon receipt of written notice from the Engineer to proceed with the said work. All such work is to be done under the provisions of the original Contract to the greatest extent practicable. Unless specifically provided in a Change Order or amendment to the Contract, no change, alteration, extension or addition or deletion to the work to be done and no extension of time for the completion of the said work, under the terms of the Contract will affect the obligations of the Contractor under the provisions of the Contract.
- 5.4.2 No change shall be made except on written instructions from the Engineer and no claim based on an addition to or deduction from the Contract sum or change in the time of completion will be valid unless confirmed by the issuance of a Change Order.
- 5.4.3 The value of changes shall be determined in accordance with G.C.6.2, "Determination of Cost of Changes".

#### **G.C.5.5 Time of Completion Extension**

- 5.5.1 If in performing the Contract the Contractor is delayed in completion of the work by:
- (a) any undue delay in tender award,
  - (b) any act or omission of The City, the Engineer or any employee of The City,
  - (c) an act or default of another contractor employed by The City,
  - (d) changes in the work ordered by The City or by the Engineer, or
  - (e) any other cause of any kind which the Engineer decides justifies an extension of the completion time of the Contract, including extreme weather conditions,
- then the time of completion may be extended for such time as the Engineer may decide is reasonable in view of the circumstances.
- 5.5.2 The Engineer shall not be obliged to extend the time of completion for any delay which occurred more than seven (7) days before the claim is made in writing to the Engineer. Notwithstanding the foregoing sentence, in the case of a continuing delay, the Contractor is only required to make one claim.
- 5.5.3 If no progress schedule is made or if the progress schedule is deficient with reference to drawings which may be required to be furnished by The City, no claim for the extension of time because of delay of less than two (2) weeks in furnishing such drawings will be considered. Otherwise the extension will only be made if and to the extent the delay in furnishing the drawings results in a delay in the completion of the project and then only to the extent that the claim for extension of time is reasonable.
- 5.5.4 Unless the Engineer in its sole discretion directs otherwise, the only relief granted to the Contractor for any delays, for which the Contractor is not responsible, will be in an appropriate extension of time as herein provided.
- 5.5.5 The Engineer shall not, except upon written notice to the Contractor, stop or delay any part of the main Contract work pending decisions or proposed changes by The City.

#### **G.C.5.6 City's Right to Do Work**

- 5.6.1 If the Contractor neglects to carry out the work properly or fails to perform any part of the Contract, upon at least three (3) days written notice to the Contractor and without prejudice to any other remedy The City may have, The City may make good any deficiencies and deduct the cost thereof from the payment then or thereafter due to the Contractor.
- 5.6.2 None of the following:
- (a) interference, or taking part in the work by The City under any of the provisions of the Contract;



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- (b) issuance or making of any account, statement, estimate or certificate of the Engineer referred to in the Contract;
- (c) approval of any such account, statement, estimate or certificate by The City;
- (d) payment, whether in part or in full, which may be made by The City to the Contractor or on its accounts; or
- (e) acceptance, taking over, using or operating of any part or parts by The City, or by any person or persons through or under The City;

will in any way release the Contractor from any responsibility or liability to The City upon or under the Contract.

### **G.C.5.7 City's Rights, including: to Declare Contractor in Default and Seek Remedies, and to Terminate Contract**

#### 5.7.1 If the Contractor:

- (a) is adjudged bankrupt or seeks protection under any bankruptcy or insolvency legislation,
- (b) makes any general assignment for the benefit of its creditors,
- (c) except in cases covered by the provisions of G.C.5.5 of these conditions, refuses or fails to supply enough properly skilled workmen or proper materials,
- (d) fails to make prompt payment to Subcontractors, or suppliers of materials, or services,
- (e) in the opinion of the Engineer, disregards any laws, statutes, regulations, or bylaws applicable to the work,
- (f) in the opinion of the Engineer, disregards instructions of the Engineer,
- (g) otherwise materially breaches any material provision of the Contract Documents,
- (h) fails to continue to meet or exceed any prequalification requirements, if applicable, including not having assigned to the work key staff resources that were represented to be assigned during the prequalification or Tender process, or
- (i) fails to carry out the work, or provide services, or both, to a standard that is satisfactory to The City, acting reasonably,

