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GENERAL CONDITIONS

SECTION 1 DEFINITIONS AND INTERPRETATION

Definitions

- 1.1 Where used in these General Conditions and in the other documents forming part of the Contract:
- (a) “**Bid**” means the offer submitted in writing by the Contractor (including applicable bid forms) in the format prescribed by the MWSB, to perform the Work;
 - (b) “**Bidder**” means any entity submitting a Bid for the Work;
 - (c) “**Business Day**” means any calendar day, other than a Saturday, Sunday or statutory or civic holiday in the Province of Manitoba;
 - (d) “**Certificate of Substantial Performance**” means a certificate issued by the Engineer when the Work reaches Substantial Performance;
 - (e) “**Change in Work**” means an addition, deletion or modification to the Work as described in the Contract at the time that the Contract is awarded and includes (without limitation) modifications in the Drawings, quantity or nature of Plant, Material or labour, methods, location or construction schedule;
 - (f) “**Change Directive**” means a written authorization issued by the Engineer to the Contractor to proceed with a Change in the Work pursuant to GC:5.4;
 - (g) “**Change Order**” means an approval of a Change in Work, signed by the Contractor and the Engineer in accordance with GC:5;
 - (h) “**Completion Certificate**” means a certificate issued by the Engineer when the Work reaches Final Completion;
 - (i) “**Contract**” means the combined documents consisting of the fully signed agreement, together with the Tender Documents (including any documents and Drawings referred to and incorporated therein), and any submissions required to be made by the Contractor after award which have been approved and signed by the General Manager, and all amendments to the foregoing;
 - (j) “**Contract Price**” means the price agreed upon for the Work and any adjustments thereto which may be required or agreed to pursuant to the Contract;

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- (k) “**Contractor**” means the Bidder that has been awarded the Contract for the execution of the Work under the terms of the Contract;
- (l) “**Construction Manager**” means the person designated by the MWSB to manage and administer the Contract on behalf of the MWSB;
- (m) “**Drawings**” means drawings which show the nature and scope of the Work to be performed and which have been prepared or approved by the Engineer and are referred to in the Contract;
- (n) “**Engineer**” is the person or entity engaged by the MWSB, or a person designated by the MWSB, to manage the project on behalf of the MWSB, and is identified as the Engineer in the Tender Documents;
- (o) “**Extra Work Allowance**” means the amount specified by the MWSB in the Tender Documents to be used to account for payment for Changes in the Work, if any, at the MWSB’s discretion and approval, in accordance with GC:5.18;
- (p) “**Final Completion**” means that the entire Work, except those items arising from the provisions of GC:12, have been performed in accordance with the Contract;
- (q) “**General Manager**” means the person designated as the general manager of the MWSB;
- (r) “**Manitoba**” means the Government of Manitoba;
- (s) “**Material**” includes all goods, parts, equipment and things required to be furnished in accordance with the Contract for incorporation into the Work;
- (t) “**MWSB**” means The Manitoba Water Services Board;
- (u) “**Owner**” is the owner of the project as identified in the Tender Documents;
- (v) “**Plant**” includes all things brought to or constructed on the Site for the performance of the Work, including goods, tools, equipment, consumable supplies, fuel, power and utility connections therefor, but does not include Material;
- (w) “**Prime Contractor**” has the same meaning, duties and responsibilities as set out in *The Workplace Safety and Health Act*;

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- (x) **“Proposed Change Notice”** means the form of proposed change notice document to be used by the parties for the purposes of initiating a Change in the Work;
- (y) **“Shop Drawings”** means all drawings, diagrams, and illustrations prepared by the Contractor, Subcontractor, manufacturer, supplier or distributor that depict details of a portion of the Work;
- (z) **“Site”** means the location(s) where the Work described in the Contract is to be carried out, including the point of delivery of Plant and Materials to be used in the Work;
- (aa) **“Specifications”** are that portion of the contract documents, wherever located and whenever issued, consisting of the written requirements and standards for the Material, systems, workmanship, quality and the services necessary for the performance of the Work, and includes the latest version of the MWSB’s Standard Construction Specifications (version date identified in table of contents in the Tender Documents);
- (bb) **“Subcontractor”** is an entity having a direct contract with the Contractor to perform a part or parts of the Work, and includes a Subcontractor’s subcontractor;
- (cc) **“Submission Deadline”** or **“Closing Date”** means the date and time set out in the Bid Form for final receipt of Bids;
- (dd) **“Submittals”** means all Shop Drawings, schedules, performance charts, brochures and other data which are submitted by or are required to be submitted by the Contractor in accordance with the requirements of the Tender Documents or Contract;
- (ee) **“Substantial Performance”** shall have the meaning ascribed to it in *The Builders’ Liens Act*, or any successor legislation thereto;
- (ff) **“Tender Documents”** means the Bid, the Instructions to Bidders, the Insurance, Performance Security and Safety Requirements, these General Conditions, the Special Provisions, Measurement and Payment, the Specifications, the Drawings, the Approved Products List and all addenda;
- (gg) **“Work”** means the total construction and related services required by the Contract including all Changes in Work which may be ordered as provided in these General Conditions; and

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- (hh) **“Working Day”** means any day on which the Engineer determines atmospheric and Site conditions are such that the Contractor is able to work at least seven (7) hours during the period between 7:00 a.m. Manitoba time or the time the Contractor's operations normally commence, whichever is the earlier, and 7:00 p.m. Manitoba time. A Saturday, Sunday or a statutory or civic holiday can be considered a Working Day if the Work is in progress on those days.

Interpretation

- 1.2 Where the Contractor consists of more than one person or entity, the obligations of the Contractor shall be joint and several.
- 1.3 Wherever the singular is used, it shall be construed to mean the plural as the context may reasonably require.
- 1.4 Headings, titles and margin notes in the Contract are inserted for convenience only and shall not be considered in any construction or interpretation of the Contract.
- 1.5 In the event of conflicts between portions of the Contract, the following order of precedence shall apply:
- (a) the fully signed agreement between the MWSB and the Contractor;
 - (b) the Special Provisions;
 - (c) the General Conditions;
 - (d) the Insurance, Performance Security and Safety Requirements;
 - (e) the Measurement and Payment provisions;
 - (f) the Specifications;
 - (g) the Drawings; and
 - (h) the Bid.
 - (i) With respect to the Drawings:
 - (i) Drawings of a later date shall govern over Drawings of an earlier date;
 - (ii) Drawings of a larger scale shall govern over those of a smaller scale; and

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- (iii) dimensions shown on a Drawing shall govern over all other scaled or implied measurements.
- 1.6 The various portions of the Contract are intended to be read together and complement each other and what is called for by any one shall be deemed to be called for by all.
- 1.7 The MWSB and the Contractor acknowledge and agree that the Contractor is an independent Contractor and neither the Contractor nor any officer, employee, agent or representative of the Contractor shall be deemed to be an officer, employee, agent or representative of the MWSB.
- 1.8 The Contract shall constitute the entire agreement between the MWSB and the Contractor. There are no representations, warranties, covenants or agreements other than those contained in the Contract.
- 1.9 Specifications, Drawings, models and copies thereof furnished by the MWSB are and shall remain the MWSB's property. All Specifications, Drawings and models furnished by the MWSB shall only be used by the Contractor with respect to the Work and are not to be used on other Work. These Specifications, Drawings and models are not to be copied or altered in any manner without the written authorization of the MWSB.
- 1.20 No provision of the Contract shall be interpreted against any party merely because that party or its legal representative drafted the provision.
- 1.21 No change to the Contract shall be valid unless in writing and signed by both parties.
- 1.22 If any provision of the Contract is for any reason invalid, that provision shall be considered separate and severable from the Contract, and the other provisions of the Contract shall remain in force and continue to be binding upon the parties.
- 1.23 Those sections containing obligations and indemnifications that by their very nature are intended to survive the termination or expiration of the Contract shall survive the expiration or termination of the Contract.

SECTION 2 **EXAMINATION OF WORK**

Site Investigation

- 2.1 The Contractor declares that, in bidding for the Work and entering into the Contract, the Contractor:

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- (a) has investigated the Site, the nature of the Work to be done and all local conditions that might affect its Bid or its performance of the Work; or
- (b) has not investigated the Site, the nature of the work to be done or location conditions;

and, in either event, assumes all risk for conditions now existing or arising in the course of the Work which have been or could have been determined through such investigation, and that it did not and does not rely upon information furnished by the MWSB or of its employees or agents other than information furnished in writing for or in connection with the Bid or the Contract by the Engineer or the Construction Manager.

Test Hole Logs

- 2.2 Further to GC:2.1, information that may be furnished in writing may include summary soil logs included on the Drawings from test holes located in or around the Site. Any information pertaining to subsurface soil, rock and groundwater conditions contained in such test hole logs shall be considered accurate only at the specific locations indicated and at the time of the investigation. The Contractor should note that variations in the subsurface conditions may exist between these hole locations and seasonal fluctuations in groundwater levels can be expected.
- 2.3 The information furnished under GC:2.2 is provided to supplement the Contractor's evaluation of the site conditions in Work areas. It is the Contractor's responsibility to ensure that the information is suitable for their purpose and to supplement the information as they consider necessary. No consideration will be given to any claims by the Contractor arising by virtue of any misinterpretation of this information.

