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October 24, 2012

RFP #12-011

JOHNSON STREET BRIDGE REPLACEMENT PROJECT

ADDENDUM NO. 8

This Addendum is issued under Section 3.10 of the RFP.

1. In the RFP in Section 4.3 delete the “and” at the end of Section 4.3(c)(ii); delete the period at the end of Section 4.3(d) and replace it with “; and”; and add the following as a new Section 4.3(e):

“(e) Design Build for Harbour Road Retaining Wall: The design and construction of the proposed retaining wall as shown between station 0+000 and station 0+101.500 on the drawing entitled Johnson Street Bridge Replacement Galloping Goose Trail Retaining Wall #11, No. 5012802-100-C-PLN-951 is part of the Related Works to be performed by the Contractor. The City’s funding for the actual design and construction costs will be separate from other Project funding and, therefore, this design and construction cost can be accommodated outside of, and in addition to, the Affordability Ceiling. To permit the City to administer costs, a Proponent should provide a separate fixed price for the design and construction of the retaining wall as described above.”
2. In the RFP in Section 5.2(d) delete the reference to “Section 4.3(c)” and replace it with “Sections 4.3(c) and 4.3(e)”.
3. In the RFP in Section 5.2 in the last paragraph delete the phrase “exceeds the Affordability Ceiling” and replace it with “exceeds the Affordability Ceiling (subject to the design and construction costs of the proposed retaining wall as described in Section 4.3(e))”.
4. In Schedule 3 – Draft Contract to the RFP delete the Agreement up to and including the signature page and replace with the attached dated for reference October 24, 2012.
5. In Schedule 3 – Draft Contract to the RFP delete Appendix A – General Conditions in its entirety and replace with the attached dated for reference October 24, 2012.

6. In Schedule 3 – Draft Contract to the RFP delete Appendix B – Scope of Work in its entirety and replace with the attached dated for reference October 24, 2012.

Yours Truly,

Keith Hennessey

Keith Hennessey,
Contact Person

JOHNSON STREET BRIDGE REPLACEMENT PROJECT

AGREEMENT

THIS AGREEMENT (this “Agreement”) made effective as of the ___ day of _____, 20__

BETWEEN:

THE CORPORATION OF THE CITY OF VICTORIA

(the “City”)

AND:

[●INSERT FULL LEGAL NAME OF THE CONTRACTOR]

(the “Contractor”)

WHEREAS:

- A. The City wishes to have constructed a new, moveable bridge (the “**New Bridge**”) to replace the existing Johnson Street Bridge (the “**Existing Bridge**”) as well as certain related street and utility works, and to demolish the existing Johnson Street Bridge (collectively, the “**Related Works**”). The construction of the Existing Bridge and the performance of the Related Works is collectively the “**Project**”.
- B. The Contractor has participated in a formal procurement process and has been selected by the City to perform work relating to the Project.

NOW THEREFORE in consideration of the mutual covenants and conditions contained in the Contract, the City and the Contractor agree as follows:

1.0 THE WORK

1.1 Scope of Work

The Contractor will provide all labour, materials and equipment necessary for the complete performance of the Work. The Contractor will perform the Work in accordance with the requirements of the Contract Documents, including Appendix B – Scope of Work, Appendix E – Specifications, Appendix F – Drawings and Appendix G – Scope of Work of Design Optimizations.

1.2 Responsibility for Design

The City will provide all design required for the performance of the Work, except for:

- (a) design that is expressly stated in the Contract Documents to be the responsibility of the Contractor (such as, for illustration, the design of temporary structures under GC. 4.9); and

- (b) the design of portions of the Project, if any, as specifically described in Appendix B – Scope of Work, that the Contractor will undertake on a design-build basis.

The City has engaged MMM Group Limited as its lead designer to perform the City's design obligations under this Contract.

1.3 Initial Work Schedule

Attached as Appendix D – Work Schedule is the initial schedule for the performance of the Work. The Contractor will revise and expand the initial schedule as required in Appendix A – General Conditions. The initial schedule will take account of and reflect the following dates:

- (a) In-water Work may take place between July 1 to October 1 inclusive and December 1 to February 15 inclusive;
- (b) Complete the two bridge deck bike lanes, the multi-use trail (including bicycle lanes), the pedestrian pathway and road approaches no later than March 31, 2015;
- (c) Complete the New Bridge such that it may be used by the public for the purposes for which the New Bridge is intended no later than September 30, 2015; and
- (d) Achieve Total Completion no later than March, 2016.

2.0 INTERPRETATION

2.1 Definitions

In this Agreement, unless the context otherwise requires, capitalized terms have the meanings set out in Appendix A – General Conditions.

2.2 Contract Documents

The following are the “**Contract Documents**”:

- (a) this Agreement;
- (b) Appendix A – General Conditions;
- (c) Appendix B – Scope of Work;
- (d) Appendix C – Schedule of Prices;
- (e) Appendix D – Work Schedule;
- (f) Appendix E – Specifications;
- (g) Appendix F – Drawings;
- (h) Appendix G – Scope of Work of Design Optimizations;

- (i) Appendix H – Design Development and Review Procedure;
- (j) Appendix I – Supplementary General Conditions, if any; and
- (k) all other documents as delivered from one party to the other pursuant to the terms of the Contract Documents.

The Contract Documents completely describe the Contract, including the parties' rights and obligations under the Contract.

3.0 DESIGN OPTIMIZATION AND COMPLETION OF DESIGN

3.1 Scope of Design Optimization

The portions of the Project as identified in Appendix G – Scope of Work of Design Optimizations (the “**Design Optimizations**”) will be designed as described in Appendix G – Scope of Work of Design Optimizations.

3.2 Completion of Design

If and to the extent the design for any portion of the Project as described in the Contract Documents requires design development or is in any way incomplete, including:

- (a) if the designs as described in Appendix E – Specifications or Appendix F – Drawings are not at final designs;
- (b) if the design detail as included in Appendix G – Scope of Work of Design Optimizations is not at final design; and
- (c) if implementation of Design Optimizations requires changes to the design of other portions of the Project as set out in Appendix E – Specifications or Appendix F – Drawings,

then, except as expressly set out otherwise in the Contract Documents, the City will instruct and cause the Consultant to complete such design. The parties will comply with the design review procedure as described in the Appendix H – Design Development and Review Procedure with respect to the completion of all such design. The scope of the Work includes the Contractor's participation in such design review procedure, and the Contractor will participate in such review without payment of additional compensation, and amendments, if any, to drawings or specifications that are required to implement the Design Optimizations will not be the basis of a claim for a Change under GC. 7.

If and to the extent Appendix B – Scope of Work describes portions of the Project that the Contractor will undertake on a design-build basis, then the Contractor, and not the Consultant, will complete the design for such portions of the Project in accordance with GC. 5.

If and to the extent that through the completion of design of Optimizations included in Appendix G – Scope of Work of Design Optimizations it is established that an Optimization, or portion of an Optimization, cannot be included in the final design of the New Bridge or the Related Works, then, unless the City and the Contractor agree otherwise, the final design for such portion will be in accordance with the Consultant's design as described in Appendix E – Specifications and Appendix F –

Drawings and the Contractor will complete the Work in accordance with such design for no increase in the Contract Price.

3.3 Issued for Construction Drawings

The Contractor will perform construction in accordance with drawings which have been stamped “Issued for Construction” by the Consultant or the Consultant’s approved delegate, and, for construction which the Contractor will undertake on a design-build basis, the Contractor will perform construction in accordance with drawings which have been stamped “Issued for Construction” by the Contractor’s consultant and stamped “Reviewed” by the Consultant or the Consultant’s approved delegate. The Contractor will not proceed with any construction for which it has not received “Issued for Construction” drawings, and with respect to construction of portions of the Project that the Contractor will undertake on a design-build basis, the Contractor will not proceed with such construction for which it has not received “Issued for Construction” drawings which have been stamped “Reviewed” by the Consultant or the Consultant’s approved delegate.

If the Contractor proceeds with construction prior to receiving “Issued for Construction” drawings or “Issued for Construction” drawings that have been stamped “Reviewed” by the Consultant or the Consultant’s approved delegate, as the case may be, and such construction and related Work is covered, then the City may direct the Contractor to uncover and make good such construction and related Work at the Contractor’s sole cost and expense and the provisions of GC. 4.18(k) will apply.

4.0 CONTRACT PRICE

4.1 Contract Price

As payment for the performance of the Work, the City will pay the Contractor \$[●*insert price*], as may be adjusted in accordance with the Contract Documents (the “**Contract Price**”), plus GST/HST.

4.2 Entire Compensation

The Contract Price will be the entire compensation owing to the Contractor for the complete performance of the Work and this compensation will cover and include all profit and all costs of supervision, labour, material, equipment, overhead, financing and all other costs and expenses whatsoever incurred by the Contractor in performing the Work.

5.0 CONSULTANT

5.1 Appointment of Consultant

The City has appointed MMM Group Limited to be the Consultant for the Project.

6.0 NOTICE

Any notice or communication required or permitted to be given under the Contract will be in writing and will be considered to have been sufficiently given when delivered by registered mail or by hand to the address of the applicable party set out below or, transmitted by electronic transmission to the email address set out below:

- (a) if to the City:
[●Insert appropriate full mailing address.]
Attention: ●
 Email: ●;
- (b) if to the Contractor:
[●Insert appropriate full mailing address.]
Attention: ●
 Email: ●; or
- (c) to such other address as any party may, from time to time, designate in the manner set out above, provided that the Contractor may not change its address under this Section 6.0 to an address other than one in British Columbia without the City’s prior written consent.

7.0 ELECTRONIC COMMUNICATION

The following provisions will apply to any written notice required or permitted under the Contract that is delivered by way of electronic communication:

- (a) the City does not assume any risk or responsibility or liability whatsoever to the Contractor:
 - (i) for ensuring that any electronic email system being operated by or for the City is in good working order, able to receive transmissions, or not engaged in receiving other transmissions such that the Contractor’s transmission cannot be received; or
 - (ii) that a permitted email communication or delivery is not received by the City, or received in less than its entirety, or within any time limit specified by the Contract; and
- (b) all permitted email communications with or delivery of documents to the City’s Representative or the Contractor’s Representative will be deemed as having been received on the dates and times indicated on the recipient’s electronic equipment.

8.0 LANGUAGE

All documents to be given under the Contract will be provided in English and the Contractor’s Representative and key personnel will be fluent in English.

9.0 AMENDMENTS

No amendment to the terms of the Contract will be binding on the City or the Contractor, unless made in writing and signed by an authorized representative of each party.

10.0 ENTIRE AGREEMENT, WAIVERS AND CONSENTS IN WRITING

The Contract Documents, and the instruments and documents to be executed and delivered pursuant to the Contract Documents, constitute the entire Contract between the parties, expressly superseding all prior agreements and communications (both oral and written) between the parties with respect to all

matters contained in the Contract Documents, and contains all the representations and warranties of the respective parties. In addition:

- (a) no waiver of any provision of the Contract; and
- (b) no consent required pursuant to the Contract Documents,

is binding or effective unless it is in writing and signed by an authorized signatory of the party providing such waiver or consent.

11.0 ASSIGNMENT

Neither party may assign the Contract, in whole or in part, without the prior written consent of an authorized representative of the other party, which consent may not be unreasonably withheld. Notwithstanding the foregoing, the City may assign the Contract to any of its Affiliates or to any third party that amalgamates or merges with the City or which acquires all or substantially all of the assets of the City or which was, immediately prior to the assignment, a part of the City, conditional upon the successor covenanting and agreeing with the Contractor to be bound to the Contractor by the provisions of the Contract. Subject to the foregoing, the Contract will enure to the benefit of and be binding upon the parties and their respective successors and permitted assigns.

12.0 FURTHER ASSURANCES

The parties will do, execute and deliver, or will cause to be done, executed and delivered, all such further acts, documents (including certificates, declarations, affidavits, reports and opinions) and things as the other may reasonably request for the purpose of giving effect to the Contract or for the purpose of establishing compliance with the representations, warranties and obligations of the Contract.

13.0 GOVERNING LAW

The Contract will be governed by and construed in accordance with the Laws of the Province of British Columbia and the federal Laws of Canada applicable in British Columbia.

[Remainder of page left intentionally blank]

14.0 COUNTERPARTS

This Agreement may be executed and delivered in several counterparts, including by facsimile (or other similar electronic means, including via pdf), each of which when so executed and delivered will be deemed to be an original and such counterparts together will be one and the same instrument.

IN WITNESS WHEREOF the parties hereto have executed this Agreement as of the day and year first above written.