then upon the determination of the Engineer or Project Manager that sufficient cause exists to justify such action, The City may without prejudice to any other right or remedy which The City may have at law or in equity, by written notice, note the Contractor in default and seek remedies, or terminate the Contract and seek remedies. In the case of any one or more of the defaults or issues listed in (c) through (i) existing, the Engineer or Project Manager may give notice in writing of the default or issue and an opportunity to cure such default or issue. If, within seven (7) days of the receipt of such notice, the Contractor fails to either cure the default or issue or take material steps that demonstrate to the Engineer or Project Manager that the default or issue will be cured within a period that is reasonable in the circumstances, The City may note the Contractor in default and seek remedies, or terminate the Contract and seek remedies. Noting the Contractor in default or terminating the Contract will not prejudice any right or remedy The City may have at law or in equity. The City may complete the work by whatever method it may deem expedient without undue delay or expense. Similarly, if a receiver should be appointed by a court of competent jurisdiction on account of the Contractor's insolvency, The City may terminate the Contract. In any one or more of these events, The City at its sole discretion may choose not to terminate the Contract and to do the work in the manner provided in G.C.5.6 of these General Conditions.

- 5.7.2 If The City continues to regard the Contract as still in existence but undertake to complete any work itself, the Contractor will not be entitled to receive any further payment until all work including making good deficiencies has been completely performed. If the unpaid balance of the Contract price (for the work completed by the Contractor) exceeds the expense of finishing the work, such excess will be paid to the Contractor. If the expense of finishing the work exceeds the unpaid balance, the Contractor shall



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pay the difference to The City. The expense incurred by The City in completing any work, will be certified by the Engineer or Project Manager prior to any payments being made.

- 5.7.3 If The City, at its sole discretion acting reasonably, determines that the Contractor has conducted itself in an unethical or criminal manner, The City may suspend or terminate the Contract upon notice in writing.

### **G.C.5.8 Emergencies**

The Engineer or Project Manager has authority to stop the progress of the work in an emergency affecting or threatening the safety of life, or of the structure, or of adjoining property. The Engineer or Project Manager has authority to make such changes and to order such work extra to the Contract or otherwise as may be necessary in the Engineer's or Project Manager's opinion.

## **G.C.6 PAYMENT CLAUSES**

### **G.C.6.1 Bid Breakdown**

On lump sum tenders the Bid breakdown required in the Bidders Information Sheets may be used for purposes of progress payments during construction.

### **G.C.6.2 Determination of Cost of Changes**

- 6.2.1 When the Engineer pursuant to the other provisions of the Tender Documents directs that any change in scope to the work be made which will require either an increase or a decrease in the amounts to be paid to the Contractor, the cost of the change will, subject to the limitations hereinafter set out in this clause, be determined by:

- (a) A lump sum quotation, or
- (b) A unit price quotation, or
- (c) Unit prices where the same are provided in the Tender Documents, or
- (d) Calculated in accordance with the current edition of The City of Calgary Force Account Rates and 6.2.3 or
- (e) Net cost of labour, material and equipment.

The method to be used for determining the value of the change will be determined by the Engineer.

- 6.2.2 Where the cost of the change is required to be determined by method G.C.6.2.1(a) or G.C.6.2.1(b), the Contractor shall include in its quotation a complete breakdown of all costs included in the quotation including all material, equipment, labour, profit, overhead and administration. The total mark-up for both overhead and administration must not exceed five percent (5%) of the estimated cost to the Contractor or Sub-Contractor performing the work. The mark-up for profit must not exceed ten percent (10%) of the estimated cost to the Contractor or Sub-Contractor performing the work. Each mark-up will be based on the estimated cost to the Contractor or Sub-Contractor performing the work without any mark-ups added.

Where the General Contractor is required to administer the work performed by a Sub-Contractor, the General Contractor will be entitled to a total mark-up of five percent (5%) for overhead and administration on the work to be performed by the Sub-Contractor. The mark-up will be based on the estimated cost to the Sub-Contractor performing the work without any mark-ups added.

No additional mark-ups will be allowed.

The Contractor shall clearly identify in its quotation any extension of time required to carry out the change.