SECTION 3 AUTHORITY OF THE ENGINEER

General

- 3.1 The Engineer shall be the MWSB's representative throughout the duration of the Contract and shall have authority to act on behalf of the MWSB to the extent expressly provided for in the Contract.
- 3.2 The Engineer shall interpret or clarify the Contract or any part thereof which appears indefinite, not clear or contradictory to the Contractor.

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- 3.3 The Engineer may at any time correct errors or omissions in the Contract or issue additional Drawings or Specifications further detailing, explaining or modifying the Work. Such Drawings or Specifications shall either supplement or supersede those forming part of the Contract at the time the Contract was executed.

Approval and Inspection

- 3.4 All Plant to be used for the Work shall be subject to approval by the Engineer and shall be maintained in satisfactory working condition for the duration of the Contract.
- 3.5 The Engineer may examine or inspect the Work or any part thereof and determine whether the Work meets the requirements of the Contract. The Engineer may reject the Work or any part thereof which does not meet the requirements of the Contract.

Control

- 3.6 The Engineer may give written instructions or orders to the Contractor to the extent necessary to ensure that the Work is performed in an orderly manner and meets the requirements of the Contract.
- 3.7 The Engineer may give written instructions or orders to the Contractor's site superintendent and such instructions or orders shall be deemed to have been given to the Contractor.
- 3.8 The Engineer may order the Contractor to remove from the Work any person employed or retained by the Contractor or by any Subcontractor in the performance of the Work who the Engineer determines is incompetent, negligent or guilty of misconduct.
- 3.9 The Engineer may order the Contractor to alter or improve their methods, including those of a Subcontractor, to increase or improve their Plant, to furnish additional or more suitable Material, or to employ additional or more qualified labour if, at any time, the Engineer determines that:
- (a) the Work is not being, or will likely not be, constructed satisfactorily; or
 - (b) progress is not being, or will likely not be, maintained in accordance with the construction schedule.
- 3.10 The Engineer may order the Contractor to stop work in whole or in part or to order their Subcontractor to stop work in whole or in part, or to take such remedial measures as the Engineer considers necessary, if, at any time, the Engineer determines that:
- (a) a danger to life or to property exists;

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- (b) the Contractor has failed to carry out any written orders given by the Engineer in accordance with these General Conditions; or
 - (c) such stoppage or remedial measures may be necessary to ensure the performance of the Work in accordance with the requirements of the Contract.
- 3.11 Without limiting the generality of the foregoing provisions, none of the Engineer's actions or responsibilities shall be interpreted as taking away from the Contractor's role and responsibilities as Prime Contractor, as more specifically set out in GC:4.11 to GC:4.14.
- 3.12 Neither the giving of any orders by the Engineer pursuant to these provisions nor the carrying out of such orders by the Contractor shall entitle the Contractor to any extra payment, nor relieve the Contractor of their responsibilities under the Contract.
- 3.13 The Engineer shall determine if and when Substantial Performance and Final Completion are achieved and shall certify the dates thereof.
- 3.14 If the Contractor disputes the Engineer's determination or order on any of the foregoing matters, the Contractor shall act in accordance with the Engineer's determination or order. The Contractor may concurrently appeal the Engineer's determination or order to the Construction Manager as provided for in GC:17.

SECTION 4 **RESPONSIBILITIES OF THE CONTRACTOR**

General

- 4.1 The Contractor shall provide all Plant, Material, labour, services and incidentals necessary for the performance of the Work.
- 4.2 The Contractor shall be responsible for any Work not explicitly set out in the Contract but which may be reasonably implied for the proper completion of the Work.
- 4.3 The Contractor shall perform, complete and maintain the Work in strict accordance with the Contract. If the Contract or any part of the Contract appears indefinite, unclear or contradictory, the Contractor shall refer the matter to the Engineer in writing for interpretation or clarification. The Contractor shall be responsible for conveying the interpretation or clarifications of the Contract, as given by the Engineer, to the Subcontractors.

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- 4.4 Except as otherwise provided in the Contract, the Contractor shall be solely responsible for construction means, methods, techniques, sequences and procedures, and for coordinating the various parts of the Work so as to ensure its proper progress and completion in a sound and workmanlike manner, in all respects in strict conformity with the Contract.
- 4.5 The Contractor shall have complete control over the methods of performing the Work and shall direct and supervise the Work so as to ensure conformance with the Contract.
- 4.6 The Contractor must arrange and carry on its Work so as not to conflict with Work being carried on or to be carried on for, or at the request of the MWSB by other contractors or by the MWSB's employees. If the Contractor finds it difficult to work in harmony with such parties, the Contractor shall notify the Engineer promptly in writing.

Regulatory Requirements

- 4.7 The Contractor shall comply with all laws, by-laws, ordinances, regulations, codes and orders of authorities having jurisdiction which are or come into force during the performance of the Work and which relate to the Work. Where there are two (2) or more laws, by-laws, ordinances, regulations or codes applicable to the Work, the most restrictive shall apply.
- 4.8 Where building codes, material specifications, provincial or federal laws, local ordinance, industry standards and utility company regulations are quoted or implied, the latest revision shall apply.
- 4.9 The Contractor shall obtain all approvals, clearances, permits, licenses and certificates required by law or by any by-laws, ordinances, regulations, codes or orders of the authorities having jurisdiction and which relate to the Work (but this shall not include the obtaining of permanent easements or rights of servitude). The Contract Price shall include the costs of these approvals, clearances, permits, licences and certificates.
- 4.10 The Contractor shall give any notices required by law or by-laws, ordinances, regulations, codes or orders of the authorities having jurisdiction and which relate to the Work.

Workplace Safety and Health

- 4.11 The Contractor is the Prime Contractor for the Work at the Site and, notwithstanding any of the actions of the Engineer or the Construction Manager in accordance with these General Conditions or the Contract, shall have all of the duties and responsibilities of a Prime Contractor.
- 4.12 For the purposes of Clause 7(2)(a) of *The Workplace Safety and Health Act*, the Contract

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entered into between the Contractor and the MWSB, which incorporates these General Conditions, is a contract to serve as a Prime Contractor.

- 4.13 In addition to its role as Prime Contractor, the Contractor may also be an “employer” and “contractor”, as those roles are set out in *The Workplace Safety and Health Act*, and shall have all of the duties and responsibilities of an employer and contractor.
- 4.14 The Contractor shall be solely responsible for workplace safety at the Site and at any other locations where the Contractor’s employees or Subcontractors may be undertaking the Work and for compliance with all laws, rules, regulations and practices required by the applicable construction and workplace safety legislation.

Supervision and Instructions

- 4.15 The Contractor shall provide competent, suitably qualified personnel to perform the Work. The Contractor shall at all times maintain good discipline and order at the Site.
- 4.16 The Contractor shall obey, perform and comply with the Engineer’s orders, instructions, rules and procedures with respect to the Work or concerning the conduct of the Work promptly, efficiently and to the satisfaction of the Engineer; and the Contractor will assist other contractors, their employees, subcontractors and agents to do the same.
- 4.17 The Contractor shall employ and keep on the Work and at the Site at all times during the performance of the Work, a competent and responsible site superintendent, and any necessary assistants.
- 4.18 The site superintendent shall represent the Contractor at the Site and shall be responsible for accepting or acting on any instructions from the Engineer in the place of the Contractor.
- 4.19 The site superintendent shall maintain a detailed weekly report outlining construction activities to be available upon request by the Engineer.
- 4.20 If the Engineer orders a person to be removed from the Work in accordance with GC:3.8, the Contractor shall comply forthwith. Any person so removed shall not be re-employed on the Work by the Contractor or by a Subcontractor.
- 4.21 If the Engineer orders the Contractor or their Subcontractor to stop work in whole or in part in accordance with GC:3.10, the Contractor shall not recommence construction on the affected portion of the Work until directed to do so in writing by the Engineer.

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Subcontracts and Assignments

- 4.22 The Contractor shall not, without prior written consent of the MWSB, assign either directly or indirectly, any right or obligation of the Contractor under the Contract to any person.
- 4.23 The Contractor, when requested by the Engineer, shall provide a complete list of Subcontractors whom the Contractor proposes to engage, along with a brief description of each Subcontractor's qualifications, roles and responsibilities within seven (7) calendar days of the request. The Contractor agrees not to employ any Subcontractor to whom the Engineer may reasonably object. The Contractor shall not make any change to the list of Subcontractors without prior written notification to the Engineer.
- 4.24 The Contractor, with respect to the Work to be performed under subcontract shall:
- (a) enter into contracts or written agreements with its Subcontractors that incorporate the terms and conditions of this Contract and that require them to perform their work in complete conformance with and subject to the terms and conditions of the Contract; and
 - (b) be as fully responsible to the MWSB for acts or omissions of its Subcontractors and of persons directly or indirectly employed or engaged by them as for acts and omissions of person directly employed or engaged by the Contractor.
- 4.25 Nothing in this Contract creates any contractual relationship between the MWSB and a Subcontractor.