THE CORPORATION OF THE CITY OF VICTORIA

Per: _____
Authorized Signatory

Per: _____
Authorized Signatory

[●INSERT FULL LEGAL NAME OF THE CONTRACTOR]

Per: _____
Authorized Signatory

APPENDIX A – GENERAL CONDITIONS

APPENDIX A – GENERAL CONDITIONS

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GC. 1 INTERPRETATION

1.1 Definitions

In the Contract, unless the context requires otherwise:

“Affiliate” means, with respect to any Person, any other Person directly or indirectly controlling, controlled by, or under direct or indirect common control of, such Person, and a Person will be deemed to control another Person if such Person possesses, directly or indirectly, the power to direct or determine the direction of the management and policies of such other Person, whether through ownership of voting securities, by contract or otherwise;

“Agreement” means the form of agreement which is signed by the parties and included in the Contract Documents;

“Change” has the meaning set out in GC. 7.1;

“Change Directive” has the meaning set out in GC. 7.2;

“Change Order” has the meaning set out in GC. 7.1;

“City” has the meaning set out in the Agreement;

“City’s Representative” means the Representative of the City as appointed in accordance with GC. 2.1;

“Claim” means any claim, demand, action, cause of action, suit or proceeding, whether for damages, contribution, indemnity or any other relief;

“Claim Costs” means any and all losses, damages, costs, penalties and expenses arising from or related to a Claim, including actual legal (on a solicitor and his own client basis), accounting and expert costs and expenses incurred in the investigation, defence or settlement of a Claim;

“Confidential Information” means the information described in GC. 15.1;

“Consequential Damages” has the meaning set out in GC. 19.2;

“Consultant” has the meaning set out in GC. 3.1;

“Contemplated Change” has the meaning set out in GC. 7.3;

“Contract” means the agreement between the City and the Contractor as defined and described in the Contract Documents, as may be amended, supplemented or restated from time to time;

“Contract Documents” means the documents listed and described in Section 2.2 of the Agreement;

“Contract Price” has the meaning set out in the Agreement;

“Contractor” has the meaning set out in the Agreement;

“**Contractor Duties**” has the meaning set out in GC. 22.4;

“**Contractor Taxes**” has the meaning set out in GC. 22.4;

“**Contractor’s Representative**” means the Representative of the Contractor as appointed in accordance with GC. 2.1;

“**Dangerous Goods**” has the meaning set out in the *Transportation of Dangerous Goods Act (Canada)*;

“**Default Costs**” has the meaning set out in GC. 10.3(c)(i);

“**Design-Build Work**” has the meaning set out in GC. 5.1;

“**Design Optimizations**” has the meaning set out in Section 3.1 of the Agreement;

“**Design Submittal Schedule**” has the meaning set out in GC. 5.3;

“**Dispute**” has the meaning set out in GC. 13.1;

“**Dispute Notice**” has the meaning set out in GC. 13.3;

“**Dispute Resolution Procedure**” means the dispute resolution procedure set out in GC. 13;

“**Effective Date**” means the effective date of the Contract as set out in on the first page of the Agreement;

“**Existing Bridge**” has the meaning set out in Recital A of the Agreement;

“**FOIPPA**” means the *Freedom of Information and Protection of Privacy Act (British Columbia)*;

“**Force Majeure**” means an event beyond the reasonable control of a party and includes any work stoppage (including strike, lock-out, picket or other labour dispute) that is not described by GC. 8.3, war, invasion, insurrection, civil or social unrest, riot, armed conflict, act of foreign enemy, revolution, terrorist act, interference by military authorities, nuclear explosion, contamination by ionizing radiation, epidemic or quarantine restriction, earthquake, tidal wave or other natural calamities, that prevents, delays or interrupts the performance of any obligation under the Contract, provided such event does not occur by reason of: (i) the negligence of the party claiming Force Majeure (or those for whom it is in law responsible); or (ii) any act or omission of the party claiming Force Majeure (or those for whom it is in law responsible) that is in breach of the provisions of the Contract, but Force Majeure does not include: (x) a party’s lack of funds; (y) the bankruptcy or insolvency of any Subcontractor; or (z) a shortage or unavailability of labour, equipment or materials unless such shortage or unavailability is caused by a Force Majeure;

“**Good Industry Practice**” means the standards, practices, methods and procedures to a good professional and commercial standard, conforming to Laws and exercising that degree of skill, care, diligence, prudence and foresight which would reasonably and ordinarily be expected from a qualified, skilled and experienced person engaged in the performance of comparable work and services in respect of work and services of a similar nature to the Work under the same or similar circumstances;

“Governmental Authority” means any federal, provincial, territorial, regional, municipal or local authority, quasi-governmental authority, court, government, or self-regulatory organization, commission, board, tribunal, organization, or any regulatory, administrative or other agency, or any political or other subdivision, department or branch of any of the foregoing, having jurisdiction in any way over or in respect of any aspect of the performance of the Contract or the Project;

“GST/HST” means the tax imposed in British Columbia pursuant to Part IX of the *Excise Tax Act* (Canada);

“Hazardous Substance” means any substance, mixture of substances, product, waste, organism, pollutant, material, chemical, contaminant, dangerous good, constituent or other material which is or becomes listed, regulated or addressed under any Law respecting the use, manufacture, importation, handling, transportation, storage, disposal and treatment of the substance, mixture of substances, product, waste, organism, pollutant, material, chemical, contaminant, dangerous good, constituent or other material;

“Indemnified Parties” has the meaning set out in GC. 18.1;

“Indemnified Party” has the meaning set out in GC. 18.1;

“Intellectual Property” has the meaning set out in GC. 24.1;

“Laws” means all valid laws, including common law, federal, provincial, and municipal statutes, bylaws, and other local laws, orders, rules, regulations, approvals and policies of any Governmental Authority, including those related to occupational health and safety, fire, employment insurance, workers’ compensation, the transportation and handling of Hazardous Substances, the transportation and handling of dangerous goods, environmental protection, standards, building codes and other governmental requirements, work practices and procedures, that are applicable to the discharge of obligations set out in the Contract Documents, including the performance of the Work;

“New Bridge” has the meaning set out in Recital A of the Agreement;

“Other Contractor” has the meaning set out in GC. 4.8;

“Permits” means all permissions, consents, approvals, registrations, certificates, permits, licences, statutory agreements and authorizations required from any Governmental Authority, and all necessary consents and agreements from any third parties, needed to carry out the Work in accordance with the Contract Documents;

“Person” means any individual, sole proprietorship, corporation, company, partnership, unincorporated association, association, institution, entity, party, trust, joint venture, estate, cooperative or other judicial entity;

“Personal Information” means information defined as “personal information” in FOIPPA;

“Prime Rate” means the floating annual rate of interest established by the Royal Bank of Canada from time to time as its reference rate of interest, to determine the interest rate it will charge for loans in Canadian dollars to its customers in Canada and designated as its “Prime Rate”;

“**Project**” has the meaning set out in Recital A of the Agreement;

“**Quotation**” has the meaning set out in GC. 7.3;

“**Related Works**” has the meaning set out in Recital A of the Agreement;

“**Representative**” means either the City’s Representative or the Contractor’s Representative, as the case may be;

“**Site**” means the designated site or location where the Work products are to be finally or permanently constructed or installed;

“**Subcontractor**” has the meaning set out in GC. 4.14;

“**Substantial Completion**” means the time at which the Work: (i) has been “substantially performed”, as that term is defined in the *Builders Lien Act* (British Columbia); and (ii) has been duly certified as such by the Consultant pursuant to GC. 6.10;

“**Submittal**” has the meaning set out in GC. 4.19;

“**Submittal Schedule**” has the meaning set out in GC. 4.19

“**Total Completion**” has the meaning set out in GC. 6.13;

“**Warranty Period**” has the meaning set out in GC. 20.3;

“**Work**” means and includes anything and everything required to be done for the fulfilment and completion of the Contract; and

“**Work Schedule**” has the meaning set out in GC. 4.12(a).

Any words or phrases defined elsewhere in the Contract will have the particular meaning assigned to such words or phrases.

1.2 Interpretation

Except as expressly set out otherwise in the Contract Documents or the context otherwise requires, the following will apply to the interpretation of the Contract:

- (a) headings are for convenience and reference only and will not affect the interpretation of the Contract;
- (b) all dollar figures will mean Canadian dollars;
- (c) any notice or communication required or permitted to be given under the Contract will be in writing;
- (d) words importing the singular include the plural, and vice versa;

- (e) words importing gender include all genders;
- (f) where a reference is made to a “day”, “week”, “month” or “year”, the reference is to the calendar period;
- (g) where the date for any delivery or response falls on a Saturday, Sunday or statutory holiday observed in British Columbia, the date for such delivery or response will be extended to the next following day which is not a Saturday, Sunday or statutory holiday observed in British Columbia;
- (h) in the calculation of time, the first day will be excluded and the last day will be included;
- (i) the words in the Contract Documents will bear their natural or defined meaning;
- (j) the word “including” is deemed to be followed by “without limitation”;
- (k) any reference to a statute will include such statute and its corresponding regulations, together with all amendments made to such statute and regulations and in force from time to time, and any statute or regulation that may be passed which has the effect of amending, supplementing or superseding the statute referred to or such statute’s corresponding regulations; and
- (l) the parties confirm that they each have obtained independent legal advice, or elected not to obtain such advice, and accordingly agree that any rule of construction to the effect that any ambiguity is to be resolved against the drafting party will not be applicable in the interpretation of the Contract.

1.3 Priority of Contract Documents

If there is any inconsistency or conflict between provisions of the Contract Documents, then:

- (a) the order of priority between the Contract Documents, from highest to lowest with the Agreement having the highest priority, is as follows:
 - (i) the Agreement;
 - (ii) Appendix I – Supplementary General Conditions, if any;
 - (iii) Appendix A – General Conditions;
 - (iv) Appendix B – Scope of Work;
 - (v) Appendix C – Schedule of Prices;
 - (vi) Appendix D – Work Schedule;
 - (vii) Appendix E – Specifications;
 - (viii) Appendix F – Drawings;
 - (ix) Appendix G – Scope of Work of Design Optimizations;

- (x) Appendix H – Design Development and Review Procedure; and
 - (xi) all other documents as delivered from one party to the other pursuant to the terms of the Contract Documents;
- (b) drawings of a larger scale have priority over drawings of a smaller scale;
 - (c) figured dimensions on a drawing will govern over scaled measurements on the same drawing; and
 - (d) documents of a later date will always supersede a similar type of document of an earlier date.

GC. 2 REPRESENTATIVES

2.1 Appointment of Representatives

Both parties will, within five days of the Effective Date, designate in writing an individual to be the party's single point of contact with respect to the Contract (the "**Representative**").

2.2 Delegation of Representative's Authority

A party's Representative may, by written notice to the other party, appoint one or more delegates with specified authority to assist the Representative in communicating with the other party and in coordinating the parties' duties and responsibilities under the Contract.

2.3 Replacement of Representatives

A party may, at any time and in its own discretion, by written notice to the other party, change the Person appointed as the party's Representative. If, for any reason, a party's Representative is unable or unwilling to continue, then the party will immediately appoint a replacement Representative. If, at any time, a party objects to a Representative of the other party, then the other party will give reasonable consideration to replacing the Representative with a Person reasonably acceptable to the objecting party.

2.4 Authority of Representatives

A party's Representative will have full authority to act on behalf of and bind its party under the Contract. A party's Representative may consult with other representatives and consultants of its party before giving any response, direction or consent. Notwithstanding the preceding sentence, a party's Representative will not have the authority to execute or agree to any amendments to the Contract or to waive any of its party's rights under the Contract.

GC. 3 THE CONSULTANT

3.1 Appointment of Consultant

The City will appoint a consultant (the "**Consultant**") to carry out and perform the duties ascribed to such Person in the Contract Documents. The City will give written notice of such appointment to the Contractor. If for any reason the Consultant's appointment is discontinued, then the City will, as soon as

practicable, appoint a replacement. The Consultant may, at the City's election, be an employee of the City, or may be an independent consultant, and may be the same Person as the City's Representative. In the absence of the appointment of an employee or independent consultant as the Consultant, the City's Representative will be the Consultant.

3.2 Authority of Consultant

The Consultant will have authority to act on behalf of the City only to the extent expressly provided in the Contract Documents. Nothing contained in the Contract Documents will create any contractual relationship between the Consultant and the Contractor, or any Subcontractor, or their agents, employees or other Persons engaged by or through them.

3.3 Role of Consultant

The role of the Consultant under the Contract will be as follows:

- (a) provide administration of the Contract as described in the Contract Documents;
- (b) provide the Contractor with additional instructions in the form of specifications, drawings, samples, models or other written instructions, to supplement the previously issued Contract Documents, as may be necessary for the performance of the Work;
- (c) act as the City's representative and agent to protect the City's interests under the Contract;
- (d) make all commercially reasonable efforts to respond promptly to the Contractor's requests for additional instructions, and, if it becomes apparent that a number of additional instructions will be required, then cooperate with the Contractor to establish a schedule for the issuance of such additional instructions;
- (e) in accordance with the requirements of the Contract Documents, review and take appropriate action upon receiving Submittals, including:
 - (i) shop drawings, product data and samples; and
 - (ii) written guarantees, warranties and manuals to be provided by the Contractor;
- (f) except as expressly set out otherwise in the Contract Documents, when required, set out or cause to be set out survey monuments or control points at the Site, sufficient to enable the Contractor to determine the required lines and grades for the performance of the Work;
- (g) prepare, sign and issue Change Orders, Change Directives and Contemplated Changes in accordance with the requirements of GC. 7;
- (h) review supporting documentation as required to determine the amounts owing to the Contractor under the Contract and perform the tasks relating to payment as required under GC. 6;
- (i) inspect the Work; and

- (j) undertake all other duties of the Consultant as described in the Contract Documents.

3.4 Contract Interpretation

The Consultant will be, in the first instance, the interpreter of the Contract Documents and the judge of the performance of the City and the Contractor. The Consultant's interpretations and judgments will be consistent with the Contract Documents and, in making such interpretations and judgments, the Consultant will not show partiality to either party. With respect to interpretation of the Contract Documents:

- (a) either party may, at any time, by written request, refer any question relating to the Contract, including questions regarding claims relating to the performance of the Work or questions regarding the interpretation of the Contract Documents, to the Consultant for a written interpretation;
- (b) the Consultant will, within ten days of a written request, or such other period of time (longer or shorter) as reasonably required in the circumstances, deliver a written interpretation to each of the City and the Contractor's Representative; and
- (c) if a party disputes an interpretation of the Consultant, then the disputing party may deliver a Dispute Notice to have the matter dealt with as a Dispute pursuant to GC. 13.

The Contractor will proceed with the Work without delay in accordance with any written direction, instruction or decision given by the Consultant with respect to a requested interpretation, without prejudice to the Contractor's rights to dispute the interpretation, or the written direction, instruction or decision, pursuant to GC. 3.4(c).

GC. 4 EXECUTION OF THE WORK

4.1 Control of Work

Except as expressly set out otherwise in the Contract Documents, the Contractor will:

- (a) have complete control of the Work and will effectively direct and supervise the Work so that it conforms to the Contract Documents; and
- (b) be solely responsible for construction means, methods, techniques, sequences and procedures and for coordinating the various parts of the Work.

4.2 Standard of Work

The Contractor will perform all the Work in accordance with:

- (a) the Contract Documents;
- (b) Laws and Permits; and
- (c) Good Industry Practice.

If more than one standard, including building codes, other governmental requirements, work practices and procedures, and specifications, applies to the performance of the Work, then the strictest of such will apply.

4.3 Responsibility for the Work

The City's rights of review, acceptance, approval or confirmation with respect to any aspect of the Work (including, if applicable, review of any design performed by the Contractor's consultant on a design build basis or otherwise) will be for the City's benefit only, and no review, acceptance, approval or confirmation of compliance by the City, the City's Representative or the Consultant will in any way relieve the Contractor of its obligations for all aspects of the Work, except as expressly set out otherwise in the Contract Documents.