- 6.2.3 Where the cost of the change is required to be determined by method G.C.6.2.1(d), all labour and material will be paid for at the Force Account Rates incorporated in the Contract Documents. These



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rates will not be increased to include a percentage of profit, overhead and administration as these items have already been included in the Force Account Rates. However, where the General Contractor administers the work performed by a Sub-Contractor, the General Contractor will be entitled to a ten percent (10%) mark-up for overhead and administration to the net cost of the work performed by the Sub-Contractor.

Equipment supplied in connection with Force Account work and not covered under the Force Account Rates will be charged at the lowest competitive rate plus fifteen percent (15%) to cover all overheads and profit additions.

Materials supplied in connection with Force Account work are to be charged at the lowest competitive rate plus fifteen percent (15%) to cover all overhead and profit additions.

Rates for personnel employed on Force Account work who are not listed in the Force Account Rates incorporated in the Contract Documents will be charged at payroll cost plus fifteen percent (15%) addition for overhead and profit. The rates will be those applicable to The City of Calgary and established by Construction Labour Relations, an Alberta Association. All rates are inclusive of contributions to Workers' Compensation Board, Employment Insurance Commission, Canada Pension Plan, and Alberta Health Care, and where applicable, pension, hospital and welfare, apprenticeship and training, union and employee fund contributions.

All rates must be submitted to and approved by the Engineer prior to the commencement of any Force Account work, and no payment will be made for Force Account work done without the prior written approval of the Engineer.

Rates used for Force Account work will be those current at the date of written approval of the Force Account work by the Engineer.

- 6.2.4 Where the cost of the change is required to be determined by method G.C.6.2.1(e), except as otherwise herein provided, the percentages to be added will be:
- (i) five percent (5%) for overhead and administration and ten percent (10%) for profit to the net cost of the Contractor or Sub-Contractor performing the work;
  - (ii) rates for equipment either rented or owned by the Contractor will follow those rates set out in the Force Account Rates used by The City (whether the same appear in the Form of Tender or elsewhere) and these rates will not be increased to include a percentage of profit, overhead and administration as these items have already been included in the Force Account Rates. Equipment not covered under the Force Account Rates will be charged at the lowest competitive rates plus fifteen percent (15%) to cover all overheads and profit additions;
  - (iii) where the General Contractor administers the work performed by a Sub-Contractor, the General Contractor will be entitled to a five percent (5%) mark-up for overhead and administration to the net cost of the work performed by the Sub-Contractor. No additional mark-ups will be allowed.
- 6.2.5 In the case of additional work to be paid for under the method determined by G.C.6.2.1(d) or G.C.6.2.1(e) or both, the Contractor shall keep and present in such form as the Engineer may direct, a correct account of the cost of labour, equipment and materials, together with relevant vouchers. The Engineer or Project Manager is to confirm the total amount, including profit and overheads due to the Contractor.
- 6.2.6 Notwithstanding the foregoing alternatives, where a Contractor has submitted a list of unit prices with its Tender which are or could be applicable to the extra or changed work, these unit prices are to be used, with no additional mark-up for overhead and profit, unless the Engineer in its sole discretion decides otherwise.
- 6.2.7 Pending final determination of the cost of changes, payments on account of changes will be made on the Progress Payment Certificates.
- 6.2.8 If either the cost of any proposed change or the length of extension of time related to any proposed change cannot be promptly agreed upon prior to commencing work on the proposed change, and if the Engineer requires the work to proceed, then the Contractor shall proceed immediately to carry out the said work upon receiving written notice from the Engineer to proceed.



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The Engineer will then make a determination of the cost of the change and of the extension of time that will be granted for carrying out the change and will issue a Change Order confirming same. If the Contractor disagrees with the Engineer's valuation of the change or the extension of time granted for the change or both, the Contractor may request an independent valuation of the change as outlined in G.C.6.3

### **G.C.6.3 Valuation of Changes in Work, Expenses Incurred or Damages Sustained**

If during the performance of the Contract or after the completion or abandonment of it a question or dispute arises between the parties hereto concerning:

- (a) the amount of damages sustained by The City by reason of an act or omission for which the Contractor is responsible under the Contract;
- (b)
  - (i) the amount or value of any changed or additional work that The City or Engineer requires or has required the Contractor to do or be done pursuant to the provisions of the Contract;
  - (ii) the length of any extension of time to the Contract or portion of the Contract required or allowed due to any changed or additional work that The City or Engineer requires or has required the Contractor to do or be done pursuant to the provisions of the Contract; or
  - (iii) both (i) and (ii);
- (c) the amount owing to the Contractor at the time that Contractor is entitled to an instalment payment during the performance of the Contract;

and the amount or value or both the amount and the value of the matter in question cannot be determined by agreement between the parties then either party may request by a notice in writing served on, delivered to or mailed to and received by the other party that a valuation be made to determine the amount or value or both of the matters in question. If the notice names and gives the address of a valuer to act for the party giving it, the party to whom the notice is given shall within seven (7) clear days after the notice is received select another valuer and forthwith advise the party requesting the valuation of the name and address of the valuer it selects. If the two valuers cannot agree on the amount or value to be determined they may select an umpire who may concur with either valuer or make a separate valuation and in any such event the finding of the umpire will be deemed to determine the amount or value in question for the purposes of the Contract. The valuation will determine only the amount or value in question and neither the valuers nor the umpire may consider any question of liability or other question of law. A valuer or an umpire must not be an employee or agent of either party and must not be a person having a direct or indirect interest in the subject matter of the Contract. If the parties so agree a single valuer may be appointed to make the valuation. The fees to be paid to the valuers should be agreed by the parties prior to the valuation and each party will bear one-half of the expense arising out of the valuation.

### **G.C.6.4 Contingency and Cash Allowances**

6.4.1 Contingency Allowances and Cash Allowances will be administered and adjusted as follows:

- (a) Expenditures will be authorized by Change Order issued by the Engineer to the Contractor.
- (b) Competitive quotations must be submitted to the Engineer when requested.
- (c) A complete breakdown into net costs of labour and materials (all trades) must be supplied when requested by the Engineer.

6.4.2 Adjustment of Contingency Allowances

The value of adjustments to Contingency Allowances will be determined in accordance with the provisions of G.C.6.2.

6.4.3 Adjustment of Cash Allowances

The Contractors' lump sum tender must include administration markup, supervision, and other expenses related to any Cash Allowance which may be provided in the Tender Documents.



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- (a) If the final cost of the work exceeds the Cash Allowance included in the Contract Documents, five percent (5%) of the difference between final cost of the work and Cash Allowance will be added to the Contract price for overhead and administration.
- (b) If the final cost of the work is less than the Cash Allowance included in the Contract Document, five percent (5%) of the difference between Cash Allowance and final cost of the work will be deducted from the Contract price.

### **G.C.6.5 Expenditure of Contingency Allowances**

No portion of the contingency sum set out in the summary of amounts making up the Total Tendered Price including Contingency Allowances appearing after the schedules to the Form of Tender may be allotted to the performance or the correction or replacement of any work which the Contractor is required to do under the terms of the Contract Documents. Any additional or extra work done beyond the requirements of the Contract Documents is to be determined at the rates set out in the Schedules to the Form of Tender and in the first instance will be a charge against the Contingency Allowances. In the event that there are changes, modifications or alterations made in the Specifications or in the Drawings of a nature that increases the total cost of the work to the Contractor and if such changes have been approved by the Engineer and are chargeable to The City after the application of the provisions of G.C.5.4 and G.C.6.2 of these General Conditions, then such amounts will be first set off against the contingency sum set out in the summary sheet following the Form of Tender notwithstanding the amounts set out in the Memorandum of Agreement unless there are extra approved expenditures pursuant to the provisions of these General Conditions.

The Contractor will have no right to or claim against any part of the contingency sum. Such contingency sum with an appropriate increase to reflect the applicable G.S.T. according to the relevant provisions of the Memorandum of Agreement will be deducted from the Total Tendered Price including Contingency Allowances. The Contractor will be entitled to the Total Tendered Price as set out on the Summary For Form of Tender, together with such changes as have been approved by the Engineer.

### **G.C.6.6 Application for Payment**

Payment will be made on the valuation of work done during each calendar month. Materials will not be paid for until incorporated into the work and installed in their final locations in accordance with Article 3 of the Memorandum of Agreement, unless modified by the Special Conditions.