Public Conveniences and Safety

- 4.26 The Contractor shall do whatever is necessary to ensure that:
- (a) no person, property, right, easement or privilege is injured, damaged or infringed by reason of the Contractor's activities in performing the Work;
 - (b) pedestrian and other traffic on any public or private road or waterway is not unduly impeded, interrupted or endangered by the performance or existence of the Work or Plant;
 - (c) all fire or other hazards in or about the Work or its Site are eliminated;
 - (d) the health and safety of all persons employed or engaged in the performance of the Work or otherwise is not endangered by the method or means of its performance;

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- (e) medical services are available to all persons employed or engaged on the Work or its Site at all times during the performance of the Work; and
 - (f) sanitation measures are taken and facilities provided with respect to the Work and its Site.
- 4.27 The Contractor shall provide and maintain, at their own expense, and in a manner approved by the Engineer, such temporary roads, other than temporary bridge crossings ordered in writing by the Engineer, as may be necessary to provide access to driveways, houses, buildings, or other property affected by the Works under construction. When ordered in writing by the Engineer, the Contractor shall provide temporary bridge crossings satisfactory to the Engineer which shall constitute a Change in the Work.
- 4.28 Where in the course of completing the Work the Contractor must disrupt water service, the Contractor shall notify all affected consumers and the appropriate municipal and waterworks officials at least forty-eight (48) hours in advance. Where the disruption is of duration in excess of twelve (12) consecutive hours, the Contractor shall, at their own expense, provide a temporary supply of potable water to consumers, either by means of a portable hose line connected to the consumer's outside hose bibb, or other means as may be approved by the Engineer. Under no circumstances shall water service be disrupted for more than twelve (12) hours per day.
- 4.29 The Contractor shall keep access to all fire hydrants free from obstructions.

Protection of Work and Property

- 4.30 The Contractor shall protect the Work, the Site, property adjacent to the Site and hauling roads from damage which may arise as a result of the Contractor's operations under the Contract, and shall be responsible for such damage, except damage which occurs as a result of acts or omissions by the MWSB, the Engineer, other contractors, their agents and employees.
- 4.31 Before commencing any Work, the Contractor shall determine the location of all underground utilities as well as all structures which may affect the construction of the Work.
- 4.32 Should the Contractor, in the performance of the Work, damage the Work, the Site or property adjacent to the Site, the Contractor shall be responsible for making good such damage at the Contractor's expense.
- 4.33 If at any time in the opinion of the Engineer, damage is being done to hauling roads by the Contractor's vehicles or equipment, the Contractor shall at its own expense on the direction

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of the Engineer make suitable changes in, or substitutions for such vehicles or equipment, or shall alter the loading or shall in some other satisfactory manner remove the cause of such damage.

- 4.34 All hauling vehicles shall comply fully with all the provisions of *The Highway Traffic Act* and any restrictions that may be imposed under the authority of said Act.
- 4.35 If directed by the Engineer, the Contractor shall at its own expense and to the satisfaction of the Engineer, repair the damage caused to hauling roads by the operation of the Contractor's vehicles or equipment.

Protection of Survey Monuments

- 4.36 Before commencing any Work, the Contractor shall acquaint themselves with the locations of survey monuments located on the Site. The Contractor shall ensure that all survey monuments are protected and are not removed, altered or damaged. Should the Contractor in the performance of the Work remove, alter or damage the survey monuments, the Contractor shall be responsible to procure a legal surveyor registered in the Province of Manitoba to provide instruction for repairing or replacing such survey monuments at the Contractor's expense.

Layout

- 4.37 Where appropriate, construction stakes will be placed by the Engineer to mark the location, alignment and elevation of the Work. The Contractor shall assume full responsibility for dimensions and elevations measured from the stakes and shall ensure that all stakes placed by the Engineer on the Work or its Site are protected and are not removed, defaced, altered or destroyed. The Contractor shall provide such assistance as may be required by the Engineer in giving lines and grades. No compensation shall be paid to the Contractor for required assistance in setting lines and grades or for the loss of time on account of such necessary suspension of Work or otherwise on the account of the requirements of this GC:4.37. The Contractor shall give at least four (4) calendar days' notice to the Engineer prior to requiring any staking work.
- 4.38 The Engineer will establish the structure centreline or corner; the location offset stakes for one of the substructure units, and one benchmark. The Contractor shall be responsible for all measurements and elevation settings taken from the substructure unit and the benchmark established by the Engineer.

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Document Review

- 4.39 The Contractor shall review the contract documents and shall report promptly to the Engineer any error, inconsistency or omission the Contractor may discover. In making this review, the Contractor shall meet a standard of care, skill and diligence that would normally be provided by an experienced and prudent contractor performing similar work for similar projects. The Contractor shall promptly request clarification in writing upon discovery of any errors, inconsistencies or omissions in the contract documents. Additional work made necessary because of the failure by the Contractor to request clarification promptly following the discovery of such errors, inconsistencies or omissions by the Contractor in the contract documents shall be carried out and completed at the Contractor's expense.

Construction Schedule

- 4.40 The Contractor shall monitor the progress of the Work relative to the construction schedule that was provided to the MWSB in accordance with the Tender Documents, and update the schedule on a bi-weekly basis, or as requested by the Engineer.
- 4.41 Failure to provide schedule updates, as requested by the Engineer, shall result in delays to progress payments until a satisfactory schedule has been submitted to the Engineer.

Shop Drawings

- 4.42 Detailed Shop Drawings, where required by the contract documents, shall be prepared and submitted to the Engineer for examination and review at least ten (10) calendar days prior to the commencement of the related Work. Prior to submission to the Engineer, the Contractor shall review all Shop Drawings (stamped with date and signature). By this review the Contractor represents that they have determined and verified all field measurements, field construction criteria, materials, catalogue numbers and similar data and has checked and coordinated each Shop Drawing with the requirement of the Work and of the Contract. Three (3) copies of each Shop Drawing shall be submitted to the Engineer. One (1) copy will be returned with any corrections noted thereon. Corrections shall then be made and a duplicate of the revised Shop Drawing(s) shall be submitted for the review of the Engineer. The Contractor shall not proceed with shop fabrication until such drawings have been reviewed by the Engineer. Such review shall not relieve the Contractor of any responsibility for errors or omissions discovered subsequently.

Documents and Drawings at the Site

- 4.43 The Contractor shall keep one (1) copy of the current contract documents, Change Orders, Extra Work Allowance disbursement authorizations, submittals, weekly reports, reports

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and records of meetings at the Site, in good order and available to the Engineer. The Contractor shall maintain a set of Drawings on which the Contractor shall make any changes to the Work at the end of each week. These drawings will be called the “Marked-Up Drawings”. Marked-Up Drawings shall be kept in good order and made available to the Engineer for review at the Site. The Contractor shall record on the Marked-Up Drawings the Changes in Work as they occur. Changes in the Work shall be indicated on the Marked-Up Drawings by the use of coloured lines and suitable notations. The Contractor shall provide a completed set of Marked-Up Drawings to the Engineer prior to the approval of final payment in accordance with GC:11.25(a).

Existing Works and Material

- 4.44 When construction operations require the removal of existing works or materials for the proper completion of the Work, the Contractor shall ensure the existing works or materials are carefully salvaged, sorted and piled near the Site, or otherwise disposed of, as directed by the Engineer.

Sewage Handling

- 4.45 When construction operations require the handling of raw sewage, the Contractor shall maintain sewage pumping service to the treatment facility for the duration of the Contract. The Contractor shall provide all necessary equipment to handle raw sewage in the proper manner to ensure continuous operation of the sewage flow to the proper destination. Temporary portable pumping equipment shall be utilized by the Contractor whenever required. The Contractor shall provide such equipment of a size and pumping rate adequate to ensure the continuous operation of the sewage system.
- 4.46 Under no circumstances shall raw sewage be discharged into ditches, land, streams, lakes or watercourses by the Contractor during the performance and execution of the Work.
- 4.47 Without limiting the generality of GC:4.45 and GC:4.46 the Contractor shall ensure that it complies with all relevant provincial and federal health and environmental laws with respect to the handling of any raw sewage.

Site Security and Clean Up

- 4.48 The Contractor shall be solely responsible for securing the Site, and any existing facility on the Site, and for the proper care and protection of the Work already performed.
- 4.49 The Contractor shall maintain the Site and the Work in a tidy condition and free from the accumulation of waste and debris, other than that caused by the MWSB or by other

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contractors. Waste and debris shall be promptly disposed of in a manner that will not contaminate or mar the surrounding area.