The stamping of any drawings "Issued for Construction" under Section 3.3 of the Agreement with respect to design that has been prepared by the Contractor's consultant on a design-build basis will be for the City's benefit only and will in no way relieve the Contractor of its obligations for such design. In addition, no stamp of acceptance by the Consultant or the Consultant's approved delegate will give rise to any claim by the Contractor, or any party claiming through the Contractor, as against the Consultant or the Consultant's approved delegate.

4.4 Site Conditions

The Contractor will not be entitled to, nor will the Contractor make any claim for, an adjustment to the Contract Price or the time for the performance of the Work on the basis that the actual Site or actual local conditions (including geotechnical and subsurface conditions, Site drainage, Site access, local weather, availability of labour, equipment and materials related to the Work) are different than anticipated by the Contractor.

4.5 Documents at Site

The City will provide the Contractor, without charge, one copy of the Contract Documents. The Contractor will, at all times, keep and maintain one copy of a complete set of the current Contract Documents, including all approved shop drawings, revised or supplementary drawings or specifications and other design details that have been issued by the Consultant or the City's Representative, at the Site, in good order and available for review by the Consultant and the City's Representative.

4.6 Monuments and Controls

The Contractor will protect and preserve all survey monuments and control points, if any, installed by or on behalf of the City at the Site and will, at the Contractor's sole cost and expense, replace or re-establish any such monument or control point as may be destroyed or disturbed by the Contractor or any Subcontractor.

4.7 Permits

Except as expressly set out otherwise in the Contract Documents, the Contractor will, as part of the Work, obtain all Permits required for the performance of the Work.

4.8 Work by Other Contractors or the City

The City reserves the right to engage other contractors (each, an “**Other Contractor**”) and to use its own forces to perform work at the Site during the time for the performance of the Work. With respect to any work performed, or to be performed, at the Site by Other Contractors or the City’s own forces:

- (a) the Contractor will coordinate the Work with the work of all Other Contractors and the City’s own forces, and perform the Work to connect to such other work as specified or shown in the Contract Documents. If such coordination and connection directly causes the Contractor to incur costs or delays (or both) that could not have been reasonably anticipated by the Contractor as of the Effective Date, then the Contractor will be entitled to claim a Change pursuant to the provisions of GC. 7.4, except that the Contractor’s notice obligation under GC. 7.4(a)(i) will be to give written notice of such claim to the Consultant promptly upon the Contractor becoming aware of such circumstances, or, in any event, promptly after the date when the Contractor should reasonably have become aware of such circumstances; and
- (b) if the Contractor discovers any deficiencies in the work of an Other Contractor or the City’s own forces that may affect the Work, then the Contractor will immediately, and before proceeding with the affected Work, report such deficiencies to the Consultant and then confirm such report in writing if the initial report was not in writing.

4.9 Temporary Structures

The Contractor will have the sole responsibility for the design, erection, operation, use, maintenance and removal of temporary supports, structures, facilities, services and other temporary items required by the Contractor for the performance of the Work. The Contractor will, as part of the Work, engage and pay for registered Professional Engineers skilled and knowledgeable in the appropriate disciplines to provide professional engineering services with respect to such temporary supports, structures, facilities, services and other temporary items where required by Law or by the Contract Documents and, in any event, in all cases where such temporary supports, structures, facilities, services and other temporary items are of such a nature, including with respect to their method of construction, that safety or Good Industry Practice requires the skill and knowledge of a registered and qualified Professional Engineer.

4.10 Errors in the Contract Documents

The Contractor will review the Contract Documents and promptly report to the Consultant any discovered error, inconsistency or omission. If the Contractor discovers any error, inconsistency or omission in the Contract Documents, then the Contractor will not proceed with Work affected by such error, inconsistency or omission without first receiving directions or clarifications from the Consultant or the City’s Representative. If the Contractor proceeds with such affected Work after becoming aware of an error, inconsistency or omission, or, in any event, after the time when a qualified and experienced contractor should reasonably have become aware of the error, inconsistency or omission, without first receiving directions or clarifications from the Consultant or the City’s Representative, then the Contractor will, at the Contractor’s sole cost and expense, remove, replace or make good any Work which fails to meet the requirements of the Contract Documents. Subject to the above provisions of this GC. 4.10, in conducting such review, the Contractor will not be responsible or liable to the City to discover all or any errors, inconsistencies or omissions.

4.11 Quality Assurance and Quality Control Plan

The Contractor will:

- (a) as soon as practicable after the Effective Date, develop and implement an effective quality assurance and quality control plan satisfactory to the Consultant, acting reasonably, covering all aspects of the Work, including, as applicable, design, engineering, fabrication, construction, supply, labour, supervision, tools, materials, equipment and construction machinery; and
- (b) comply with the accepted quality assurance and quality control plan,

provided that compliance with the quality assurance and quality control plan will not relieve the Contractor of any of his duties, obligations or responsibilities under the Contract.

4.12 Work Schedule

The Contractor will:

- (a) within seven days of the Effective Date, or by such later date as the Consultant may agree to in writing, prepare and submit to the Consultant a revised and expanded work schedule (the “**Work Schedule**”) satisfactory to the Consultant, acting reasonably, that is based on the attached Appendix D – Work Schedule and complies with Section 1.3 of the Agreement, with the milestone dates, if any, as set out in the Contract Documents, and that includes:
 - (i) the planned order and duration of the major activities of the Work; and
 - (ii) resource (manpower and equipment) loading that will be utilized by the Contractor for the performance of the Work.

The Work Schedule will contain sufficient detail to permit the Consultant to be able to understand and monitor the progress of the Work;

- (b) update the Work Schedule to the satisfaction of the Consultant, acting reasonably, on no less than a monthly basis so as to incorporate any time adjustments as permitted under the Contract Documents; and
- (c) perform the Work in compliance with the then current Work Schedule, as may be updated under GC. 4.12(b). If, for any reason, the performance of the Work falls behind the schedule for the Work set out in the then current Work Schedule, then:
 - (i) if, in accordance with the Contract Documents, the delay entitles the Contractor to an extension of the time for the performance of the Work, then the Contractor will, as part of the Work, include such extension in the next update to the Work Schedule as provided under GC. 4.12(b); or
 - (ii) if, in accordance with the Contract Documents, the delay does not entitle the Contractor to an extension of the time for the performance of the Work, then the Contractor will, as part of the Work, take all such steps as are required to bring the Work back into conformity with the then current Work Schedule.

Failure to comply with the requirements of this GC. 4.12 will be deemed to be a default under the Contract to which the provisions of GC. 10.1 will apply.

4.13 Supervision

The Contractor will provide all necessary supervision on the Site and appoint a competent representative(s) who will be in attendance on the Site while Work is being performed. Such representative(s) may be the same as the Contractor's Representative.

4.14 Subcontractors

The following will apply with respect to all subcontractors, sub-consultants, suppliers and vendors (each, a "**Subcontractor**" and the term "Subcontractor" will be deemed to include all further subcontractors, sub-consultants, suppliers and vendors engaged below a Subcontractor) engaged to perform a portion of the Work:

- (a) the Contractor will not directly or indirectly engage or permit the engagement of a Subcontractor if and to the extent the Contract Documents expressly prohibit such subcontracting;
- (b) if and to the extent the Contract Documents identify a specific Subcontractor for the performance of a portion of the Work, then the Contractor will not change any such specified Subcontractor without the prior written approval of the Consultant;
- (c) subject to GC. 4.14(a) and GC. 4.14(b), the Contractor will be free to engage Subcontractors for the performance of the Work without approval by the City;
- (d) the Contractor will be fully responsible for the acts, omissions, errors and defaults of a Subcontractor, its employees or other Persons engaged by or through that Subcontractor as if such acts, omissions, errors and defaults were those of the Contractor, and neither the engagement of a Subcontractor by the Contractor nor the approval by the City of a Subcontractor will in any way reduce or amend or otherwise alter the Contractor's responsibility for the performance of the Work as set out in the Contract Documents;
- (e) notwithstanding any approval given by the Consultant to the engagement of a Subcontractor, if any event occurs or circumstance arises in relation to a Subcontractor that would, if it occurred or arose with respect to the Contractor, entitle the City to terminate the rights of the Contractor pursuant to the Contract, then the Consultant may, by written notice to the Contractor's Representative, require the Contractor to discharge or cause to be discharged the Subcontractor and to cancel and terminate or cause to be cancelled or terminated the applicable contract with the Subcontractor, all without liability to the City;
- (f) the Contractor will require all Subcontractors to perform their work in accordance with the Contract Documents and the Contractor will incorporate or cause to be incorporated all applicable terms and conditions of the Contract into all subcontracts with Subcontractors, including GC. 4.14(e); and

- (g) nothing in the Contract will be construed as creating any contractual relationship between the City and any Subcontractor.

4.15 Skilled Workers

The Contractor will employ or engage, and cause all Subcontractors to employ or engage, a sufficient number of skilled and qualified workers to perform the Work in accordance with the Contract Documents.

4.16 Removal of Persons

The Consultant or the City's Representative may, by written notice to the Contractor's Representative, object to any person engaged by the Contractor or any Subcontractor for the performance of the Work who, as determined by the Consultant or the City's Representative, as the case may be, in its sole discretion, has engaged in misconduct, is incompetent or does not have adequate working knowledge of the safety rules and procedures applicable to the Site. Upon receipt of any such notice, the Contractor will immediately cause such person to be removed from the Site and promptly replaced by a person with suitable qualifications and experience, at no extra cost or expense to the City. Notwithstanding any other provision in this GC. 4.16, the Contractor and the Subcontractors will retain all authority and control over their respective employees, agents and Subcontractors.

4.17 Products and Materials

Except as expressly set out otherwise in the Contract Documents, the Contractor will only provide products and materials that are new. If the Contract Documents do not specify or describe the quality of a product or materials required for the Work, then the product or materials will be of a quality equivalent to the quality of the adjacent or connecting portions of the Work, and suited to their purpose and use, as approved by the Consultant in writing.

4.18 Tests and Inspections

The Consultant and the City's Representative and any of their authorized delegates will have access to the Work at all times, including Work being performed at a location other than the Site, for the purpose of testing and inspecting the Work so as to remain familiar with the progress and quality of all aspects of the Work, and to be able to determine that the Work is proceeding in conformance with the requirements of the Contract Documents. With respect to all such tests and inspections:

- (a) the Contractor will incorporate or cause to be incorporated all such testing and inspection rights in all applicable subcontracts with Subcontractors, and will take all necessary steps to facilitate such testing and inspection, including maintaining easy access to the Site;
- (b) the Consultant and the City's Representative will be entitled at all reasonable times during the performance of the Work to inspect and examine the Work and any equipment and materials used in the performance of the Work;
- (c) without limiting the generality of GC. 4.18(b), the Consultant will conduct, in a timely manner, any testing or inspections of the Work, equipment and materials that the Contract Documents require the Consultant to conduct;

- (d) if testing or inspections of the Work, equipment or materials are required by the Contract Documents to be conducted by the Consultant or are required by Law to be conducted by a Governmental Authority, the Contractor will, in accordance with the then current Work Schedule but, in any event, with no less than five days notice, notify the Consultant and the City's Representative and the applicable Governmental Authority in writing of the date on and the place at which any such testing or inspections can be conducted;
- (e) the Consultant and the City's Representative will be entitled to observe all quality tests and inspections, results and data pertaining to the Work, including factory or other tests performed at a location other than the Site, and the Contractor will give written notice to the Consultant and the City's Representative of such tests and inspections, results and data in accordance with GC. 4.18(d);
- (f) the Contractor will submit to the Consultant and the City's Representative copies of all certificates and inspection reports (all in a format agreed by the Consultant in writing) relating to the Work;
- (g) the Consultant has the authority to reject any Work that does not conform to the requirements of the Contract Documents, and the Contractor will, at its sole cost and expense, correct such non-compliant Work, subject to the Contractor's rights to dispute under GC. 13;
- (h) the Consultant has the authority to stop Work where such Work is not being performed in accordance with the Contract Documents, or where there is a threat, whether or not imminent, to the safety of anyone or anything at the affected area or to the environment;
- (i) the Consultant's authority to order testing, inspect, reject, or otherwise review the Work will be for the benefit of the City, and such authority will not give rise to any duty or responsibility on the Consultant, the City's Representative or the City to the Contractor, Subcontractors, or their agents, employees or other Persons performing any of the Work, to order testing, inspect, reject, or otherwise review the Work;
- (j) the Contractor will pay for the cost of making any test or inspection, including the cost of samples, if the test or inspection is designated in the Contract Documents to be performed by the Contractor or is required by Law; and
- (k) if the Contractor covers or permits to be covered Work that has been designated in the Contract Documents or by Law for tests, inspections or approvals, before such tests, inspections or approvals are made, given or completed, then the Consultant may direct the Contractor to uncover such Work, as required, so that such tests, inspections or approvals may be completed or given to the satisfaction of the Consultant, acting reasonably. The Contractor will uncover and make good such Work and any other removed or damaged property at the Contractor's sole cost and expense.

The Contractor will perform or cause to be performed all tests and inspections as are called for or required under the Contract Documents, including any tests and inspections required by Law, for the performance of the Work. The tests and inspections required by the Contract Documents or by Law are for the City's benefit and acceptable test and inspection results will not relieve the Contractor of its

obligations under the Contract to perform the Work in accordance with the requirements of the Contract Documents and to correct defects or deficiencies in the Work.