Application for payment for work done during each calendar month must be submitted to the Engineer within the five (5) working days after the end of each month. The Contractor should also provide a completed statutory declaration that all subcontractors and suppliers have been paid and a clearance letter from the Workers' Compensation Board that the Contractor's account is in good standing.

Subject to the provisions set out in Article 3 of the Memorandum of Agreement, the application will be processed, and payment will be made to the Contractor within thirty (30) days from the date that application for payment was submitted to the Engineer. To expedite payment of invoices, Contractors should submit invoices in a format approved by The City.

Notwithstanding any other provision of the Standard General Conditions, when the Construction Completion Certificate is issued The City may withhold the lesser of ONE THOUSAND DOLLARS (\$1,000.00) or one percent (1%) of the Total Tendered Price that would otherwise be due to the Contractor and retain such amount until the Final Maintenance Certificate has been issued.

### **G.C.6.7 Certificate and Payments**

No certificate issued, no payment made to the Contractor, nor partial or entire use or occupancy of the work by The City is to be construed as an acceptance of any work or material not in accordance with the Contract. The acceptance by the Contractor of final payment (not including payment made under G.C.4.44.2 for amounts withheld by The City under G.C.6.6) after issue of the Construction Completion Certificate will constitute a waiver and release by the Contractor of all claims against The City, except any previously made and still unsettled. To expedite payment of invoices, Contractors should submit invoices in a format approved by The City. Notwithstanding the provision of this G.C.6.7 no amount named in a certificate issued by the Engineer may be due before expiry of the time provided for payment in Article 3 of the Memorandum of Agreement and no payment will be due or payable if any Builders' Lien arising under the Contract is registered against the property.



## G.C.6.8 Liens and Holdbacks

- 6.8.1 In order to comply with the provisions of the *Builders' Lien Act*, The City must withhold ten percent (10%) of all progress payments on the Contract. The City is also prevented by law from making any further payments whatsoever to the Contractor under the Contract after a lien has been registered against the property by reason of work done under the Contract, either by the Contractor or a Subcontractor, or by reason of material supplied for work under the Contract. No portion of any payment may become due or payable until all liens arising out of the Contract (other than the Contractor's own) which have been registered against City property have been released or removed from The City's title as provided in the Memorandum of Agreement. Additionally, the Contractor must promptly remove all liens (other than its own) which have arisen by reason of work done or materials supplied under the Contract.
- 6.8.2 The City will accept an irrevocable letter of credit, from a financial institution acceptable to the Director of Finance ("Letter of Credit") in lieu of withholding the ten percent (10%) holdback on progress payments. The Letter of Credit is to be in an amount of ten percent (10%) of the maximum amount of the contract including any contingencies (including G.S.T, if applicable). Failure to extend or increase the Letter of Credit may result in The City realizing upon the Letter of Credit or taking other action under the contract, including termination of the contract.
- The Letter of Credit must be valid for sixty (60) days beyond the contract completion date. If the Contract is extended in duration or value or both, or if in the opinion of the Engineer the completion will be delayed, the Letter of Credit must be extended or increased accordingly.
- The Letter of Credit and any additions thereto must be forwarded to the Project Manager or Engineer within seven (7) days of acceptance of the Tender award. Any reduction of the amount of the Letter of Credit must, prior to any such reduction, be authorized by the Project Manager or Engineer. If the Contractor decides to have the ten percent (10%) lien holdback deducted from the progress payments, no interest will be paid by The City to the Contractor on the holdback amount.
- Normally a Letter of Credit will be returned to the Contractor within sixty (60) days following the issue of the Construction Completion Certificate, in accordance with the provisions of Article 3 of the Memorandum of Agreement.
- 6.8.3 Where in the opinion of the City Solicitor the *Builders' Lien Act (Alberta)* allows the reduction or release of all or parts of the lien fund by reason of the completion of a contract or sub-contract The City may, subject to all other provisions of this S.C.6.8 relating to Liens and Holdbacks, release to the Contractor the appropriate amounts except those required to be retained pursuant to the said Act. The City will not release any such amounts retained as a lien fund unless and until the Contractor has at its own expense complied with all of the applicable provisions of the *Builders' Lien Act* and furnished such evidence as the City Solicitor may require indicating that no lien has been or could be registered in connection with the portion of the work which has been completed or if any such lien has been registered it has been duly discharged. Any deviations in release of holdback from the procedure described in this Section will be noted in the Special Conditions.
- 6.8.4 Where The City is not required to retain on the Contract any lien fund pursuant to the *Builders' Lien Act (Alberta)* The City may nevertheless retain the equivalent amount of monies which would constitute such a lien fund from each payment made under the Contract until the Construction Completion Certificate is issued for the entire Contract.
- 6.8.5 The Contractor must also furnish in addition to the evidence required by G.C.6.8.3 a statutory declaration indicating that all payments made by the Contractor in respect of sub-contracts, wages and materials have been made. If in the opinion of the Engineer any portion of the work so completed might require adjustment, rectification, repair or replacement during the maintenance period set out in G.C.4.44 of these General Conditions and a portion of the amount which might otherwise be released from the holdback should be retained, The City may refuse to release all or any portion of the said amount. If The City releases all or any portion of the amount to be retained as holdback The City may require as the condition of such release such bond or bonds, deeds, undertakings or other securities as it considers necessary or desirable to protect The City against liability, loss, claims or damage by reason of such payment, or to assure the continued acceptability of the work.
- 6.8.6 Payments of the statutory holdback to the Contractor will be made at the following stages provided that the conditions attached to each stage have been completed.