- 4.50 Upon attaining Substantial Performance, the Contractor shall remove any Plant and Material not required for the performance of the remaining Work. The Contractor shall also remove waste and debris other than that caused by the MWSB or other contractors and shall leave the Site and the Work clean and suitable for occupancy by the MWSB unless otherwise specified.
- 4.51 Final Completion shall not be considered to have been achieved until the Contractor has cleaned up the Site and has removed all Plant, surplus Material, waste and debris, other than that left by the MWSB or other contractors.

Manuals, Commissioning and Training

- 4.52 Before commissioning and training, the Contractor shall submit to the Engineer a draft set of manuals for all materials, equipment and controls installed under this Contract for review and approval by the Engineer. The set of manuals shall be bound in vinyl coated three (3) ring binders and assembled as follows, using only those items which are applicable:
- (a) index;
 - (b) technical literature describing products used, including specifications;
 - (c) list of spare and replacement parts;
 - (d) names, addresses and phone numbers of all suppliers and distributors for parts, servicing and repairs;
 - (e) operating instructions (including recommended tapping procedures for service connections on any in-ground piping);
 - (f) maintenance instructions; and
 - (g) reviewed Shop Drawings which may have been produced for any custom fabricated products.
- 4.53 After the draft set of manuals has been approved, the Contractor shall proceed with the commissioning and training for the project in accordance with GC:4:54.

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- 4.54 The Contractor shall provide qualified manufacturer representatives to calibrate, test and instruct staff on the maintenance, adjustment and operation of the following equipment:
- (a) process equipment (meters, analyzers, etc.);
 - (b) control systems (SCADA, PLC, etc.);
 - (c) electrical equipment (control panels, generators, etc.);
 - (d) pumps and related control systems;
 - (e) instrumentation; and
 - (f) all other equipment as specified.
- 4.55 Within thirty (30) calendar days after the commissioning and training, the Contractor shall submit a final version of the set of manuals to the Engineer (which shall consist of three (3) paper copies and two (2) electronic copies), accompanied by a certified commissioning and training report, which includes the final equipment settings and performance data.

SECTION 5 **CHANGES IN WORK**

General

- 5.1 The MWSB may order a Change in the Work at any time after award of the Contract.
- 5.2 The Contractor shall not perform a Change in Work without a Change Order unless a Change Directive has been issued by Engineer pursuant to GC:5.4.
- 5.3 Changes in Work shall be performed in accordance with the applicable Change Order and in accordance with the Contract.
- 5.4 In emergency situations or to permit an orderly progress of the Work, a written Change Directive may be issued by the Engineer as authorization for the Contractor to proceed with the Change in Work with a Change Order to follow thereafter.

Change in Work initiated by the Engineer

- 5.5 The Engineer may initiate a Change in the Work by issuing a Proposed Change Notice to the Contractor, in a form provided by the MWSB, describing the proposed Change in the Work.

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- 5.6 The Contractor shall respond to the Engineer's Proposed Change Notice within seven (7) calendar days after receiving it, or such longer period of time as the Contractor and Engineer may agree, by completing the Proposed Change Notice document. The Proposed Change Notice document shall include the Contractor's estimate of the value for the proposed Change in Work, including the proposed adjustment (increase or decrease) to the Contract Price, if any, pursuant to GC:5.13.
- 5.7 The completed Proposed Change Notice document will constitute an offer by the Contractor to provide the Changes in Work requested by the Engineer for the cost stated in the Proposed Change Notice document. The Proposed Change Notice shall be open for acceptance for forty-five (45) calendar days after the date it is submitted to the Engineer. The Proposed Change Notice will not be binding on the MWSB unless and until the Engineer accepts it in writing by issuing a Change Order to the Contractor approving the Change of Work, and any corresponding adjustment to the Contract Price, if any.
- 5.8 If the Engineer does not accept the completed Proposed Change Notice, then neither party will have any further obligation with respect to that Proposed Change Notice.

Change in Work Initiated by the Contractor

- 5.9 If, at any time after award of the Contract, the Contractor is of the opinion that a Change in Work is necessary to accomplish the result intended by the Contract or if the Contractor considers it desirable that a Change in Work be approved, the Contractor shall promptly submit a Proposed Change Notice to the Engineer, in a form provided by the MWSB, including:
- (a) the reason for the proposed Change in Work;
 - (b) a detailed description of the proposed Change in Work;
 - (c) the Contractor's estimate of the value for the proposed Change in Work, including the proposed adjustment (increase or decrease) to the Contract Price, if any, pursuant to GC:5.13.
- 5.10 Upon receipt of the Contractor's Proposed Change Notice, the Engineer shall then make an assessment as to whether a proposed Change in Work is necessary and whether the Proposed Change Notice is approved or not, including the any corresponding adjustment to the Contract Price.
- 5.11 The Proposed Change Notice shall be open for acceptance for forty-five (45) calendar days after the date it is submitted to the Engineer. The Contractor's Proposed Change Notice will not be binding on the MWSB unless and until the Engineer accepts it in writing by

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issuing a Change Order to the Contractor approving the Change of Work, and any corresponding adjustment to the Contract Price, if any.

- 5.12 If the Engineer does not accept the Contractor's Proposed Change Notice, then neither party will have any further obligation with respect to that Proposed Change Notice.

Valuation of a Change in Work

- 5.13 The value of any Changes in Work and the adjustment (increase or decrease) in Contract Price (if any) shall be determined by one or more of the following methods:

- (a) by estimate in a lump sum;
- (b) by the unit prices and methods of measurement set out in the Contract or subsequently agreed upon; and
- (c) by the actual cost of the Change in Work to:
 - (i) the Contractor, plus ten percent (10%) on any portion of the Change in the Work undertaken by the Contractor's own forces;
 - (ii) a Subcontractor, plus ten percent (10%) on any portion of the Change in the Work undertaken by a Subcontractor.

Note: Only one (1) mark-up of ten percent (10%) is permitted on the actual cost of the Change in the Work undertaken by a Subcontractor (not 10% plus 10%).

- 5.14 For the purposes of GC:5.13(c), "actual cost" on any portion of the Change in Work undertaken by:
- (a) the Contractor's own forces shall mean the direct cost of labour plus an allowance for direct supervision and payroll burden (including Employment Insurance, Canada Pension, Payroll Tax, Workers Compensation assessments and vacation pay), purchase or rental of Plant and Material and any other payments made by the Contractor with the prior approval of the Engineer that are necessary for the performance of the Change in Work. Equipment rental costs shall be paid for in accordance with the rates set out in the current Manitoba Heavy Construction Association "Annual Directory and Equipment Rental Rates Guide".
 - (b) a Subcontractor shall mean the amount invoiced by the Subcontractor and paid by the Contractor, net of any discounts and excluding any late payment interest or penalties. Equipment rental costs shall be paid for in accordance with the rates set

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out in the current Manitoba Heavy Construction Association “Annual Directory and Equipment Rental Rates Guide”. Only one mark up of ten percent (10%) shall be permitted on a Change of Work, even if the Change of Work is undertaken by a Subcontractor’s subcontractor.

- 5.15 If a Change in Work results in a reduction in the Contract Price, no claim may be made for damages on the ground of loss of anticipated profit on Work so diminished or on any other ground.
- 5.16 If the valuation of the Change in Work or adjustment to the Contract Price cannot be promptly agreed upon and the Engineer requires the Change in Work to proceed, then the Engineer will determine the method of valuation and the adjustment to the Contract Price. The Engineer shall issue a Change Order to the Contractor approving the Change in Work and setting out the method of valuation, and any approved adjustments to the Contract Price.
- 5.17 If the Contractor disputes a determination made by the Engineer, the Contractor shall act in accordance with the Engineer’s determination. The Contractor may concurrently appeal the determination of the Engineer to the Construction Manager as provided for in GC:17.

Extra Work Allowance

- 5.18 The MWSB reserves the right to include an Extra Work Allowance in the Contract Price. If an Extra Work Allowance is included, the MWSB shall use it to account for payment for Changes in Work, if any. Disbursements under the Extra Work Allowance shall be authorized in writing by the Engineer in a Change Order and valued as provided for in GC:5.13. The Contract Price shall be adjusted by Change Order to provide for any difference between the disbursements authorized under this paragraph and the Extra Work Allowance.

Cost Records

- 5.19 Where the value of the Change in Work will be determined on an actual cost basis, the Contractor shall keep a daily time log, which shall include
- (a) the name, rate of pay and hours of work for each of the persons employed by the Contractor or a Subcontractor; and
 - (b) the number of hours the equipment was employed for the Change in Work.
- 5.20 If a valuation is required under GC:5.13, the Contractor shall provide the Engineer with:

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- (a) detailed and accurate statements showing:
 - (i) description, cost (including expenses for operation and maintenance) and time for Plant used by the Contractor;
 - (ii) description, cost and quantity for Material used by the Contractor;
 - (iii) copy of the daily time logs to be kept by the Contractor pursuant to GC:5.19; and
- (b) access to any cost records (including payroll records, time books and invoices) or other data necessary to verify the accuracy of such statements and daily time logs.