4.19 Submittals

If the Contractor is required under the Contract Documents to submit drawings or other documents (each, a “**Submittal**”) to the Consultant, then:

- (a) the Contractor will prepare and submit a schedule (the “**Submittal Schedule**”) satisfactory to the Consultant, acting reasonably, setting out and describing:
 - (i) all submissions, drawings or other information that the Contractor is required under the Contract Documents to submit to the City, including:
 - (A) the subject matter and scope of information to be addressed in each Submittal;
 - (B) the background information, including information that may be proprietary to the Contractor or a Subcontractor, required in order for the Consultant to understand and review the Submittal; and
 - (C) the form of each Submittal (such as a drawing or specification); and
 - (ii) the order and scheduling requirements of each Submittal in relation to the then current Work Schedule, including reasonable times for review and comment on a Submittal by the Consultant, such review times to be no less than 15 working days after the Consultant receives a Submittal, or shorter time as agreed by the Consultant in writing;
- (b) either party’s Representative may from time to time recommend to the other party’s Representative that adjustments are required to update the Submittal Schedule so that it is consistent with the then current Work Schedule, and the Representatives will cooperate to reach agreement on such adjustments. Upon such agreement, the Contractor will provide an updated Submittal Schedule;
- (c) the Consultant will review a Submittal within the times described in the Submittal Schedule, or such other period of time (longer or shorter) as reasonably required in the circumstances, and return the Submittal to the Contractor stamped with one of the following notations:
 - (i) "Reviewed" – which will be deemed to mean that the Consultant did not observe any aspect or element of the Submittal that did not comply with the Contract Documents; or
 - (ii) “Make Corrections as Noted and Re-Submit” – which will be deemed to mean that, subject to the amendments or corrections as noted in writing by the Consultant, the Submittal is Reviewed, as defined in GC. 4.19(c)(i).

If a Submittal is noted as “Make Corrections as Noted and Re-Submit”, then the Consultant will provide written justification for such notation;

- (d) if a Submittal is returned to the Contractor with the notation “Make Corrections as Noted and Re-Submit”, then, subject to the Contractor’s rights under GC. 13, the Contractor will promptly

revise such Submittal, taking into account the comments provided by the Consultant, and resubmit the revised Submittal to the Consultant for further review;

- (e) any revised Submittal submitted to the Consultant pursuant to GC. 4.19(d) will be reviewed by the Consultant in accordance with GC. 4.19 within a further period of time equal to the original time the Consultant had for review and comment of the initial Submittal;
- (f) if the Consultant, for any reason, fails to return a Submittal to the Contractor within the times described in GC. 4.19(c) and GC. 4.19(e), as applicable, then such Submittal will be deemed to have been given the notation “Reviewed”; and
- (g) except as expressly set out otherwise in the Contract Documents, the Consultant’s authority to review a Submittal will be for the benefit of the City, and such authority will not give rise to any duty or responsibility on the Consultant, the City’s Representative or the City to the Contractor, Subcontractors, or their agents, employees or other Persons performing any of the Work, to review the Work, and no such review, or authority to perform such review, will relieve the Contractor of its obligations under the Contract to perform the Work in accordance with the requirement of the Contract Documents and to correct any defects or deficiencies in the Work.

4.20 Shop Drawings

The Contractor will arrange for the preparation of all required shop drawings (including assembly and installation drawings or diagrams) and submission of them to the Consultant, and the following will apply to shop drawings:

- (a) unless expressly required otherwise by the Contract Documents, the drawings provided to the Contractor by the City for construction will be sufficiently complete to permit the Contractor to proceed with the Work, and to prepare shop drawings to show details such as fabrication methods, connections or other details that are not customarily included in construction drawings provided by an owner for work similar to the Work;
- (b) the Consultant may require that a shop drawing be stamped by a registered and qualified Professional Engineer with appropriate skill, qualification and knowledge indicating that the shop drawing has been prepared in compliance with Laws, Permits, applicable design standards and good engineering practice; and
- (c) the Contractor will make any changes to such drawings or diagrams which the Consultant may require so that the shop drawings meet the requirements of the Contract Documents, and the Contractor will submit to the Consultant the number of copies of the revised prints required by the Consultant for the Consultant’s review. After review, one copy will be returned to the Contractor in accordance with the review schedule as agreed between the Consultant and the Contractor. Any review by the Consultant is for the City’s benefit and will not relieve the Contractor of its obligations under the Contract to prepare the shop drawings in accordance with the requirements of the Contract Documents.

4.21 Record Drawings

During the course of the Work, the Contractor will prepare a complete set of “record” drawings of the execution of the Work, on the construction drawings and other construction documents satisfactory to the Consultant, acting reasonably, showing the actual as-built locations, sizes and details of the Work as performed. Except as expressly set out otherwise in the Contract Documents, the Contractor will update such record drawings no less than monthly, except that in any event the Contractor will be responsible to accurately and completely record all as-built details of the Work performed by the Contractor. The Contractor will keep an up-to-date copy of the record drawings at the Site and available for review upon the request of the Consultant during the performance of the Work. As part of the Work, the Contractor will deliver to the Consultant two copies of a complete set of record drawings current as of the date of Substantial Completion. Failure to provide such record drawings with the application for Substantial Completion will be deemed a deficiency.

4.22 Tidy Site

The Contractor will maintain the Site in a tidy condition, free from the accumulation of waste products and debris generated by the performance of the Work.

4.23 Staging

The Contractor will, as part of the Work, be responsible for all staging areas required for the performance of the Work. No staging areas will be supplied or provided by the City.

GC. 5 DESIGN-BUILD WORK

5.1 Design Process for Design-Build Work

The Contractor will, at its cost, as part of the Work, undertake the design of the portions of the Project, if any, as specifically described in Appendix B – Scope of Work that the Contractor will undertake on a design-build basis (the “**Design-Build Work**”). The Contractor will perform such design as follows:

- (a) complete the design and submit the design drawings with supporting documentation to the City and the Consultant in progressive phases that will provide to the City the level of detail and documentation that an owner would customarily receive for a project similar to the Project in accordance with Good Industry Practice, with each design phase capturing the information and detail approved in a previous phase;
- (b) submit the design drawings and documents as Submittals under GC. 4.19 at each of the 50%, 90%, 100% and “Issued for Construction” drawing stages, and, within 14 days of the Effective Date, submit to the Consultant a schedule satisfactory to the Consultant, acting reasonably, detailing the dates on which such Submittals will be submitted to the Consultant for review, which will be consistent with the Work Schedule;
- (c) in each design document Submittal specifically identify any design elements that deviate from or vary the requirements of the Contract Documents; and

- (d) proceed to the next design phase only after the Consultant has stamped the Submittals with an “Reviewed” notation for a completed phase.

5.2 Review by Registered Professional Engineer

The Contractor will:

- (a) cause all portions and aspects of the design for the Design-Build Work to be prepared under the direction of, and to be sealed by a registered and qualified Professional Engineer;
- (b) cause a Professional Engineer to confirm to the City, under his or her professional seal, that in the opinion of the Professional Engineer:
 - (i) the drawings and specifications implement and otherwise conform to the requirements of Appendix B – Scope of Work, Appendix E – Specifications, Appendix F – Drawing and Appendix G – Scope of Work of Design Optimizations;
 - (ii) the drawings and specifications have been prepared in accordance with, and substantially comply with Laws and Permits; and
 - (iii) the Design-Build Work has been completed in accordance with the approved drawings and specifications; and
- (c) provide the City with all letters of professional assurance as required pursuant to Laws.

5.3 Life-Cycle and Maintenance Considerations

In addition to all other requirements of the Contract Documents, the Contractor will undertake and perform the design of the Design-Build Work so that the design includes consideration of efficient and cost-effective operation and maintenance of the Project, in accordance with Good Industry Practice.

5.4 Document Control and Coordination

The Contractor will ensure that all documentation submitted to the City as part of the design process for the Design-Build Work:

- (a) is identified in a “table of contents” or other general summary of all the documents the Contractor intends to prepare for the design of the Design-Build Work so as to provide context and reference for the submitted documentation;
- (b) is dated;
- (c) is recorded on a schedule describing the changes to related drawings and documents as compared to previous submittals;
- (d) if a drawing, is assigned a drawing number (and a revision number if it is a revised drawing);
- (e) includes an explanation of how any design changes comply with the terms of the Contract; and

- (f) is provided in a format and number of copies reasonably acceptable to the City.

5.5 Record Drawings for Design-Build Work

The Contractor's obligations under GC. 4.21 will apply with respect to drawings for Design-Build Work.

GC. 6 THE CONTRACT PRICE AND PAYMENT

6.1 Breakdown of Contract Price

The Contractor will submit to the Consultant, at least 14 days before the first application for payment, a schedule of values of the various parts of the Work aggregating the total amount of the Contract Price and reasonably dividing it so as to facilitate:

- (a) evaluation of applications for payment during the performance of the Work; and
- (b) the City's compliance with its third party funding agreements.

The schedule of values will be prepared in such form and supported by such evidence as to its correctness as the Consultant may reasonably direct, and, when approved by the Consultant, will be used as the basis for all applications from the Contractor for payment.

6.2 Application for Payment

To apply for payment, the Contractor will submit a statement to the Consultant, in a form substantially similar to the form provided by the Consultant, within five days after the end of a calendar month for the period ending the last calendar day of the month. The payment application must include, in respect of the calendar month that is the subject of the application, the following information and documents:

- (a) the Contract Price;
- (b) additions to or deductions from the Contract Price;
- (c) the total value of Work completed and the materials and products incorporated into the Work;
- (d) for Work performed on a unit price basis, the total quantity for each pay item;
- (e) for Work performed on a lump sum basis, the value of the Work completed expressed as a percent complete for each pay item;
- (f) for Work performed on a cost-plus basis, the value of the Work completed as substantiated by invoices, payrolls and other relevant records to the satisfaction of the Consultant, plus the applicable percentage or fixed fee;
- (g) the balance of the Contract Price available to complete the Work;
- (h) the amount of holdback deduction calculated based on the provisions of the *Builders Lien Act* (British Columbia);

- (i) the amount of any holdback, other than pursuant to the *Builders Lien Act* (British Columbia), made by the City up to the date of the payment application;
- (j) the amount applied for in the application; and
- (k) the updated Work Schedule prepared in accordance with GC. 4.12(b).

6.3 Materials on Site

Unless otherwise specifically agreed in writing by the Consultant, the Contractor will not be entitled to apply for payment for material delivered to the Site but not yet incorporated into the Work.

6.4 Application for Payment Not a Waiver

The Contractor's application for payment under GC. 6.2 will be without prejudice to the Contractor's rights to dispute under GC. 13.

6.5 Payment

The City will pay the Contractor the amount of each invoice prepared and submitted in accordance with GC. 6.2, less any holdbacks, by the later of:

- (a) 25 days after receipt of the invoice; or
- (b) the last day of the current month.

6.6 Payment Not a Waiver

No payment made to the Contractor by the City will at any time constitute approval or acceptance of any Work under the Contract, nor be considered a waiver by the City of any of the terms of the Contract, nor relieve the Contractor of the Contractor's obligations under the Contract.

6.7 Builders Liens

With respect to builders liens, the following applies:

- (a) The City will retain a holdback of 10% under the *Builders Lien Act* (British Columbia).
- (b) The Contractor will, at its sole risk and expense, do everything necessary, including through the institution, prosecution or defence of legal proceedings, to promptly discharge from title to the Site any claim of lien, certificate of pending litigation or lien.
- (c) If, at any time, the City becomes aware that a claim of lien, certificate of pending litigation or lien is threatened or has been registered against title to the Site, the City may, in its sole discretion, withhold out of any monies payable to the Contractor, a holdback (in addition to the holdback described in GC. 6.7(a)) in the amount set out in or associated with the applicable filing plus an additional reasonable amount as security for related costs. The City may, on five days written notice to the Contractor, make application to court pursuant to the provisions of the *Builders Lien Act* (British Columbia) to obtain a court order whereby any holdback monies or

other security such as a lien bond or letter of credit can be paid into or deposited with the court and the claim of lien, certificate of pending litigation or lien be discharged. The Contractor will reimburse the City for any legal and other costs actually incurred by the Owner relating to such application to court immediately upon receipt of an invoice from the Owner of such costs. If the Contractor fails to so reimburse the Owner, the Owner may, on five days written notice to the Contractor, withhold and set-off such amounts from any payment then or thereafter due to the Contractor. If the claim of lien, certificate of pending litigation or lien is discharged without payment of any holdback into court, then the City will pay such holdback to the Contractor, without interest.

6.8 Right of Set-off

The City may set-off, as against any amounts due to the Contractor, any amount owing from the Contractor to the City, including liquidated damages and other amounts as payable under the Contract Documents.

6.9 Application for Substantial Completion

When the Contractor judges that the Work is sufficiently complete, the Contractor may apply to the Consultant for a certificate of Substantial Completion. The application will be in writing and will include the following:

- (a) a comprehensive list of all items of Work to be completed or corrected, including an estimated cost to complete or correct each item, and a schedule for completion and correction of all such items through to Total Completion, prepared in consultation with the Consultant;
- (b) all manufacturer's inspections, certifications, guarantees and warranties specified in the Contract Documents or otherwise applicable to the Work;
- (c) evidence that all required Permits and approvals from testing or inspection agencies, if any, have been obtained;
- (d) evidence from the Workers' Compensation Board of British Columbia that the Contractor is in good standing; and
- (e) a statement as to the status of amounts owing to first tier Subcontractors and as to any unresolved claims made by Subcontractors against the Contractor or another Subcontractor.

6.10 Substantial Completion

The Consultant will, no later than 14 days after the receipt of an application under GC. 6.9, inspect the Work to verify the validity and accuracy of the application. The Consultant will, no later than a further seven days after the inspection, notify the Contractor in writing of approval, or the reasons for refusal, of the application. If the application is refused, then the Contractor will continue with the performance of the Work and may re-apply for a certificate of Substantial Completion pursuant to GC. 6.9. The provisions of this GC. 6.10 will apply to any such subsequent application.

When the Consultant, acting reasonably, determines that the requirements for Substantial Completion have been achieved (other than the issuance of the certificate of Substantial Completion), the Consultant will issue a certificate of Substantial Completion that includes the date of Substantial Completion. Concurrently with the issuance of such certificate, the Consultant will prepare a written list of items of the Work to be completed or corrected that were apparent to the Consultant in the inspection of the Work. The issuance of such list will not relieve the Contractor of its obligation to complete the Work and correct all defects and deficiencies in the Work, all in accordance with the Contract Documents.

6.11 Deficiencies Holdback

The City may retain, out of the amount due and owing to the Contractor upon Substantial Completion, an amount equal to two times the value of the estimated cost to complete or correct the items set out in the list provided pursuant to GC. 6.10. If the total amount due and owing to the Contractor upon Substantial Completion is less than two times the value of the estimated cost to complete or correct the items set out in the list provided pursuant to GC. 6.10, then such difference will be immediately due and owing by the Contractor to the City upon receipt of an invoice from the City for such difference.