## Stage 1 - Substantial Performance

1. A Contract or a subcontract is substantially performed:
  - (a) when the work under a Contract or a subcontract or a substantial part of it is ready for use or is being used for the purposes intended, and
  - (b) when the work to be done under the Contract or subcontract is capable of completion or correction at a cost of not more than:
    - (i) three percent (3%) of the first \$500,000.00 of the Contract or subcontract price,
    - (ii) two percent (2%) of the next \$500,000.00 of the Contract or subcontract price, and
    - (iii) one percent (1%) of the balance of the Contract or subcontract price.
2. The value of work actually done and materials actually furnished will be calculated on the basis of:
  - (a) the Contract price, or
  - (b) the actual value of the work done and materials furnished, if there is not a specific Contract price.
3.
  - (a) If conditions set out above have been satisfied then the Substantial Performance Certificate ("S.P.C.") can be issued by the Contractor or a Subcontractor. After the expiry of forty-five (45) days from the date of the S.P.C. and the Contractor having furnished to The City a certificate of title showing that no liens have been registered against the property connected to the Contract or in the vicinity of the Contract, and this has been verified by the Engineer, a separate Payment Certificate suitably endorsed will be issued for the release of the major lien fund, or portion thereof, which will be paid by The City by the later of thirty (30) days after the expiry of the lien period or thirty (30) days after receipt of an invoice from the Contractor for the release of the holdback.
  - (b) In the event of the work being carried out on lands held by The City as road, where no certificate of title has been issued, the requirement of furnishing a certificate of title as set out in 6.8.6.3(a) will not apply, and instead the Contractor must provide a statutory declaration that no liens, charges or other encumbrances are registered or contemplated in respect of the property (including lands) connected to the Contract or in the vicinity of the Contract.
4. The issuance of a Substantial Performance Certificate will be by the Contractor or Subcontractor and not by the Consultant or Engineer. (Refer to Section 19 of the *Builders' Lien Act.*)

## Stage 2 - Construction Completion

- 6.8.7 A Construction Completion Certificate ("C.C.C.") may not be issued until all work (including deficiencies and all seasonal work) has been totally completed. If no liens have been registered and if all the requirements of the Memorandum of Agreement have been met, then The City within sixty (60) days after the C.C.C. issue date will pay to the Contractor the monies held in the minor lien fund, or major lien fund or lien fund in a case where a Substantial Performance Certificate is not issued.

### G.C.6.9 Measurement of Quantities (Unit Price Work)

The quantities of work performed will be computed by the Engineer on the basis of measurements taken by the Engineer and these measurements will be final and binding.