SECTION 6 **RIGHT OF ENTRY**

- 6.1 The Contractor shall not be entitled to exclusive possession of the Site.
- 6.2 The MWSB shall have the right for itself, its agents, representatives or other persons, to enter, occupy or use any portion of the Site or the Work, at any time and for so long a time as the Engineer may require. If the MWSB does enter, occupy or use the Site, the MWSB, its agents, representatives or other persons entering, occupying or using the Site shall provide the Contractor with prior notice, and will comply with any instructions given by the Contractor in its role as Prime Contractor.
- 6.3 Such entry, occupation or use shall not constitute acceptance of the Work by the MWSB nor shall it relieve the Contractor of the responsibility to complete the Work.

SECTION 7 **PLANT AND MATERIAL**

General

- 7.1 All Material shall be new, fit for the purpose intended and shall meet or exceed the kind, quality and quantity of the same specified in the Contract, except those specifically set forth in the Specifications or the Special Provisions. If required, the Contractor shall provide evidence satisfactory to the Engineer that the foregoing requirements have been met.
- 7.2 The Contractor shall not remove any Plant or Material that has been brought to the Site and which is required to complete the Work without the prior written consent of the Engineer until the date of Final Completion.

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- 7.3 Plant or Material that is the property of the MWSB shall not be removed from the Site, disposed of or used except for the purposes of the Work without the prior written consent of the Engineer.
- 7.4 The Contractor shall keep such records of all Plant and Material supplied or placed in the care, custody and control of the Contractor by the MWSB. Upon request by the Engineer, the Contractor shall prove that such Plant and Material are at the place and in the condition required by the MWSB.

Material Supplied by the MWSB

- 7.5 The MWSB may enter into separate contracts with third parties for the supply of certain Material which shall be used by the Contractor in connection with the Work.
- 7.6 When a separate contract is entered into by the MWSB for the supply of certain Material, the MWSB shall pay the third party supplier directly (and therefore any costs for such Material shall not be included in the Contract Price), and the MWSB shall make arrangements with the third party supplier to have the Material delivered to the nearest MWSB approved storage facility or the Site.
- 7.7 Where Material supplied by the MWSB is delivered prior to Contract award:
- (a) the Contractor and the Engineer shall visit the location where the Material is stored after Contract award and confirm the quantities required for the Work;
 - (b) the MWSB shall, at its cost, continue to store the Material at its approved storage facility until the Material is required for the Work;
 - (c) the Contractor shall give the Engineer written notice at least five (5) calendar days' prior to the date the Material supplied by the MWSB is required for the Work;
 - (d) The Contractor shall arrange for the pick up and delivery of the Material from the MWSB's approved storage facility to the Site. The cost for any such pick up and delivery, including loading and unloading, shall be at the Contractor's cost;
 - (e) The Contractor must comply with best commercial practices to ensure that the Material is delivered and arrives safely at the Site; and
 - (f) The Contractor shall assume the care, custody and control of such Material once the Contractor receives the Material for pick up and delivery to the Site.
- 7.8 Where the Material supplied by the MWSB is available for delivery after Contract award:

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- (a) the MWSB will arrange for the delivery of the Material to the Site at the cost of the MWSB;
- (b) the Engineer and the Contractor shall jointly count and inspect the Material delivered to the Site. If the count or inspection shows that the Material does not comply with the Specifications, the Material will be rejected and returned to the supplier;
- (c) once the Material has been satisfactorily counted, inspected or reviewed by the Engineer and the Contractor, the Engineer and the Contractor shall sign a receipt and acceptance for the Material; and
- (d) thereafter, the Contractor shall assume the care, custody and control of such Material at the Site.

7.9 The Contractor shall not use any Material supplied by the MWSB except for the purpose for which it was supplied in connection with the Contract.

SECTION 8 **RISK AND RESPONSIBILITY**

8.1 Plant or Material brought to the Site or the Work by the Contractor shall remain at the risk and the responsibility of the Contractor from the commencement of the Work until:

- (a) Material is incorporated into the Work; or
- (b) Plant or Material is removed from the Site or the Work by the Contractor.

8.2 The Contractor shall be liable to the MWSB for any loss of or damage to Plant or Material that is supplied to or placed in the care, custody and control of the Contractor by the MWSB in connection with the Contract, whether or not that loss or damage is attributable to causes beyond the Contractor's control, from the commencement of the Work until:

- (a) Material is incorporated into the Work; or
- (b) Plant or Material is returned, in its original condition, to the MWSB.

8.3 The Work shall remain at the risk and responsibility of the Contractor from the commencement of the Work until the date of Substantial Performance.

8.4 That portion of the Work not completed as of the date of Substantial Performance shall remain at the risk and responsibility of the Contractor until the date of Final Completion.

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- 8.5 The Contractor shall, at their own cost, be required to maintain the Work, make good all damage thereto and imperfections therein and to deliver the completed Work to the MWSB in accordance with the provisions of the Contract, including (without limitation) GC:12 (warranty).
- 8.6 The Contractor shall provide adequate protection (including proper storage facilities) for all Material that is subject to deterioration by weather conditions, during their transportation, handling, storage and use by the Contractor.

SECTION 9 **INSPECTION**

Inspection – General

- 9.1 The Contractor shall provide the Engineer access, whether at the Site or at the premises of the Contractor or any Subcontractor, to observe and inspect the Work and its progress.
- 9.2 The Contractor shall provide the Engineer any and all assistance which the Engineer may require to observe and inspect the Work.
- 9.3 The Contractor shall provide the Engineer any samples required to inspect the Work.
- 9.4 If the Contractor covers the Work that is subject to inspection, or before any special tests and approvals are completed without approval of the Engineer, the Contractor shall, if and when required by the Engineer, take down, uncover and rebuild that portion of the Work, to have the inspection satisfactorily completed. The costs of such taking down, uncovering and rebuilding, if any, shall be borne by the Contractor.
- 9.5 When required by the Engineer, the Contractor shall take down or uncover any portion of the Work where the Engineer determines that the Work is not in accordance with the Contract. If such Work is found to be in accordance with the Contract, the MWSB shall pay the cost of such taking down, uncovering and rebuilding, together with the cost of subsequent verification testing. If such Work is found not to be in accordance with the Contract, the Contractor shall pay such costs.
- 9.6 The inspection of the Works shall not relieve the Contractor of full responsibility for the quality, proper operation and performance of the Work.

Inspection of Certain Construction Operations of the Work

- 9.7 The Contractor shall ensure that the Engineer is at the Site while the following construction operations of the Work are in progress, unless otherwise authorized by the Engineer:

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- (a) pipe laying;
- (b) backfilling;
- (c) placing concrete;
- (d) construction involving existing works or utilities; and
- (e) commissioning and training in accordance with GC:4.54.

9.8 The Contractor shall give the Engineer at least forty-eight (48) hours' notice before commencing the above construction operations. The notice shall indicate the time and date the Contractor plans to proceed with the applicable construction operation(s). It shall be the responsibility of the Contractor to ensure that the Engineer is available to observe and inspect the above construction operations of the Work.

Defective Work

- 9.9 If the Engineer determines that the Work, or any part of the Work, is defective or deficient, the MWSB shall have the right to do any one or more of the following in addition to anything permitted in the Contract or by law:
- (a) if the Engineer determines that any Plant is defective, deficient or otherwise unfit for the purpose intended, the Engineer may direct the Contractor to remove such Plant from the Site and promptly replace it with Plant which meets the requirements of the Contract and is fit for the purpose intended;
 - (b) if the Engineer determines that any Material which is not yet incorporated into the Work is defective, deficient or otherwise unfit for the purpose intended, the Engineer may direct the Contractor to remove such Material from the Site and promptly replace it with Material which meets the requirements of the Contract and is fit for the purpose intended;
 - (c) if the Engineer determines that the Work or any portion of the Work, including any Material which is incorporated in the Work, is defective, deficient or otherwise unfit for the purpose intended, the Engineer may direct the Contractor to repair, reconstruct, replace or otherwise remedy the defect or deficiency; and
 - (d) if the Engineer determines that it is not expedient to correct defective or deficient Work, the MWSB may deduct from the Contract Price the difference between the

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value of the Work as done and that called for by the Contract, the amount which shall be determined by the Engineer.

- 9.10 The Contractor shall carry out the directives of the Engineer pursuant to GC:9.9 within seven (7) calendar days of being notified by the Engineer. Where a defect or deficiency causes an interruption of water services to consumers, the Contractor shall carry out the directives of the Engineer and restore service within twenty-four (24) hours of being notified by the Engineer. In addition, the Contractor shall be responsible for the cost of any additional inspections necessitated thereby.
- 9.11 The MWSB shall be entitled, in its sole discretion, to use the Work or any portion of the Work notwithstanding that it may be defective or deficient, and such use shall not constitute acceptance of any defects or deficiencies nor shall it relieve the Contractor of responsibility to complete the Work.