6.12 Application for Total Completion

When the Contractor judges that all deficiencies in the Work have been corrected and that the Work is fully complete, the Contractor may apply to the Consultant for a certificate of Total Completion. The application will be in writing and will include the following:

- (a) evidence that all deficiencies have been corrected and approved by the Consultant;
- (b) evidence from the Workers' Compensation Board of British Columbia that the Contractor is in good standing;
- (c) evidence acceptable to the City that title to the Site is free from all claims of builders lien, builders liens and certificates of pending litigation; and
- (d) a statement as to the status of amounts owing to first tier Subcontractors and as to any unresolved claims made by first tier Subcontractors against the Contractor or another Subcontractor.

6.13 Total Completion

The Consultant will, upon receipt of an application under GC. 6.12, inspect the Work to verify the validity of the application and, when all Work is complete in accordance with the requirements of the Contract Documents ("**Total Completion**"), issue such certificate.

6.14 Limitation of Certificates

None of the Consultant, the City's Representative or the City, by issuing any certificate, including a certificate of Substantial Completion or Total Completion, guarantees, or otherwise becomes liable or responsible in any way for, the completeness or correctness of the Work, and no certificate will make

the Consultant, the City's Representative or the City in any way responsible or liable for the performance of the Work.

6.15 Waiver of Claims

As of the dates of the Contractor's application for Substantial Completion and Total Completion, the Contractor expressly waives and releases the Indemnified Parties from any and all Claims against the Indemnified Parties, or any one of them, with respect to the Work or with respect to the Contract, including those that may arise from the negligence of or breach of the Contract by an Indemnified Party, or any other representative of the City, except for Claims set out in writing and delivered to the Consultant prior to the delivery by the Contractor of the applicable application and still unsettled.

GC. 7 CHANGES

7.1 Changes

The City may, without invalidating the Contract, make changes to the Work by altering, adding to, or deducting from the Work (a "**Change**"), with adjustments, if any, to the Contract Price or the time for the performance of the Work or both as set out in this GC. 7. When the adjustments, if any, to the Contract Price or the time for the performance of the Work or both are agreed by the City and the Contractor, the Consultant will issue a written approval (a "**Change Order**") setting out:

- (a) a description of the Work covered by the Change;
- (b) the price or method of valuation for such Work;
- (c) the total adjustment, if any, to the Contract Price (excluding only GST/HST) on account of the Change and, for certainty, will be deemed to include all claims for compensation on account of all related costs, including all direct, indirect or "impact", overhead, and all other costs, and all mark ups and profits, even if the Change Order does not specifically mention such items; and
- (d) the net effect on the time for the performance of the Work on account of the Change and, for certainty, will be deemed to include all effects on the time for the performance of the Work, and if there is no mention in the Change Order of an adjustment to the time for the performance of the Work, then the Change Order will be interpreted to mean that the Contractor will complete the Work covered by the Change Order without any adjustment to the time for the performance of the Work.

The City's Representative and the Contractor's Representative will sign the Change Order to confirm agreement and, upon receipt of a signed Change Order, the Contractor will proceed with the Change without delay.

7.2 Change Directive

If the City determines that the Contractor is to proceed with a Change prior to the issuance of a Change Order, then the City's Representative may, without invalidating the Contract, sign and issue a written order (a "**Change Directive**") instructing the Contractor to proceed with a defined Change. Notwithstanding that the parties have not reached agreement on any adjustment to the Contract Price

or the time for the performance of the Work or both, upon receipt of a Change Directive, the Contractor will proceed with the Change without delay, without prejudice to the Contractor's right to claim such adjustments. Any disputes relating to such adjustments will be resolved in accordance with GC. 13, having regard to the provisions of GC. 7.

7.3 Contemplated Change

The City, through the Consultant may, at any time, give the Contractor's Representative a written request to provide price and schedule information (collectively, a "**Quotation**") relating to a potential Change being considered by the City (a "**Contemplated Change**"), and the following will apply:

- (a) Within seven days of a written request for a Quotation (or such longer time as is reasonable in the circumstances), the Contractor will, as part of the Work, prepare and deliver a written Quotation for a Contemplated Change to the Consultant.
- (b) Any Quotation submitted by the Contractor's Representative for a Contemplated Change will, except as expressly set out otherwise in the Quotation, be interpreted to represent the proposed total adjustment to the Contract Price (excluding only GST/HST) and the net effect on the time for the performance of the Work on account of such Contemplated Change, and, for certainty, will be deemed to include:
 - (i) all claims for compensation on account of all related costs, including all direct, indirect or "impact", overhead, and all other costs, and all mark ups and profits, even if the Quotation does not specifically mention such items; and
 - (ii) all effects on the time for the performance of the Work, and if there is no mention in the Quotation of a required adjustment to the time for the performance of the Work, then the Quotation will be interpreted to mean that the Contractor will complete the Work covered by the Quotation without any adjustment to the time for the performance of the Work.

If the City, through the Consultant, accepts the Quotation in response to a Contemplated Change, then the Quotation will be recorded in a Change Order, signed by the parties and issued pursuant to GC. 7.1.

- (c) If the Contractor requires third party consultants or contractors to prepare a Quotation, and if the Contractor wishes to be reimbursed for the costs of such third parties pursuant to GC. 7.3(d), then the Contractor will only be entitled to make a claim for such costs if the Contractor obtains the Consultant's prior written approval to retain such third parties.
- (d) If, following receipt of a Quotation:
 - (i) the City elects to proceed with the Contemplated Change, then all costs incurred by the Contractor to prepare the Quotation will be paid by the Contractor, and the Change Order issued with respect to the Contemplated Change will be deemed to be the entire compensation payable by the City for such Change; or
 - (ii) the City, for any reason, elects not to proceed with a Contemplated Change, then:

- (A) if the Contractor retained third parties pursuant to GC. 7.3(c), then the City will pay the Contractor for the reasonable and substantiated direct costs paid to all such third parties who were approved in advance by the Consultant; and
- (B) the Contractor will bear all other costs incurred by the Contractor to prepare the Quotation.

7.4 Claim for a Change

The following applies where the Contractor wishes to claim that a Change has occurred:

- (a) if the Contractor receives a direction, instruction or decision from the Consultant or the City's Representative for which a Change Order or Change Directive was not given, then the Contractor may only claim an adjustment to the Contract Price or the time for the performance of the Work or both as follows:
 - (i) prior to proceeding with such direction, instruction or decision, the Contractor will give written notice to the Consultant of its intention to make such a claim with sufficient detail to permit the Consultant to be able to understand the basis for the claim as well as the anticipated impact on the Contract Price, if any, and the time for the performance of the Work, if any; and
 - (ii) the Contractor will maintain daily records of the resources used in connection with the claimed Change, including labour, equipment and materials prepared contemporaneously with the performance of the affected Work, and submit such records to the Consultant on a rolling two business day basis;
- (b) upon receipt of a notice under GC. 7.4(a)(i) from the Contractor, the Consultant will promptly investigate the conditions giving rise to the claimed Change;
- (c) in no event will the Contractor be entitled to, nor will the Contractor make any claim for, an adjustment to the Contract Price or the time for the performance of the Work on account of any circumstance, condition or event that entitles the Contractor to make a claim under GC. 7.4:
 - (i) that occurs more than seven days prior to the notice delivered by the Contractor to the Consultant as provided by GC. 7.4(a)(i); or
 - (ii) notwithstanding GC. 7.4(c)(i), to the extent the City is materially prejudiced by any delay in the Contractor complying with its obligations under GC. 7.4(a)(i); and
- (d) in no event will the Contractor be entitled to, nor will the Contractor make any claim for, an adjustment to the Contract Price on account of any circumstance, condition or event that entitles the Contractor to make a claim under GC. 7.4 for which the Contractor has not kept, nor made available to the Consultant, the records as required under GC. 7.4(a)(ii).

If the Consultant refuses the Contractor's request for a Change Order or Change Directive, then such refusal will be subject to dispute under GC. 13.

7.5 Valuation of a Change

The adjustment to the Contract Price on account of any Change will be determined by one or more of the following methods:

- (a) as set out in a Quotation and accepted by the Consultant pursuant to GC. 7.3;
- (b) by a lump sum as agreed by the parties;
- (c) by applicable unit prices, if any; or
- (d) by cost-plus, being the Contractor's reasonable and substantiated direct costs arising from the performance of the Change plus agreed mark-ups, as follows:
 - (i) labour at the actual cost to the Contractor, including all amounts paid for labour and all related taxes, assessments payable as required by any statutory scheme such as workers compensation, employment insurance, holiday pay, insurance, and all employee benefits. A mark-up of 3% on the foregoing will be allowed for all small tools. A mark-up of 10% on the total of the foregoing will be allowed for overhead. A further mark-up of 10% on the total of the foregoing including the mark-up for overhead will be allowed for profit;
 - (ii) equipment (other than small tools) will be paid at market rates, inclusive of overhead and profit;
 - (iii) materials incorporated into the Work, or required for the performance of the Work and not re-usable, will be at the Contractor's actual cost, as evidenced by invoice, including all transportation, freight and haulage costs plus a mark-up of 10% on such actual cost (to cover all overhead, handling, and profit); and
 - (iv) Work performed by a Subcontractor will be paid for in the lesser of:
 - (A) the amount as provided by subparagraphs 7.5(d)(i), 7.5(d)(ii), and 7.5(d)(iii), plus a mark-up of 5% on such amount (to cover all overhead and profit); or
 - (B) the actual amount the Contractor pays the Subcontractor including a mark-up of 10% on such actual cost (to cover all overhead and profit).

7.6 Net Valuation of Cost of a Change

In determining any adjustment to the Contract Price resulting from a Change, such adjustment will be determined on the basis of the Contractor's reasonable and substantiated direct costs and savings attributable to the Change. If the Change results in a net increase in the Contractor's reasonable and substantiated direct costs, then the Contract Price will be increased by an amount equal to the net increase in such costs. If the Change results in a net decrease in the Contractor's reasonable and substantiated direct costs, then the Contract Price will be decreased by an amount equal to the net decrease in such costs. For certainty, a Change Order issued pursuant to GC. 7.1 will be deemed to be a net adjustment as required by this GC. 7.6.

7.7 Adjustments to Time for the Performance of Work

Subject always to the Contractor's duties under GC. 25.3, the time for the performance of the Work will be adjusted on account of a Change by the net amount of time reasonably required by the Contractor to accommodate and perform the Change, taking account of any impacts that require more time, and any impacts, including deletions of Work, that result in time savings, as follows:

- (a) as set out in a Quotation and accepted by the Consultant pursuant to GC. 7.3;
- (b) as otherwise agreed in writing by the parties; or
- (c) in the absence of an agreement, in accordance with GC. 13.

7.8 No Change Without Written Order

Subject to GC. 7.4 and except as expressly set out otherwise in the Contract Documents, the Contractor will not proceed with any Change prior to the receipt of a written Change Order or Change Directive. No claim for an adjustment to the Contract Price or the time for the performance of the Work may be made without such written order. The Contractor will not be entitled to, nor will the Contractor rely on any oral representation (except in an emergency), Site meeting discussion or minutes, or other communication as approval for a Change.

7.9 Emergency

Notwithstanding any other provision in the Contract, the Consultant or the City's Representative may, in the event of an emergency, issue oral orders to the Contractor for any Change required by reason of an emergency, and the Consultant will confirm such orders in the form of a Change Order or Change Directive as soon as practicable. The Contractor will proceed with such Change without delay, without prejudice to the Contractor's right to claim an adjustment to the Contract Price or the time for the performance of the Work or both.

GC. 8 DELAYS AND ACCELERATION

8.1 Delay by the City

If the Contractor is delayed in the performance of the Work by an act or omission of the Consultant, the City's Representative, the City, or a Person for whom the City is in law responsible (other than the Contractor and those engaged by or through the Contractor, including Subcontractors), contrary to the provisions of the Contract Documents, then, on written notice as required by GC. 8.6 and subject to the Contractor's duties to mitigate under GC. 25.3, the Contractor will be entitled to:

- (a) an extension of the time for the performance of the Work equal to the impact of such delay; and
- (b) reimbursement from the City for directly related out of pocket additional costs reasonably and necessarily incurred by the Contractor as a result of such delay. No payment will be owed by the City to the Contractor for Consequential Damages.

8.2 Delay by Contractor

If the Contractor is delayed in the performance of the Work by its own acts or omissions, or by a Person for whom the Contractor is in law responsible, then the Contractor will not be entitled to, nor will the Contractor make any claim for, an adjustment to the Contract Price or the time for the performance of the Work, in either case, on account of such delay.

8.3 Labour Disputes

Any work stoppage, strike, lock-out, picket or other labour dispute by any personnel engaged by the City will be deemed to be a delay under GC. 8.1. Any work stoppage, strike, lock-out, picket or other labour dispute by any personnel engaged by the Contractor or any Subcontractor (including any financial and jurisdictional disputes involving unionized and non-unionized workers) will be deemed to be a delay under GC. 8.2.

8.4 Force Majeure

If either the Contractor or the City is delayed in the performance of any of their obligations under the Contract as a result of an event of Force Majeure, then the party claiming the delay will be excused from performance of such obligations, provided that party gives written notice in accordance with GC. 8.6, and mitigates the effect of the delay in accordance with GC. 25.3, as applicable. The party delayed by an event of Force Majeure will be entitled to an extension of the time for the performance of the affected obligations equal to the impact of the delay caused by the event of Force Majeure, but will not be entitled to, nor will such party make any claim for, reimbursement or the payment of any costs suffered by that party as a result of the event of Force Majeure.

8.5 Concurrent Delay

With respect to concurrent delays:

- (a) if two or more events occur concurrently that each entitle the Contractor to an extension of the time for the performance of the Work under the Contract Documents, then for the period of any concurrency the Contractor will be entitled to claim an extension with respect to only one of the concurrent events;
- (b) if an event as described in GC. 8.1 occurs concurrently with an event as described in GC. 8.4, then during the period of any concurrency the Contractor will be entitled to claim an extension with respect only to the event described in GC. 8.4;
- (c) if an event as described in GC. 8.1 occurs concurrently with an event as described in GC. 8.2, then during the period of any concurrency the Contractor will not be entitled to claim, nor will the Contractor make any claim for, an extension with respect to the event described in GC. 8.1; and
- (d) if an event as described in GC. 8.4 occurs concurrently with an event as described in GC. 8.2, then during the period of any concurrency the Contractor will not be entitled to claim, nor will the Contractor make any claim for, an extension with respect to the event described in GC. 8.4.