### G.C.6.10 Changes in Taxes and Duties Applicable to Contract

- 6.10.1 Except as and to the extent otherwise provided in the Contract Documents, the Contractor shall pay all federal duties, sales taxes, excise taxes, or Provincial taxes/surcharges, which at the time of submission of tender by the Contractor for the Contract, are applicable to the operations of the Contractor and to the materials supplied and equipment incorporated in the work by the Contractor under the Contract.

If after the date of submission of tender for the Contract, any federal or provincial duties, sales, fuel or excise taxes applicable to and included in materials and equipment which are supplied under the



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Contract for incorporation in the project for which the Contract is called are increased or decreased so as to change the amount payable by the Contractor for such materials, except as referred to in 6.10.3, or 3.11.4, the consideration payable by The City to the Contractor with respect to such materials and equipment will be adjusted in a manner deemed equitable by the Engineer.

For the purposes of the Contract, federal or provincial duties, sales, fuel or excise taxes include but are not restricted to those imposed under the following Acts: *The Excise Act, The Excise Tax Act, The Customs Act, The Customs Tariff Act, Fuel Tax Act (Alberta), The Alberta Environmental Protection and Enhancement Act* and any other legislation that succeeds or replaces the Acts described, or any other legislation that may be applicable from time-to-time. Where a tax is changed after the date of submission of tender but public notice of the change has been given by the Minister of Finance or Provincial Treasurer before that date, the change will be deemed to have occurred before the date of submission of tender, effective as at the date announced by the Minister of Finance or Provincial Treasurer. For greater certainty, increases or decreases of taxes or duties after the date of tender can arise as a result of any Federal or Provincial Budgetary pronouncements, rulings or any judicial or quasi-judicial decisions affecting the rate of tax or duty on the status of the Owner or Contractor.

- 6.10.2 Pursuant to changes referred to in 6.10.1 the Contractor shall file a claim for and cooperate fully with The City and with the proper authorities in seeking to obtain such refunds in the manner established by the other provisions of the Contract Documents. The Contractor shall provide The City with a certified statement setting out any increase or decrease in the cost to the Contractor and shall furnish evidence relating to such change in price and to the increase or decrease of every duty or tax applicable to material incorporated in the work and shall provide The City with access to or copies of all the changes in prices which the Contractor must pay or deduct by reason of such changes in taxes or duties. All refunds or credits obtained by the Contractor resulting in decreased cost to the Contractor must be disclosed to The City and be for the benefit of The City.

The changes referred to herein do not refer to any other costs incurred by the Contractor including administrative costs of calculating the adjustment to the Contract price.

- 6.10.3 Where public notice of a change in Goods and Services Tax has been given by the Minister of Finance subsequent to date of submission to Tender, The City shall pay the G.S.T. rate in effect at time of billing. Changes in G.S.T. rates will not affect costs or result in losses to the Contractor and thus the Contractor will not be eligible to request reimbursement from The City.

### **G.C.6.11 Non-Resident Withholding Taxes**

The Contractor acknowledges that the supply of services described herein may be subject to Non-Resident Withholding Taxes ("NRWT") pursuant to the *Canadian Income Tax Act* and the Canada/US Tax Convention (1980) and protocols through 1997. The City of Calgary, as the purchaser, may be required to withhold a prescribed percentage of its remittance to a foreign Contractor for the account of the Canada Revenue Agency, unless the Contractor is able to provide The City with a copy of a waiver letter obtained from the Canada Revenue Agency. The waiver letter must be received by The City of Calgary prior to payment of the Contractor's invoice. This clause is applicable to all transactions subject to NRWT, and includes but is not restricted to rentals and services performed in Canada by a non-resident as defined in the regulations. The City shall attempt to note the specific NRWT conditions applicable on any subsequent purchase orders.

## **G.C.7 ADDITIONAL CONDITIONS**

### **G.C.7.1 Accidents and Failures**

If by reason of any accident or failure or other event occurring to or in connection with the work, or any part thereof, either during the execution of the work or during the Maintenance Period, any remedial or other work or repair that in the opinion of the Engineer is urgently required and necessary to the equipment and materials furnished under the Contract, and if the Contractor is unable or unwilling to promptly do such work or repair, The City may by its own or other workers do such work or repair as in the opinion of the Engineer is necessary. If the work or repair so done by The City is work which in the opinion of the Engineer the Contractor was liable to do at the Contractor's expense under the Contract, then all costs and charges properly incurred by The City in so doing must on demand be paid by the Contractor to The City, or may be deducted by The City from any monies due, or which may become due, to the Contractor. The Engineer will notify the Contractor in writing of the occurrence of any such event referred to herein, as soon as reasonably practicable after its occurrence.