SECTION 10 **PROGRESS OF WORK**

- 10.1 The Contractor shall perform the Work in accordance with the approved construction schedule.
- 10.2 The Contractor shall achieve Substantial Performance within the time specified in the Contract. The time to achieve Substantial Performance shall be specified either as a stipulated date, or as a specific number of Working Days.
- 10.3 Where the date of Substantial Performance is specified in Working Days, the counting of Working Days shall commence twenty-one (21) calendar days after the date the MWSB signs the agreement, or the date the Contractor commences Work, whichever occurs first. If, in the opinion of the Engineer, seasonal (atmospheric and/or ground) conditions are such that the Contractor cannot commence Work within the twenty-one (21) calendar days after the date the MWSB signs the “Acceptance” in the Bid Form or the agreement, the Contractor shall be notified. Thereafter, at such time as the Contractor is notified that, in the opinion of the Engineer, seasonal conditions are suitable, the counting of Working Days shall commence fourteen (14) calendar days after such notification is made or the Contractor commences Work, whichever occurs first.
- 10.4 The Engineer shall at the end of each day certify on a time sheet as to whether or not a day is to be considered a Working Day or a non-working day.
- 10.5 If the Contractor is delayed in the performance of the Work by reasons of strikes or lockouts, an act of God, or any other cause which the Contractor satisfies the Engineer to be totally beyond the Contractor’s control, the construction schedule shall be adjusted by a period of time equal to the time lost due to such delay. No extension for delay shall be

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approved unless a notice of claim is received by the Engineer from the Contractor within five (5) calendar days of the date on which the cause of the delay arose. Any notice or claim for extension must state the cause of the delay, the length of the extension requested, and a clear work around plan explaining in detail the steps that the Contractor proposes to take to minimize the impact of the event causing the delay. In the case of a continuing delay, only one claim for an extension shall be necessary.

- 10.6 If the Contractor fails to achieve Substantial Performance in accordance within the time specified in the Contract, the Contractor shall pay the MWSB the amounts per Working Day (as specified in the Bid Form for each and every Working Day during which the failure continues. The Contractor acknowledges and agrees that the amounts specified as liquidated damages set out in the Bid Form are based on a genuine pre-estimate of the MWSB's losses (and is not a penalty) in the event the Contractor does not achieve Substantial Performance by the time specified in the Contract. The MWSB may reduce any payment to the Contractor by the amount of any liquidated damages assessed.

SECTION 11 **CLAIMS AND PAYMENT**

General

- 11.1 Unless otherwise specified in the Specifications, Special Provisions or agreed to in writing by the MWSB and the Contractor, the MWSB shall only be required to pay the Contractor for Material required for the Work upon the installation and total incorporation of same permanently in the Work.
- 11.2 The amounts to be paid by the MWSB to the Contractor shall be the sums approved by the Engineer in the progress estimates and the request for final payment.
- 11.3 For unit price items, such sums shall be determined by the Engineer upon the basis of the unit prices for the various items of the Work stated on the Contractor's Schedule of Prices. The total amount to be paid to the Contractor for the Work will be the amount arrived at by measuring the amount of each unit price item listed on the Schedule of Prices and performed in accordance with the Contract, and pricing the same, in accordance with the unit prices stated thereon.
- 11.4 For lump sum items, such sums shall be determined by the Engineer upon the basis of the lump sum price stated on the Schedule of Prices. Where, in the opinion of the Engineer, the lump sum prices are unbalanced, the payments for the applicable lump sum item may be made on a pro-rata basis over the duration of the Contract.
- 11.5 As stated in the Instructions to Bidders, the unit or lump sum prices in the Schedule of Prices shall be all inclusive, and shall include: (i) the cost of the various items of Work as

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set forth in the Contract; (ii) the cost to furnish all Material (except as otherwise provided in the Contract); (iii) the cost to furnish all Plant, labour, transportation and incidentals necessary for the proper completion of the Work which the Contractor is required to do in accordance with the terms and conditions of the Contract; and (iv) all insurance, Worker's Compensation, vacation pay, custom duties, provincial sales tax, excise taxes (except the Federal Goods and Services Tax) and all other charges, costs and assessments.

Increased or Decreased Costs

- 11.6 The Contract Price shall not be increased or decreased by reason of any increase or decrease in the cost of the Work to the Contractor except as provided for herein.
- 11.7 The Contract Price shall be adjusted if any change in a tax imposed under the *Excise Tax Act* (Canada), the *Customs Act* (Canada), or *The Retail Sales Tax Act* (Manitoba):
- (a) occurs after the Submission Deadline; and
 - (c) affects the cost of the Work to the Contractor.
- 11.8 If a change referred to in GC:11.7 occurs, the Contract Price shall be increased or decreased by an amount equal to the amount that is established, by an examination of the relevant records of the Contractor, to be the increase or decrease in the cost incurred that is directly attributable to that change.
- 11.9 For the purpose of GC:11.7, where a tax is changed after the Submission Deadline but public notice of the change has been given by either the Federal or Provincial Minister of Finance before that date, the change shall be deemed to have occurred before the Submission Deadline and the Contractor shall not be entitled to an increase in the Contract Price.

Measurement and Payment

- 11.12 Progress payments to the Contractor shall be made on a monthly basis.
- 11.13 The Contractor shall prepare a progress estimate setting out the quantity and value of the Work performed during the preceding month.
- 11.14 The Engineer shall sign each progress estimate signifying that the Engineer agrees with and approves the Contractor's estimate of the quantity and value of the Work completed. The Engineer's approval of a progress estimate will make the amount of the progress estimate valid for payment.

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Holdbacks

- 11.15 The MWSB shall retain a holdback in the amount fifteen percent (15%) from all progress payments made by the MWSB to the Contractor.
- 11.16 The 15% holdback shall consist of:
- (a) seven and one-half percent (7.5%) builders' liens holdback that is required to be made pursuant to *The Builders' Liens Act*; and
 - (b) seven and one-half percent (7.5%) performance holdback for the MWSB to complete and rectify any defects, deficiencies and items of outstanding Work.
- 11.17 Any progress payments made by the MWSB to the Contractor shall also be less any other amounts which the MWSB is entitled to withhold pursuant to the Contract.

Substantial Performance

- 11.18 When the Contractor considers that the Work is substantially performed, the Contractor shall submit an application for Substantial Performance to the Engineer in a form provided by the MWSB. The Contractor's application shall detail a list of items to be completed or corrected for review by the Engineer to establish Substantial Performance of the Work or Substantial Performance of the designated portion of the Work. Failure to include an item on the list does not alter the responsibility of the Contractor to complete the Contract.
- 11.19 The Engineer will review the Work to verify the validity of the application and shall promptly advise the Contractor that:
- (a) the Work or the designated portion of the Work is not substantially performed and give reasons why; or
 - (b) the Work or the designated portion of the Work is Substantially Performed and issue a Certificate of Substantial Performance.
- 11.20 The Engineer shall further confirm in writing the list of items to be completed or corrected by the Contractor. Such items shall be listed in the Completion Certificate. The Completion Certificate shall also establish a reasonable date for finishing the Work and correcting deficient Work.

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Payment of Holdback Upon Substantial Performance

- 11.21 After the issuance of the Certificate of Substantial Performance, the Contractor shall submit for the Engineer's review and approval:
- (a) an application for payment of the holdback amount; and
 - (b) a signed Statutory Declaration in the form provided by the MWSB.
- 11.22 After the Engineer approves the application for payment from the Contractor and the Statutory Declaration as provided in GC:11.21:
- (a) the builders' lien holdback shall be released to the Contractor when the time for filing liens or trust claims has elapsed under *The Builders' Liens Act*, unless the MWSB is in receipt of lien or trust claim; and
 - (b) the performance holdback may be reduced at the discretion of the MWSB to the value of the portion of the Work not completed, if such a reduction is recommended by the Engineer.

Final Payment

- 11.23 When the Contractor considers that the Work is completed, the Contractor shall submit a request for final payment.
- 11.24 The Engineer will then review the Work to verify the validity of the request and shall promptly advise the Contractor that:
- (a) the request is not valid and give written reasons why it is not; or
 - (b) the request is valid and shall certify Final Completion on the Completion Certificate, which shall be signed by the Engineer, the Contractor and the Owner of the project (i.e. municipality or Provincial government department).
- 11.25 After the issuance of the Completion Certificate, the Engineer shall recommend the MWSB approve the Contractor's request for final payment. The MWSB's approval of the final payment shall be subject to the following conditions:
- (a) receipt by the Engineer of the completed set of Marked-Up Drawings in accordance with GC:4.43;

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- (b) receipt by the MWSB of a signed Statutory Declaration from the Contractor, in the form provided by the MWSB;
 - (c) receipt by the MWSB of a certificate from the Workers Compensation Board stating that full payment has been made to the Board with respect to all assessments owing; and
 - (d) receipt of a written consent of the surety, which shall be provided in a release document on a form provided by the MWSB, and signed by the Contractor, the surety, and the MWSB.
- 11.26 The final payment, including the builders' liens holdback and the performance holdback, shall be paid to the Contractor when the time for filing liens or trust claims has elapsed, unless the MWSB is in receipt of a lien or trust claim.
- 11.27 Neither the issuance of a Completion Certificate nor the payment of the final payment shall relieve the Contractor from their responsibilities under either GC:12 or as a result of any breach of the Contract by the Contractor including, but not limited to, defective or deficient Work appearing after Final Completion, nor shall it conclude or prejudice any of the powers of the Engineer or the Construction Manager hereunder.
- 11.28 Subject to GC: 11.29, acceptance by the Contractor of the final payment shall constitute a waiver and release by the Contractor of all claims against the MWSB whether for payment for Work done, damages or otherwise arising out of the Contract.
- 11.29 If the Contractor disputes a determination made by the Engineer with respect to a progress estimate or the final payment, the Contractor shall be paid in accordance with the Engineer's determination. The Contractor may concurrently appeal the determination to the Construction Manager as provided for in GC:17.