8.6 Notice of Delay

With respect to any event of delay:

- (a) regardless of the cause of a delay, the party claiming delay will give written notice of the delay to the other party's Representative with sufficient detail to permit the other party's Representative to be able to understand the basis for the claim as well as the anticipated impact on the Contract Price, if any, and the time for the performance of the Work, if any. Such notice will be given promptly after the party claiming delay is aware of an impact on the Contract Price or the time for the performance of the Work, or, in any event, promptly after the time when the party claiming delay should reasonably have become aware of the impact on the Contract Price or the time for the performance of the Work, provided, however, that in the case of a continuing cause of delay only one written notice of delay will be necessary;
- (b) if the Contractor gives notice of delay in accordance with GC. 8.6(a), then, as part of the Work, the Contractor will keep and provide to the Consultant records in the same detail and manner as described in GC. 7.4(a)(ii);
- (c) upon receipt of a notice of delay from the Contractor, the Consultant will promptly investigate the conditions giving rise to the claimed delay in order to satisfy himself as to the validity of the claimed delay;
- (d) in no event will the Contractor be entitled to, nor will the Contractor make any claim for, an adjustment to the Contract Price or the time for the performance of the Work on account of any delay or portion of a delay:
 - (i) that occurs more than five days prior to the notice delivered by the Contractor to the Consultant as provided by GC. 8.6(a); or
 - (ii) notwithstanding GC. 8.6(d)(i), to the extent the City is materially prejudiced by any delay in the Contractor complying with its obligations under GC. 8.6(a); and
- (e) in no event will the Contractor be entitled to, nor will the Contractor make any claim for, an adjustment to the Contract Price on account of any delay costs for any delay or portion of a delay for which the Contractor has not kept, nor made available to the Consultant, the records as required under GC. 8.6(b).

8.7 Acceleration to Recover Contractor Delays

If, at any time, the Consultant, acting reasonably, determines that the then current Work Schedule is not being met due to an act, error or omission of the Contractor or any Subcontractor, then the Consultant may deliver written notice to the Contractor directing the Contractor to accelerate the performance of the Work, at the Contractor's sole cost and expense, so as to bring the Work back into conformity with the then current Work Schedule.

8.8 Acceleration for the City's Convenience

The Consultant may, at any time, deliver written notice to the Contractor to accelerate the performance of the Work at the City's convenience and any such acceleration will be a Change under GC. 7.

GC. 9 PERFORMANCE SECURITY

9.1 Performance Security

The Contractor will provide a performance bond and a labour and material bond each in the amount of 50% of the Contract Price issued by a surety company registered to do business in British Columbia, in a form acceptable to the City. If approved by the City, in its sole discretion, then the Contractor may provide a letter of credit in the form and amount satisfactory to the City in substitution for the performance bond or the labour and material bond or both.

9.2 Liquidated Damages

If the Contractor fails to achieve Substantial Completion on or before the date shown on the Work Schedule updated in accordance with the Contract Documents, then the City may, without prejudice to any of its other rights or remedies, deduct from any payment then or thereafter due to the Contractor an amount of \$2,500 for each day that achievement of Substantial Completion is delayed past the date for Substantial Completion described above. The parties acknowledge that such amount is a genuine pre-estimate of the City's increased costs resulting from the delay.

GC. 10 CONTRACTOR DEFAULT

10.1 Failure to Perform

If:

- (a) the Contractor should fail or neglect to perform the Work properly and expeditiously; or
- (b) the Contractor should otherwise fail to comply with the requirements of the Contract to a substantial degree; or
- (c) the aggregate liability of the Contractor to the City exceeds the maximum aggregate liability as set out in GC. 19.1,

then the City's Representative may provide the Contractor with written notice stating the nature of the Contractor's default and instructing the Contractor to correct the default within seven days of receipt of such notice. If the Contractor cannot correct the default in such seven days, then the Contractor will be in compliance with the City's Representative's instructions if the Contractor:

- (d) takes all reasonable steps to begin to correct the default within such seven days;
- (e) provides the City's Representative with a schedule reasonably acceptable to the City's Representative for such correction; and
- (f) completes the correction in accordance with such schedule.

If the Contractor fails to correct the default in the time specified or subsequently agreed in writing, or if, for any reason, the default cannot be corrected (including if the default is as described in GC. 10.1(c) and no new agreement is reached between the parties regarding the Contractor's maximum aggregate liability), then the City may, without prejudice to any of its other rights or remedies:

- (g) correct such default to the extent the City is able to correct the default and set-off from any payment then or thereafter due to the Contractor all additional costs reasonably incurred by the City to correct the default, including the costs of other contractors, any administrative costs, the cost of the City's own forces and resources and the cost of the Consultant;
- (h) deduct any portion of the outstanding Work from the Contract as the City may, in its sole discretion, decide and adjust the Contract Price on account of such deduction and set-off from any payment then or thereafter due to the Contractor all additional costs reasonably incurred by the City to complete the Work, including the costs of other contractors, any administrative costs, the cost of the City's own forces and resources and the cost of the Consultant; or
- (i) terminate the Contract.

10.2 Bankruptcy

The City may, without prejudice to any of its other rights or remedies, terminate the Contract by giving written notice to the Contractor or any other applicable Person, if:

- (a) the Contractor makes an assignment for the benefit of its creditors, is declared bankrupt or commits an act of bankruptcy, becomes insolvent, makes a proposal for relief under the *Bankruptcy and Insolvency Act* (Canada) or similar legislation in any jurisdiction, or becomes involved in any other type of insolvency proceedings being commenced by or against the Contractor under the *Bankruptcy and Insolvency Act* (Canada) or otherwise;
- (b) a receiver, receiver manager or other encumbrance holder takes possession of or is appointed over, or any distress, execution or other process is levied or enforced upon, the whole or any material part of the assets of the Contractor;
- (c) any arrangement or composition with or for the benefit of creditors is entered into by or in relation to the Contractor;
- (d) any proceedings with respect to the Contractor is commenced under the *Companies' Creditors Arrangement Act* (Canada);
- (e) the Contractor ceases to carry on business; or
- (f) a petition is filed (and not being contested in good faith, using all commercially reasonable efforts), or a resolution is passed or an order is made for the winding up, liquidation or dissolution of the Contractor.

10.3 Termination for Cause

If the City terminates the Contract under GC. 10.1 or GC. 10.2, then the City will, while making all commercially reasonable efforts to mitigate costs and delays:

- (a) be entitled to take possession of the equipment and materials located at the Site or elsewhere and intended for incorporation in or use in the performance of the Work, and to utilize such equipment and materials, subject to the rights of third parties, and complete the Work by whatever method the City may consider expedient;
- (b) be entitled to withhold any payments owing to the Contractor;
- (c) upon Total Completion, be entitled to retain from any amounts withheld from the Contractor:
 - (i) the total of any additional costs (the “**Default Costs**”) in excess of the Contract Price the City incurred to achieve Total Completion because of the Contractor’s default, including the costs of other contractors, any administrative costs, the cost of the City’s own forces and resources and the cost of the Consultant; plus
 - (ii) a reasonable allowance to cover the cost to the City of correcting Work that was performed by the Contractor,

and pay the balance, if any, subject to the builders’ lien holdback requirements, to the Contractor. If the total of the Default Costs and the costs to cover corrections during the Warranty Period exceeds the total of the payments the City has withheld, then such excess will be immediately due and owing by the Contractor to the City upon receipt of an invoice from the City for such excess; and

- (d) on expiry of the Warranty Period retain, from any holdback, the cost of any corrections made to the Work during the Warranty Period and pay the balance, if any, to the Contractor. If the total of the costs of such corrections exceeds the holdback, then such excess will be immediately due and owing by the Contractor to the City upon receipt of an invoice from the City for such excess.

If the Contract is terminated for any reason, including pursuant to GC. 12.1, the Contractor’s obligations described in the Contract Documents as to quality, correction and warranty will continue in full force and effect after such termination with respect to the Work performed by the Contractor up to the time of termination.

GC. 11 CITY DEFAULT

11.1 Failure to Perform

If the City fails to:

- (a) pay the Contractor payments when due in accordance with the provisions of the Contract;
- (b) provide the Contractor with adequate directions or instructions so as to prevent the Contractor from performing any of the Work in accordance with the Contract; or
- (c) resume the Contract, in whole or in part, within one year of the effective date of the suspension of the Contract under GC. 12.1,

then the Contractor may provide the City’s Representative with written notice stating the nature of the City’s default and instructing the City to correct the default within 30 days after receipt of such notice. If

the City cannot correct the default in such 30 days, then the City will be in compliance with the Contractor's instructions if the City:

- (d) takes all reasonable steps to begin to correct the default within such 30 days;
- (e) provides the Contractor with a schedule acceptable to the Contractor, acting reasonably, for such correction; and
- (f) completes the correction in accordance with such schedule.

If the City fails to correct the default in the time specified or subsequently agreed in writing, then the Contractor may, without prejudice to any of its other rights or remedies, terminate the Contract.

11.2 Termination for Cause

If the Contractor terminates the Contract under GC. 11.1, then the City will, in full satisfaction of all claims the Contractor may have, pay the Contractor:

- (a) all compensation owed in accordance with the Contract for all Work completed in accordance with the Contract Documents up to the date of the termination;
- (b) all third party cancellation charges, if any, incurred by the Contractor to the date of termination, provided such charges could not have been reasonably avoided or mitigated by the Contractor; and
- (c) the Contractor's reasonable and substantiated direct Site demobilization costs.

For certainty, the Contractor will not be entitled to, nor will the Contractor make a claim for, Consequential Damages.

GC. 12 SUSPENSION OR TERMINATION OF CONTRACT OTHER THAN FOR DEFAULT

12.1 Suspension or Termination for Convenience

The City may, by written notice to the Contractor's Representative, at any time at the City's convenience and in its sole discretion, suspend or terminate the Contract, in whole or in part, stating the extent and effective date of such suspension or termination, and, upon receipt of such written notice, the Contractor will:

- (a) wind down all suspended or terminated Work in a manner such that the City receives the benefit of all completed Work;
- (b) with respect to the terminated portions of the Work, if any, on the written direction of the City's Representative:
 - (i) assign to the City, in the manner and to the extent directed, all of the Contractor's rights under purchase orders and agreements with any first tier Subcontractors as identified by the City; and

- (ii) terminate purchase orders and agreements with first tier Subcontractors, to the extent that they are not assigned to the City;
- (c) take any necessary action, including re-possession, to protect property in the Contractor's possession in which the City has or may acquire an interest;
- (d) continue and complete performance of the continuing portion of the Work, if any, in accordance with the Contract Documents;
- (e) provide suggestions to the City as to the best methods of mitigating any Claims, costs or delays arising from the termination of portions of the Work;
- (f) provide all records and documents, as required by the Contract, to the City relating to the terminated portion of the Work; and
- (g) take any other action in relation to the termination of the Work which the City may reasonably direct.

12.2 Rights upon Termination for Convenience

In the event of termination under GC. 12.1, the City will, in full satisfaction of all claims the Contractor may have, pay the Contractor:

- (a) all compensation owed in accordance with the Contract for all Work completed in accordance with the Contract Documents up to the date of the termination;
- (b) all third party cancellation charges, if any, incurred by the Contractor to the date of termination, provided such charges could not have been reasonably avoided or mitigated by the Contractor; and
- (c) the Contractor's reasonable and substantiated direct Site demobilization costs.

For certainty, the Contractor will not be entitled to, nor will the Contractor make any claim for, Consequential Damages.

12.3 Obligations During Suspension

During any period of suspension, the Contractor will not remove any Work, or any equipment and materials from the Site without the prior written consent of the City's Representative, and will make all commercially reasonable efforts to secure and make safe all Work and all such equipment and materials at the Site. At any time after the commencement of a suspension of the Work, the City may give written direction to the Contractor to resume performance of the suspended Work, and, upon receipt of such direction, the Contractor will resume the Work within the time specified in such direction by the City's Representative or the Consultant, acting reasonably. In the event of suspension under GC. 12.1, the City will, in full satisfaction of all claims the Contractor may have, reimburse the Contractor for the Contractor's reasonable and substantiated direct costs incurred in complying with the obligations of this GC. 12.3.

For certainty, the Contractor will not be entitled to, nor will the Contractor make any claim for, Consequential Damages.

12.4 Suspension or Termination for Force Majeure

Either party may, on 14 days written notice to the other party, terminate the Contract if an event of Force Majeure has caused a suspension of the Contract for a period greater than 90 days. Any termination pursuant to this GC. 12.4 will be deemed to be a termination under GC. 12.1.

GC. 13 DISPUTES

13.1 Dispute Resolution

Except as expressly set out otherwise in the Contract Documents, all disputes relating to or arising out of the Contract (each, a “**Dispute**”) will be resolved in accordance with GC. 13.

13.2 Good Faith Efforts to Resolve any Dispute

Without in any way limiting the parties’ rights under the Contract, the City will encourage and support the City’s Representative and the Contractor will encourage and support the Contractor’s Representative to use good faith efforts to resolve any Dispute promptly upon becoming aware of the Dispute, and the Representatives will continue to use such efforts after the delivery of a Dispute Notice, including the early full disclosure and exchange of all documents and information that may be relevant to the Dispute.

13.3 Dispute Notice

A party with a Dispute may, at any time, deliver written notice to the other party, with a copy to the City’s Representative or the Contractor’s Representative, as applicable, describing the Dispute (the “**Dispute Notice**”). A Dispute Notice will include, at a minimum:

- (a) a summary of the facts relevant to the Dispute;
- (b) the applicable provisions of the Contract relevant to the Dispute or other basis for the claim upon which the disputing party relies;
- (c) additional supporting documentation, if any, as may be relevant to the dispute and available; and
- (d) a clear statement of the resolution to the Dispute being sought by the disputing party.