### **G.C.7.2 Force Majeure**

- 7.2.1 The performance of any of the obligations of any of each to the Contract may be delayed or suspended at any time while, but only so long as, such party is hindered in or prevented from performance by Act of God or the Queen, or the Queen's enemies, or other event or circumstance beyond the reasonable control of such party.
- 7.2.2 No party will be deemed to be in default in performance of any of its obligations while and so long as performance would be in violation or in conflict with any law, order, rule or regulation of any civil or military agency of authority, while the same is or purports to be in force, provided that upon such a law, order, rule or regulation being finally declared invalid by a court of competent jurisdiction, the party will no longer be excused.

### **G.C.7.3 Availability of Products**

- 7.3.1 Upon Notice of Award, the Contractor shall review product requirements and anticipate foreseeable delivery delays in any items. If delays in deliveries of materials, equipment or articles (herein collectively referred to as "Product") are foreseeable, and these will delay the Contractor in performance of the work, the Contractor shall propose substitutions of Product or other remedial action in ample time to prevent delay in performance of the work.
- 7.3.2 If such proposal is not given to the Engineer by the Contractor, the City reserves the right to substitute, or have the Engineer substitute, more readily available Product at any time in order to prevent delays at no additional cost to The City.
- 7.3.3 No substitution of any Product will be permitted unless the specified item cannot be delivered to the job site in time to comply with the Schedule and the Engineer has approved the substituted Product.
- 7.3.4 To receive approval, a proposed substitute Product must equal or exceed the quality, finish and performance of the Product specified or shown in the Contract, and must not exceed the space requirements allotted on the drawings.
- 7.3.5 The Contractor must provide documentary proof of equality, difference in price (if any), and the respective delivery dates in the form of certified quotations from Sub-Contractors of both specified Product and proposed substituted Product.

### **G.C.7.4 Contract Numbers**

The contract number for a Contract will be the number assigned by The City for that Contract at the time of award.

### **G.C.7.5 Photographs and Publicity**

- 7.5.1 No photographs of the site or of any portion of the work will be permitted without prior approval of The City.
- 7.5.2 No press or publicity releases will be permitted without prior approval of The City.

### **G.C.7.6 Dispute Resolution**

- 7.6.1 G.C.6.3 provides a mechanism for valuations in the event of a dispute between the parties. G.C.4.1.4 provides that the Engineer is in the first instance the interpreter of the Contract Documents. If the mechanisms provided in these provisions are either not suitable for a particular type of dispute or not successful in resolving a dispute between the parties, then the dispute resolution procedures described in G.C.7.6.2 are to be followed.
- 7.6.2 Subject to G.C.7.6.1, any dispute between the parties as to the interpretation of, subject matter of, or in any way related to, any one or more of the Contract Documents, is to be resolved by the two parties attempting to reach a fair and equitable resolution by using, in good faith, one or more of the following means, in the order listed, until a resolution is arrived at. The means to be used are:
- (a) negotiation;
  - (b) mediation;



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- (c) arbitration; or
- (d) legal proceedings in a court of competent jurisdiction.

Except for the purposes of preserving a limitation period or obtaining an appropriate interim order or remedy where reasonably necessary, unless otherwise agreed to in writing by the two parties, it will be a condition precedent to the bringing of any legal proceedings that the means or procedures in this clause have been used and followed in good faith. With respect to mediation, unless otherwise agreed to in writing by both parties, mediation will be in accordance with the procedures of the ADR Institute of Canada, Inc. (hereinafter sometimes referred to as the "Institute"), using as mediator a third party neutral person either as mutually agreed to by the parties, or if the parties are unable to agree as selected by the Institute. With respect to arbitration, unless otherwise agreed to in writing by both parties, arbitration is to be by way of a single arbitrator pursuant to the *Arbitration Act (Alberta)*, in accordance with the rules and procedures of the Institute.



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