Contractor's Financial Obligations

- 11.30 The Contractor shall make prompt payment to their Subcontractors, their employees or an account of the purchase or rental of Plant or Material.
- 11.31 The Contractor shall promptly secure a discharge of a lien or trust claim served upon MWSB pursuant to *The Builders' Liens Act*.

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SECTION 12 **WARRANTY**

General

12.1 The Contractor warrants that the Work will be free of any and all defects or deficiencies during the warranty period.

Warranty Period

12.2 Unless specifically stated in the Special Provisions, the warranty period shall begin on the date of Substantial Performance and shall expire one (1) year thereafter unless extended in which case it shall expire when provided for under the following:

- (a) if a defect or deficiency prevents the full and normal use or operation of the Work or any portion thereof, then for purposes of calculating the warranty period, time shall be deemed to cease to elapse for the defective or deficient portion, and for any portion of the Work whose use or operation is prevented by such defect or deficiency, as of the date on which the defect or deficiency is observed or the use or operation is prevented and shall begin to run again when the defect or deficiency has been corrected or the Work may be used or operated to the satisfaction of the Engineer; and
- (b) if all outstanding defects or deficiencies have not been corrected to the satisfaction of the Engineer by at least two (2) weeks prior to the date on which the warranty would expire except for this section, then the Engineer may require the Contractor to extend the warranty period for a further period of one (1) year for those defects or deficiencies in the Work identified by the Engineer as still outstanding and uncorrected or for any portion of the Work whose use or operation is prevented by such defects or deficiencies.

12.3 Notwithstanding the above, if any law of Manitoba or the jurisdiction in which the Work was manufactured requires, or if the manufacturer provides, a longer warranty period or a warranty which is more extensive in its nature, then the provisions of such law or manufacturer's warranty shall apply.

Final Inspection

12.4 Within a reasonable time before the warranty expires, the Engineer shall request that the Contractor arrange, attend at and assist the Engineer in carrying out an inspection of the Work. If the request for inspection is made prior to the expiration of the warranty period, but the inspection does not take place until after the expiration of the warranty period, then

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the warranty period shall be deemed to be extended until such time after the inspection of the Work takes place.

- 12.5 If the Engineer has not requested an inspection at least two weeks prior to the expiry of the warranty period, then the Contractor shall advise the Engineer of the approaching expiry date and shall arrange for an inspection in accordance with GC:12.4.
- 12.6 Where the warranty period has been extended pursuant to GC:12.2, a second inspection shall be carried out in accordance with GC:12.4 before the warranty period, as extended, expires.

Warranty Work

- 12.7 The Engineer shall notify the Contractor of observed defects, deficiencies and damage within the warranty period. Such notice will be provided to the Contractor in writing using a “Warranty Action Notice” form provided by the Engineer.
- 12.8 The Contractor shall correct, to the satisfaction of the Engineer, all defects, deficiencies and damage identified by the Engineer in the manner and within the time period(s) specified in the notice.
- 12.9 If the Contractor disagrees with the Engineer's determination under GC:12.7, the Contractor shall nonetheless comply with GC:12.8. The Contractor may concurrently appeal the determination of the Engineer as provided for in GC:17.

Acceptance of the Work

- 12.10 The Engineer shall certify acceptance of the Work upon:
- (a) the satisfactory performance of the Work during the warranty period;
 - (b) the Contractor fully complied with GC:12.8 (warranty work); and
 - (c) the successful conclusion of any tests required under the Contract.
- 12.11 Certification of acceptance of the Work shall not relieve the Contractor from their responsibilities for any breach of the Contract, including, but not limited to, defective or deficient Work appearing after the date of such certification.

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SECTION 13 **INDEMNIFICATION**

General

13.1 The Contractor shall save harmless and indemnify the MWSB against all costs, damages or expenses arising from actions, claims, demands and proceedings, by whomsoever brought, made or taken as a result of acts or omissions of the Contractor, its Subcontractors, employees or agents in the performance or purported performance of the Work, and more particularly from:

- (a) accidental injury to or death of any person whether retained by or in the employ of the Contractor or not, arising directly or indirectly by reason of the performance of the Work, or by reason of any trespass on or damage to property;
- (b) damage to any property owned in whole or in part by the MWSB, or which the MWSB by duty or custom is obliged, directly or indirectly, in any way or to any degree, to construct, repair or maintain;
- (c) damage to, or trespass or encroachment upon, property owned by persons other than the MWSB;
- (d) failure to pay and obtain a discharge of a notice of claim for lien served upon the MWSB in accordance with the requirements of *The Builders' Liens Act*;
- (e) failure to pay a worker's compensation assessment, or federal or provincial taxes;
- (f) unauthorized use of any design, device, material or process covered by letters patent, copyright, trademark or trade name in connection with the Work; and
- (g) inaccuracies in any information provided to the MWSB by the Contractor.

Settlement

13.2 The MWSB has the right, acting reasonably and upon notice to the Contractor, to settle any such action, proceeding, claim or demand and charge the Contractor with the amount so paid or to be paid in effecting a settlement.

Claim Fees

13.3 The Contractor shall pay to the MWSB the value of all legal fees and disbursements required to settle any such claim or to defend the MWSB against any such claim, action, proceeding, claim or demand notwithstanding that the settlement or defence of the said

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action, proceeding, claim or demand was undertaken on behalf of the MWSB by a salaried employee of the MWSB or of the Government of Manitoba.

Payment Deduction

13.4 If the Contractor fails to make any payment required to be made to the MWSB pursuant to GC:13.1, the MWSB shall be entitled to deduct the amount of such payment from any payment required to be made by the MWSB to the Contractor under the Contract or take whatever other remedies against the Contractor that the MWSB may have at law.

SECTION 14 **EVENTS OF DEFAULT**

14.1 An event of default will be deemed to have occurred if the Contractor:

- (a) abandons the Work; or
- (b) is adjudged bankrupt or files for bankruptcy, becomes insolvent, makes a general assignment for the benefit of their creditors, or has a receiver or liquidator appointed in respect of their assets; or
- (c) is not performing or has not been performing the Work, or any part thereof, in a sound and workmanlike manner and in all respects in strict conformity with the Contract; or
- (d) is not progressing continuously with the Work or any part thereof, and in such a manner as to ensure the completion of the Work or any part thereof, in accordance with the construction schedule; or
- (e) fails to take down, rebuild, repair, alter or amend any defective or deficient Work, or to remove any defective or deficient Material; or
- (f) fails to remedy defects or deficiencies during the warranty period in the manner and within the time periods specified by the Engineer; or
- (g) fails to make prompt payment to their Subcontractors, their employees or on account of the purchase or rental of Plant or Material; or
- (h) fails to promptly secure a discharge of a lien or trust claim served upon the MWSB pursuant to *The Builders' Liens Act*; or
- (i) fails to comply with any laws, by-laws or statutory regulations; or

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- (j) refuses or neglects to comply with an order given by the Engineer; or
- (k) commits any other breach of the Contract.

14.2 Any provision of the Contract may be waived only by express waiver in writing by the MWSB. No express waiver of any provision shall imply the waiver of any other provision.

SECTION 15 **MWSB's RIGHTS AND REMEDIES**

General

15.1 If an event of default has occurred, the MWSB may do any one or more of the following:

- (a) withhold or retain the whole or part of any payment;
- (b) take the whole of the Work, or any part or parts thereof out of the hands of the Contractor;
- (c) demand payment for any amount owed to the MWSB;

all as more particularly set forth in GC:15.3 to GC:15.13 below.

15.2 The duties and obligations imposed upon the Contractor by the Contract and the rights and remedies available to MWSB hereunder shall be in addition to and not a limitation of any duties, obligations, rights and remedies otherwise imposed upon the Contractor or available to MWSB at law.

Withholding of Payment

15.3 If the MWSB withholds or retains the whole or part of any payment pursuant to GC:15.1(a), the MWSB may apply the amount withheld or retained to:

- (a) pay any person to whom the Contractor is indebted in respect of Material, labour or services furnished for the Work;
- (b) secure the discharge of a lien or trust claim served upon the MWSB pursuant to *The Builders' Liens Act*; and
- (c) indemnify, compensate or reimburse the MWSB for amounts paid or costs incurred by the MWSB in connection with the event of default.