13.4 Submission to Senior Management

Within ten days of the delivery of a Dispute Notice, or such other time as the parties may agree in writing, the Dispute will be referred to a member of senior management of each of the parties who has the authority to resolve the Dispute and to the extent reasonably practicable, have not been previously involved in the events leading to the Dispute. Such senior management will use commercially reasonable efforts to resolve the Dispute without delay.

13.5 Unresolved Dispute

If a Dispute is not resolved within 30 days after delivery of the Dispute Notice (whether or not a dispute resolution meeting of senior management has occurred pursuant to GC. 13.4), or such other time as the parties may agree in writing, then the parties may agree to submit the unresolved dispute to arbitration pursuant to GC. 13.6 or either party may, within the limitation periods set out in applicable legislation, commence litigation with respect to the Dispute.

13.6 Arbitration

A Dispute submitted to arbitration will be conducted as follows:

- (a) the parties will endeavour to agree upon the appointment of a mutually acceptable arbitrator within ten days of either party submitting the dispute to arbitration pursuant to GC. 13.6. If the parties cannot agree on the appointment of an arbitrator in such period, then either party may immediately apply for the appointment of an arbitrator to the British Columbia International Commercial Arbitration Centre or, in the event that such entity no longer exists, to the British Columbia Supreme Court, pursuant to the *Commercial Arbitration Act* (British Columbia); the arbitrator selected by the parties, or appointed pursuant to this GC. 13.6(a), must be qualified by education and training and have such technical expertise, if any, as may be necessary or appropriate having regard to the matter in dispute;
- (b) the arbitration will be conducted in accordance with the appropriate rules of the British Columbia International Commercial Arbitration Centre, and in accordance with the *Commercial Arbitration Act* (British Columbia);
- (c) the arbitration will be conducted in English and in Victoria, British Columbia;
- (d) the arbitrator will endeavour to convene a hearing within 30 days of being nominated, and to complete the arbitration and render an award within 60 days of such nomination. The arbitrator may, in his or her discretion, on application of either party or on the motion of the arbitrator, extend either or both of the time periods referred to in this GC. 13.6(d), and such discretion may be exercised both before and after any such time period, or extended time period, has expired;
- (e) the arbitrator will conduct the arbitration in a cost effective manner and on an expedited basis, having regard for the subject matter of the Dispute;
- (f) subject to the arbitrator's ruling on costs:
 - (i) the cost of the arbitrator and other administrative costs of the arbitration will be shared equally between the parties; and
 - (ii) each party will bear its own costs incurred in participating in the arbitration;
- (g) except as expressly set out otherwise in the Contract Documents, any decision by the arbitrator will be final and binding upon the parties and may not be appealed by either party on any grounds;

- (h) a decision of the arbitrator may be filed in any court of competent jurisdiction, and may be enforced by either party as a final judgment of such court as permitted by Law in the jurisdiction in which enforcement is sought;
- (i) the arbitration proceedings, evidence at the arbitration proceedings, and, subject to GC. 13.6(h), the decision of the arbitrator, will be treated as strictly confidential, and not disclosed to any third party without the prior written consent of the parties, and the parties will jointly instruct the arbitrator to maintain the strictest confidentiality of the proceedings, evidence and his or her decision; and
- (j) if a Dispute that is subject to arbitration under GC. 13 is pending concurrently with a related dispute(s) which is subject to separate arbitration(s), then the parties consent to the consolidation of all related arbitration proceedings before one arbitrator if such consolidation of proceedings is feasible.

13.7 No Lobbying

The parties expressly acknowledge that the Dispute Resolution Procedure is to encourage timely resolution of Disputes, and that for it to have the best opportunity for success the procedures should be respected and, accordingly, neither party will make efforts to influence the parties' representatives by making contact with senior representatives of the other party, or the government, or any third party for the purpose of attempting to influence the terms of a resolution of a Dispute, and, for certainty, the parties agree that any such contact will be a breach of the Contract.

13.8 Interest

Subject to any express direction in the arbitrator's decision, interest will be owing on any amount payable pursuant to the arbitrator's decision from the date specified for payment in the decision. Interest will be calculated at the Prime Rate established as of the date such amounts became payable, plus 1%, calculated monthly, interest accruing on interest.

13.9 Must Continue with Work

Notwithstanding any Dispute, the parties will continue to fulfill their obligations pursuant to the Contract, without interruption to the performance of the Work by the Contractor, without prejudice to either party's rights relating to the Dispute.

13.10 Injunctions

Notwithstanding any other provision in GC. 13 or any other provision of the Contract, a party may apply to court for injunctive relief if the party determines that, in the circumstances, such relief is required to protect its interests or the interests of the public.

GC. 14 PROTECTION OF PERSONS, PROPERTY AND THE ENVIRONMENT

14.1 Protection of Work and Property

With respect to protection of the Work, other work and property:

- (a) except as expressly set out otherwise in the Contract Documents, in performing the Work, the Contractor will be responsible:
 - (i) for the care, custody, control and security of all parts of the Work until Substantial Completion, and the Contractor will, at the Contractor's sole cost and expense, make good any loss or damage to any part of the Work until Substantial Completion;
 - (ii) to protect the City's and other Person's work and property from loss or damage, and the Contractor will, at the Contractor's sole cost and expense, make good any such loss or damage to the City's or other Person's work and property; and
 - (iii) for the care, custody, control, maintenance and security of all equipment, materials and other items used or provided to or by the Contractor or any Subcontractor in connection with the Work whether in transit to or from the Site or in storage on or off the Site by the Contractor or any Subcontractor, and the Contractor will, at the Contractor's sole cost and expense, make good any loss or damage to any such equipment, materials and other items;
- (b) notwithstanding GC. 14.1(a), the Contractor will not be responsible for loss or damage described in GC. 14.1(a):
 - (i) to the extent the Contractor, in the performance of the Work, could not reasonably have avoided such loss or damage; or
 - (ii) to the extent the City, the City's Representative, the Consultant, Other Contractors or others for whom the City is in law responsible (other than the Contractor and those engaged by or through the Contractor, including Subcontractors), contributed in causing such loss or damage; and
- (c) for certainty, if the loss or damage described in GC. 14.1(a) would have been covered by or recoverable against the insurance required to be obtained and maintained under the Contract but for GC. 14.1(b), then GC. 14.1(b) will be inoperative and considered as deleted from the Contract so as to permit the recovery under such insurance. In such event, the City will pay the applicable deductible or reimburse the Contractor for the payment of the applicable deductible and the insurance proceeds will be used by the parties to make good the loss or damage.

14.2 Hazardous Substances

The Contractor will not, and will ensure that the Subcontractors will not, use, store, transport, remove, dispose of or destroy any Hazardous Substances on the Site, except with the prior written approval of the City's Representative. All Hazardous Substances used, stored, transported, removed, disposed of or destroyed will be dealt with in accordance with Law and the Contract Documents.

14.3 Discovery of Hazardous Substances

If, in the performance of the Work, the Contractor encounters material on the Site which is, or which appears to be, a Hazardous Substance that has not been identified in the Contract Documents, then the Contractor will:

- (a) immediately stop Work in the affected area and give written notice to the City's Representative; and
- (b) cooperate with the City's Representative to determine the steps that should be taken to confirm whether the material is a Hazardous Substance, and if necessary, the steps to deal with the Hazardous Substances in a way that minimizes the risks to health and safety, the environment and delay to the Work.

The Contractor will not be entitled to, nor will the Contractor make any claim for, an adjustment to the Contract Price or the time for the performance of the Work on the basis that the Contractor encounters material on the Site which is, or which appears to be, a Hazardous Substance.

14.4 Dangerous Goods

All Dangerous Goods used, stored, transported, removed, disposed of or destroyed will be dealt with in accordance with the Law and the Contract Documents. The Contractor will bring on to the Site only those Dangerous Goods that are required for the performance of the Work on the Site. Dangerous Goods will not be brought onto, used or stored on the Site without the prior written approval of the City's Representative. The Contractor will make material safety data sheets for such goods immediately accessible by Subcontractors, the Consultant and the City's Representative on the Site at all times.

14.5 Dangerous Goods Occurrence

If, during the performance of the Work or in the course of transporting Dangerous Goods to or from the Site, the Contractor is involved in a Dangerous Goods Occurrence, as defined in the *Transportation of Dangerous Goods Act (Canada)*, the Contractor will immediately notify the City's Representative in writing.

14.6 Heritage Resources

All remains or things of geological or archeological interest or value the Contractor discovers or encounters on the Site will, as between the City and the Contractor, be deemed to be the property of the City. Upon discovery of or encountering such remains or things, the Contractor will immediately:

- (a) take all reasonable precautions to prevent removal or damage to such remains or things;
- (b) notify the City's Representative in writing;
- (c) comply with any directions given by the City's Representative; and
- (d) prepare and submit to the Consultant a detailed plan satisfactory to the Consultant, acting reasonably, including a description of the means and methods the Contractor will use to mitigate schedule and cost impacts arising from such discovery or encounter, and upon acceptance of the plan by the Consultant the Contractor will proceed in compliance with the plan.

The circumstances described in this GC. 14.6, when encountered by the Contractor, will entitle the Contractor to claim a Change pursuant to the provisions of GC. 7.4 as follows:

- (e) the Contractor's notice obligation under GC. 7.4(a)(i) will be to give written notice of such claim to the City's Representative promptly upon the Contractor becoming aware of such remains or things, and the Contractor will not be entitled to, nor will the Contractor make any claim for, an adjustment to the Contract Price or the time for the performance of the Work under this GC. 14.6 with respect to any delay incurred by the Contractor prior to the delivery of such notice; and
- (f) the Contractor will not be entitled to make any claim until the aggregate of the delay arising from the discovery of such remains or things is greater than 15 days. For certainty, no claim may be made for the first 15 days of delay arising from the discovery of such remains or things.

14.7 Site Safety

With respect to Site safety:

- (a) within 14 days of the Effective Date but, in any event, before commencing any Work at the Site, and at any time on the Consultant's or the City Representative's request, the Contractor will deliver to the City's Representative and the Consultant a statement from the Workers' Compensation Board of British Columbia that:
 - (i) the Contractor is registered and in good standing; and
 - (ii) all Persons performing Work who are not covered by the *Workers Compensation Act* (British Columbia) are covered under personal optional protection coverage available through the Workers' Compensation Board of British Columbia;
- (b) the Contractor will, as part of the Work and at no additional cost to the City, be the "prime contractor" for the purposes of the *Workers Compensation Act* (British Columbia), and, accordingly, the Contractor will diligently discharge the obligations and duties of prime contractor under such Act. If at any time, for any reason, the Contractor is not designated as prime contractor under such Act, then the Contractor will perform the Work in accordance with the safety requirements as required by the entity designated as prime contractor including, as the case may be, the City or a third party contractor;
- (c) the Contractor will, on an on-going basis, provide training to all employees, agents, Subcontractors and other personnel that will, for any reason, be on the Site with respect to all safety rules and procedures applicable to the performance of the Work, the Contractor will provide for such training in subcontracts with such Subcontractors;
- (d) the City's Representative or the Consultant may, at any time, and from time to time, make enquiries so as to be satisfied, acting reasonably, that the Contractor is meeting the safety requirements of GC. 14.7, including testing, at any time, any individual referred to in GC. 14.7(c) to determine if such individual has adequate working knowledge of the safety rules and procedures applicable to the performance of the Work;
- (e) the Contractor will provide the City's Representative and the Consultant with copies of all notices to, and other communications with, Governmental Authorities and insurance companies with respect to the Work, accidents, inspections or audits that occur on the Site, and, thereafter,

provide such written reports relating to the Work, and such accidents, inspections and audits, as may be requested by the City's Representative or the Consultant;

- (f) if the Contract Documents permit the use of explosives and the Contractor intends to use explosives in the performance of the Work, then the Contractor will provide ten days prior written notice to the City's Representative and the Consultant of the date and location such explosives will be used; and
- (g) the Contractor will provide security measures for the protection and safeguarding of the public at the Site and any other location where Work is being performed, all in accordance with the Contract Documents, Laws, Permits and Good Industry Practice.

14.8 Protection of the Environment

With respect to the protection of the environment, except as expressly set out otherwise in the Contract Documents:

- (a) the Contractor will perform the Work using all commercially reasonable efforts to minimize damage and negative impact to the environment;
- (b) as directed in writing by the City's Representative or the Consultant, the Contractor will protect and not destroy, remove or clear trees, timber or shrubs or disturb or damage watercourses; and
- (c) if unauthorized damage to the environment occurs, or threatens to occur, then the Contractor will:
 - (i) immediately notify the City's Representative in writing with details of the cause and extent of such actual or threatened damage;
 - (ii) stop Work, in whole or in part, as may be required to protect the environment;
 - (iii) without delay, prepare and submit a written plan to the City's Representative describing the steps the Contractor will implement in the performance of the Work to protect the environment, acceptable to the City's Representative, acting reasonably;
 - (iv) implement such plan; and
 - (v) except if the damage or threatened damage was or will be caused directly by the City, or a Person for whom the City is in law responsible (other than the Contractor and those engaged by or through the Contractor, including Subcontractors), pay all costs incurred to comply with the requirements of GC. 14.8(c).

GC. 15 CONFIDENTIALITY**15.1 Confidential Information**

Each party will keep confidential all matters respecting technical, commercial, financial and legal issues relating to or arising out of the Contract or the performance of the Work and will not disclose any such matters. Notwithstanding the preceding sentence, disclosure of any such matters may be made:

- (a) with the prior written consent of the applicable Representative;
- (b) in strict confidence to the party's professional advisors;
- (c) in the case of the Contractor, to Subcontractors who need to know such information of the purposes of performing the Work;
- (d) in the case of the City, at any time and for any purpose, provided such disclosed matters are not proprietary or confidential to the Contractor; or
- (e) as otherwise required by Law or permitted by the Contract Documents.

The Contractor will require all Subcontractors to enter into an agreement with the Contractor containing provisions in the same form as those found in this GC. 15.1.