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- 15.4 Payment of such amounts shall discharge the MWSB's liability to the Contractor to the same extent as payment directly to the Contractor.
- 15.5 Upon remedy of the event of default, any amount remaining from the amount withheld will be released to the Contractor.

Taking Work out of the Contractor's Control

- 15.6 If the MWSB takes the whole of the Work, or any part or parts thereof out of the hands of the Contractor pursuant to GC:15.1(b), the Contractor shall immediately discontinue the Work or any part or parts thereof specified in the said notice.
- 15.7 The taking of the Work or any part thereof out of the Contractor's control pursuant to GC:15.6 shall not relieve or discharge the Contractor from any obligation under the Contract or imposed upon them by law except the obligation to complete the performance of that part of the Work that was taken out of the Contractor's control.
- 15.8 If the Work or any part thereof is taken out of the Contractor's control pursuant to GC:15.6, all Plant and Material, and the interest of the Contractor in all licenses, powers and privileges acquired, used or provided by the Contractor under the Contract shall be assigned by the Contractor to the MWSB without compensation to the Contractor.
- 15.9 The MWSB shall have the right, subject to GC:16, to complete, by contract or with its own forces, the Work taken out of the Contractor's control, and the Contractor agrees that the MWSB shall have the right to take possession of and use any of the Contractor's Material and property of every kind provided by the Contractor for the purpose of the Work, and to procure other Plant or Material for the completion thereof. The MWSB shall not be required to obtain the lowest price to complete the Work taken out of the Contractor's control.
- 15.10 When the Engineer certifies that any Plant, Material or any interest of the Contractor referred to in GC:15.8 is no longer required for the purposes of the Work, or that it is not in the best interest of the MWSB to retain that Plant, Material or interest, it shall revert to the Contractor.
- 15.11 If the cost to the MWSB of completing the Work or portion thereof is less than the amount to which the Contractor would have been entitled under the Contract for so doing, the Contractor shall have no claims in respect thereof against the MWSB. If the cost of the Work performed by the MWSB is more than the amount to which the Contractor would have been entitled under the Contract for the same Work, the MWSB shall have a claim against the Contractor for such excess costs.

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15.12 When any portion of the Work is being carried on by the MWSB, by contract or otherwise, the Contractor shall continue to perform the remainder of the Work in accordance with the Contract, and in such manner as in no way to hinder or interfere with the persons performing the portion of the Work being carried on by the MWSB.

Demand for Payment

15.13 If the MWSB demands payment pursuant to GC:15.1(c), the Contractor shall, within seven (7) calendar days of receipt of a notice from the MWSB, pay the MWSB the amount set out in the notice.

SECTION 16 SURETY'S OPTION TO ASSUME THE CONTRACT

16.1 Where the MWSB has given notice to the Contractor that the Work or part thereof has been taken out of the Contractor's control, the MWSB shall promptly provide the surety with a copy of such notice.

16.2 The surety may, at its option, assume the Contract in respect of the Work specified in the notice and proceed to perform same.

16.3 Within fourteen (14) calendar days after the date on which the surety is provided with a copy of the notice given to the Contractor, the surety shall advise the MWSB whether it intends to exercise such option. The said option shall expire if the surety fails to so advise the MWSB within the time specified.

16.4 If the surety has exercised its option in accordance with the foregoing, it shall take the Contractor's place in all respects. The surety shall be bound by all terms and conditions of the Contract and shall be paid in accordance with the terms of the Contract for all Work performed by it.

16.5 The surety may, with the consent of the Engineer, subcontract the Work so taken over or any portion thereof.

SECTION 17 DISPUTE RESOLUTION

General

17.1 The parties shall make all reasonable efforts to resolve their disputes by amicable negotiations and agree to provide, without prejudice, disclosure of relevant facts, information, and documents to facilitate these negotiations. Should it not be possible to

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resolve the dispute in this manner, then the dispute resolution provisions set out herein shall apply.

Contractor's Right to Appeal

- 17.2 If the Contractor disagrees with a determination or order of the Engineer, the Contractor may within seven (7) calendar days after receiving notice of the Engineer's determination or order, notify the Construction Manager of their contention with respect thereto and request a determination thereon from the Construction Manager.
- 17.3 If the Contractor disagrees with a determination or order of the Construction Manager, the Contractor may within seven (7) calendar days after receiving notice of the Construction Manager's determination or order, notify the General Manager of their contention with respect thereto and request a determination thereon from the General Manager.
- 17.4 If the Contractor disagrees with the General Manager's determination, the Contractor may request that the dispute be referred to arbitration in accordance with GC:17.6, by providing notice to the General Manager within seven (7) calendar days after receiving notice of the General Manager's determination.
- 17.5 If the Contractor neglects or fails to observe fully and faithfully the above conditions, the Contractor shall be deemed to have accepted the Engineer, the Construction Manager or the General Manager's determination and to have waived any said claim, at law or otherwise.

Arbitration

- 17.6 If, at any time before the termination of the warranty period, any dispute, difference or question shall arise between MWSB and the Contractor regarding the Work, then every such dispute, difference or question may, with the consent of both the MWSB and the Contractor, be referred to arbitration. Notwithstanding that the parties may have consent to arbitration; no arbitration shall proceed before the date of Substantial Performance.
- 17.7 The party desiring arbitration (the "Requesting Party") shall request the consent of the other party (the "Other Party") to refer a particular dispute, difference or question to arbitration.
- 17.8 The Other Party shall reply to the request within seven (7) calendar days of receiving same.

Referral to a Single Arbitrator

- 17.9 If the Other Party has consented to arbitration, the Requesting Party shall nominate an arbitrator (the "Requesting Party's Nominee") within seven (7) calendar days of receiving

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the reply. The Other Party shall have seven (7) calendar days after receiving notice of the nomination to accept or reject the Requesting Party's Nominee.

- 17.10 If the Other Party accepts the Requesting Party's Nominee, the dispute, difference or question shall be promptly referred to that nominee.

Referral to a Panel of Arbitrators

- 17.11 If the Other Party rejects the Requesting Party's Nominee, it shall, within seven (7) calendar days of rejection, appoint its own arbitrator.
- 17.12 The Requesting Party shall, within seven (7) calendar days of receiving the Other Party's rejection, appoint its own arbitrator.
- 17.13 The arbitrators appointed under GC:17.11 and GC:17.12 shall, within seven (7) calendar days of the date on which the last of them was appointed, appoint a third arbitrator (the "Panel Chair") who will act as chair of the arbitration panel.

General

- 17.14 *The Arbitration Act* or any successor legislation thereto shall apply to the arbitration in all respects except as expressly otherwise provided in these General Conditions.
- 17.15 The single arbitrator or the Panel Chair, as the case may be, shall determine the procedure to be followed in the arbitration, which shall be consistent with *The Arbitration Act* or any successor legislation thereto.
- 17.16 Where the matter proceeds with a single arbitrator, each party shall be responsible for its own legal expenses, expenses to produce expert evidence or other evidences voluntarily incurred, and for an equal share of the fees and expenses of the single arbitrator and of any other expenses related to the arbitration.
- 17.17 Where the matter proceeds with an arbitration panel, each party shall be responsible for its own legal expenses, expenses to produce expert or other expenses voluntarily incurred, for the fees and expenses of the arbitrator appointed by it, and for an equal share of the fees and expenses of the Panel Chair and of any other expenses related to the arbitration.

SECTION 18 **GOVERNING LAW**

- 18.1 The Contract has been entered into in the Province of Manitoba and shall be governed by and construed and enforced in accordance with the laws of the Province of Manitoba and of Canada as applicable therein.

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18.2 The parties hereby irrevocably and unconditionally agree to the exclusive jurisdiction of the Courts in the Province of Manitoba and all courts competent to hear appeals therefrom.

SECTION 19 **NOTICES**

19.1 All notices, requests, nominations, proposals, consents, approvals, statements, authorizations, documents or other communications required or permitted to be given under the Contract shall be in writing and shall be delivered by hand or by facsimile transmission (fax) or by electronic mail (email).

19.2 All notices, requests, nominations, proposals, consents, approvals, statements, authorizations, documents or other communications shall be delivered to the parties at their respective addresses set out in Section 5 of the agreement.

19.3 Either party may, by giving notice, designate another address or addresses at which it will accept delivery of notices, requests, nominations, proposals, consents, approvals, statements, authorizations, documents or other communications.

19.4 Delivery to the Contractor's designated site superintendent shall constitute delivery to the Contractor.

19.5 Any notices, requests, nominations, proposals, consents, approvals, statements, authorizations, documents or other communications given as provided herein shall:

- (a) if delivered by hand, be deemed to have been received on the date of receipt; and
- (b) if delivered by facsimile transmission or by electronic submission, be deemed to have been received on the date of facsimile transmission or electronic mail, if a Business Day, or if not a Business Day, on the next Business Day.

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