GC. 16 RECORDS AND AUDIT**16.1 Retention of Documents**

The Contractor will, during the performance of the Work and for a period of six years after termination of the Contract, maintain proper and accurate accounts and records, including all subcontracts with Subcontractors, invoices, statements, receipts, vouchers, calculations, reports, data, time and material costing records with respect to Work undertaken on a time and materials or cost-plus basis, drawings, plans and other documents, in hard or electronic form, in respect of the Project and the Work, in accordance with Good Industry Practice.

16.2 Audit

The Contractor will, upon reasonable written notice, make all information described in GC. 16.1 available to the Consultant, the City and any of their nominees for during the performance of the Work and for such six year period for review and audit. The Contractor will, upon written request from the Consultant or the City within such time period, and in any event prior to disposal of such information, provide the Consultant and the City with a copy of any such information in a form satisfactory to the City, acting reasonably. Her Majesty the Queen in Right of Canada, the Auditor General of Canada, and/or their designated representatives, to the extent permitted by Law, will, at all times, be permitted to inspect the terms of the Contract and any records and accounts respecting the Project and will have free access to the Site, Project facilities and any documentation relevant for the purpose of audit.

16.3 Audit Not a Waiver

No audit conducted by the Consultant, the City or any of their nominees will at any time constitute approval or acceptance of any Work under the Contract, nor be considered a waiver by the City of any of the terms of the Contract, nor relieve the Contractor of the Contractor's obligations under the Contract..

GC. 17 INSURANCE

17.1 Contractor Provided Insurance Coverage

Without limiting any of the Contractor's obligations or liabilities under the Contract and prior to commencing any Work under the Contract, the Contractor will, at its sole cost and expense, obtain and maintain during the performance of the Work policies in respect of the following insurances:

- (a) Workers' Compensation coverage for all employees engaged in the Work in accordance with the *Workers Compensation Act* (British Columbia);
- (b) Personal Optional Protection coverage available through the Workers' Compensation Board of British Columbia for all employees engaged in the Work who are not covered by the *Workers Compensation Act* (British Columbia);
- (c) Commercial General Liability Insurance, including bodily injury, death and property damage, in an amount of \$10,000,000 per occurrence. This insurance will include Completed Operations and cover off-Site exposures and all Subcontractors. Liability coverage during the Project will be contingent coverage to the Wrap Up & Excess Wrap UP Liability Insurance provided by the City. Notwithstanding any other provision in the Contract, this policy will be maintained in full force and effect for a period of six years after Substantial Completion;
- (d) Automobile Liability Insurance for owned, non-owned, leased, operated or licensed automobiles, trucks, trailers, tractors and all-terrain vehicles with limits of \$5,000,000 for accidental injury to or death of one or more Persons or damage to or destruction of property as a result of one accident or occurrence;
- (e) Aircraft and Watercraft Liability Insurance for owned or non-owned and licensed aircraft and watercraft used directly or indirectly by the Contractor and all Subcontractors in performance of the Work or part of the Work, including use of additional premises, with limits of \$5,000,000 inclusive per occurrence for bodily injury, death, and damage to property, including loss of use of such property and limits of \$5,000,000 for aircraft passenger hazard;
- (f) Construction Equipment "All Risks" Insurance providing for full replacement value coverage of all equipment, materials and property that is owned, leased or rented by and used by the Contractor in the performance of the Work but which does not form part of the permanent construction. This policy will include a the insurer's rights of subrogation against the City; and
- (g) such additional coverage as may be required by Law or which the Contractor considers necessary.

17.2 Requirements for Contractor Insurance

The insurance provided by the Contractor will be provided in accordance with the following terms and conditions:

- (a) the Contractor will provide the City with evidence of compliance with the *Workers Compensation Act* (British Columbia) and coverage under such Act prior to the commencement of the Work, and the Contractor will, upon request, at any time, from the City's Representative, provide such evidence to the City within five days of such request;
- (b) certificates of insurance for the policies described in GC. 17.1 will be submitted to the City prior to commencement of the Work. All such policies will be placed with insurers acceptable to the City and be in a policy form acceptable to the City. The approval or non-approval of any such policy by the City will in no way relieve the Contractor of its obligations to provide the insurance required by the Contract. The City's Representative or the Consultant may request, at any time, certified copies of the Contractor's insurance policies and the Contractor will provide such certified copies to the City's Representative and the Consultant within five days of such request;
- (c) all insurance provided by the Contractor will contain a waiver of subrogation against the City, its Affiliates and each of their respective elected officials, directors, officers, employees and agents; and
- (d) all insurance, except for automobile liability insurance and workers compensation insurance, provided by the Contractor will:
 - (i) add the City, its Affiliates and each of their respective elected officials, directors, officers, employees and agents as additional insureds;
 - (ii) contain a cross liability or severability of interest clause; and
 - (iii) each such policy will state that it cannot be cancelled without at least 30 days written notice to the City.

17.3 Minimum Amount No Limit on Recovery

All policy limits and types of insurance specified by the Contract to be obtained and maintained by the City or the Contractor are the minimum policy limits and types of insurance that are to be provided. The Contractor will be solely responsible for determining whether the policy limits and types of insurance are adequate and for placing any excess insurance and any additional insurance which it considers necessary to protect and indemnify itself.

Subject to GC. 19.1, the Contractor will be liable to the City for all Claims and Claim Costs excluded by, or in excess of the policy limits of, applicable insurance policies.

17.4 Subcontractor Insurance

Without duplication of insurance coverage, the Contractor will require all first tier Subcontractors to enter into an agreement with the Contractor containing provisions in the same form as those found in GC. 17.1 and GC. 17.2, as applicable to the Work being undertaken by such Subcontractors. The

Contractor will provide to the City's Representative and the Consultant, upon request, certificates of insurance for the insurance policies the Contractor has obtained from such Subcontractors and a copy of the agreement entered into with such Subcontractors setting out the insurance requirements of such Subcontractors, without reference to commercial terms.

17.5 Deductibles

Deductibles for insurance policies required to be obtained by the Contractor under GC. 17 will be no more than \$100,000 with the exception of any earthquake deductible which will be no more than 5% of insured values.

The Contractor will be responsible for the payment of all deductibles for the insurance policies described in GC. 17, including for the payment of all deductibles for the insurance policies described in GC. 17.7, except:

- (a) the Contractor will be responsible for the payment of only the first \$100,000 of any earthquake deductible; and
- (b) with respect to damage arising out of the negligent acts or omissions of the City or any Person for whom the City is in law responsible (other than the Contractor and those engaged by or through the Contractor, including Subcontractors), the City will pay the proportion of the deductible that represents the proportionate fault of the City for the loss which gave rise to the damage.

17.6 Liability of Contractor

Neither the providing of insurance by the Contractor in accordance with the requirements of GC. 17, nor the insolvency, bankruptcy or the failure of any insurance company to pay any claim occurring will be held to relieve the Contractor from any other provisions of the Contract with respect to liability of the Contractor or otherwise.

17.7 City Provided Insurance Coverage

Without limiting any of the Contractor's obligations or liabilities under the Contract, the City will, at its sole cost and expense, obtain and maintain during the performance of the Work, policies in respect of the following Project specific insurances:

- (a) Wrap Up and Excess Wrap Up Liability Insurance with a combined limit of \$100,000,000 inclusive of defence costs for bodily injury, death and property damage arising from any one accident or occurrence. This policy will include Non-Owned Automobile Liability with a limit of \$10,000,000 and a deductible for any one accident or per occurrence up to \$50,000 except Telus Duct Work which will have a deductible of \$100,000. This policy will be in the name of the City, the Contractor and the Consultant. All Subcontractors (with the exception of suppliers whose only function is to supply and/or transport products to the Site) will be considered as un-named additional insureds. This policy will include coverage for:
 - (i) Premises and Occupiers Liability;

- (ii) Products and Completed Operations Liability;
- (iii) Blanket Contractual Liability;
- (iv) Cross Liability;
- (v) Elevator and Hoist Liability;
- (vi) Contingent Employer's Liability;
- (vii) Personal Injury Liability;
- (viii) Shoring, Blasting, Excavation, Underpinning, Demolition, Pile Driving and Caisson Work, Work Below Ground Surface, Tunnelling and Grading, as applicable;
- (ix) Liability with respect to Non-Owned Licensed Vehicles;
- (x) Broad Form Property Damage; and
- (xi) Broad Form Completed Operations.

This policy will be maintained continuously from commencement of the Work until the date of Total Completion, plus, with respect to completed operations, a further period of 36 months from the date of Total Completion.

(b) Property and Boiler & Machinery Insurance:

- (i) Builders Risk Property Insurance which will be in the name of the City, the Contractor, the Consultant and all Subcontractors. This policy will have limits of the sum of the amount of the replacement cost, the applicable taxes, and the full value of all products entering into and forming the Project or for incorporation in the Work. This policy will have the following deductibles:
 - (A) \$250,000 for water damage;
 - (B) \$250,000 for testing and commissioning; and
 - (C) \$250,000 for all other losses; and
- (ii) Boiler and Machinery Insurance which will be in the name of the City, the Contractor, the Consultant and all Subcontractors. This policy will have limits of the replacement value of the boilers, pressure vessels and other insurable objects forming part of the Work.

These policies will allow for partial or total use or occupancy of the Work. In addition, these policies will provide that, in the case of loss or damage, payment will be made to the City and the Contractor as their respective interest appear. The Contractor will act on behalf of the City for the purpose of adjusting the amount of such loss or damage payment with the insurers. When the extent of the loss or damage is determined, the Contractor will proceed to restore the

Work. Loss or damage will not affect the rights and obligations of either party under the Contract;

- (c) Project Specific Professional Liability Insurance (Errors and Omissions) on a 'claims made' basis with a limit of \$10,000,000 per occurrence and in the aggregate. The deductible for this policy will be \$250,000 for each and every claim including costs and expenses. This policy will be maintained continuously from commencement of the Work until the date of Total Completion, plus, a further period of 36 months from the date of Total Completion. This policy will insure against all insured loss or damage, including coverage for third party property damage, bodily injury or death, arising out of any professional services rendered by the Consultant, its declared subconsultants and the Contractor's declared design consultants. The retroactive date of this policy will coincide with the verifiable start of design for any work covered by this policy; and
- (d) Project Specific Pollution Liability on a 'claims made' basis with a limit of \$10,000,000 per claim and in the aggregate. This policy will insure against third party claims for bodily injury, property damage, clean-up costs and related defence expenses arising out of pollution conditions caused by, or disrupted during, the rendering of "covered operations". This policy will contain a 24 month extended reporting period to allow for discovery of pollution conditions attributed to "covered operations" after the claims-made policy term expires. This policy contains a \$50,000 retention amount per claim.

17.8 Requirements for City Insurance

The insurance provided by the City will be provided in accordance with the following terms and conditions:

- (a) certificates of insurance for the policies described in GC. 17.7 will be provided to the Contractor upon request. The Contractor's Representative may request, at any time, certified copies of the City's insurance policies and the City will provide such certified copies to the Contractor's Representative within ten days of such request;
- (b) include a waiver of subrogation against the Contractor, the Subcontractors and their respective directors, officers, employees and agents;
- (c) not limit any of the obligations or liabilities of the Contractor or its Subcontractors as expressed in the Contract; and
- (d) be primary insurance with respect to any loss or damage which at the time of the occurrence is covered by such City insurance policies.

17.9 Duplication

The Contractor will not duplicate the insurance coverage specified to be provided by the City in GC. 17.

17.10 Premium Costs

The Contractor acknowledges that the prices set forth in the Contract do not, and will not, include the cost of premiums for insurance to be provided by the City.

17.11 Notice of Change to Insurance Program

Notwithstanding any other provision in the Contract, the City may at any time add to, delete or modify any aspect of its insurance program, however the City will provide the Contractor with at least 30 days prior written notice if the insurance coverage specified to be provided by the City in GC. 17 is to be cancelled.

17.12 Notice of Occurrence

The City and the Contractor will immediately notify, in writing, each other and the relevant insurer of any occurrence or incident likely to give rise to a claim under the policies or insurance coverage referred to in GC. 17 whether or not such occurrence or incident arises under the Contract, and of any other matter or thing in respect of which notice should be given by the City or the Contractor to the relevant insurers. In addition, both the City and the Contractor will give all such information and assistance as may be reasonably practicable in all the circumstances. The Contractor will prepare all reports required to support insurance claims relating to or arising out of the Work or the Contract and will be responsible for delivering such reports and providing any further documentation to the City for recovery of the City's losses under the insurance coverage specified to be provided by the City in GC. 17.

GC. 18 INDEMNIFICATION

18.1 Contractor Indemnity

The Contractor will indemnify, save harmless and assume the defense of, the City, its directors, officers, employees, consultants and agents, including the City's Representative (each, an "**Indemnified Party**" and, together, the "**Indemnified Parties**") from and against all third party Claims, including Claim Costs, at any time suffered or incurred by, or brought or made against, the Indemnified Parties, or any one of them, relating to or arising out of the errors, omissions or negligent acts, willful misconduct, or fraudulent or criminal acts, or breach of the Contract, of or by the Contractor, the Contractor's Affiliates or any Subcontractor, or those for whom such Persons may in law be responsible, except for the portion of any Claim arising from the negligence or willful misconduct of an Indemnified Party.

18.2 Conduct of Claims

Without limiting the generality of GC. 18.1, if an Indemnified Party becomes a party to a Claim for which indemnity may be sought under GC. 18.1, then the Contractor will conduct the defence of such Claim, at the Contractor's sole cost and expense, and on such terms and conditions as the City may direct. Notwithstanding the preceding sentence, if the Contractor fails to commence or carry out such defence in a manner that is acceptable to the City, the City has the right, but not the obligation, upon prior written notice to the Contractor, to assume the defence of such Claim. The City may settle or resolve such Claim, without the prior consent or approval of the Contractor, and without relieving the Contractor of its obligations under GC. 18. If the City exercises its rights under this GC. 18.2, then the Contractor will reimburse the City all of the City's costs and expenses incurred as a result of such exercise.

18.3 Separate Counsel

Where the Contractor has conduct of the defence of a Claim under GC. 18, each applicable Indemnified Party may retain its own counsel, at the Indemnified Party's sole cost and expense, for the purpose of monitoring the Contractor's conduct of the Claim.

18.4 Limitation on Settlement

Notwithstanding any other provision in the Contract, where the Contractor has conduct of the defense of a Claim, the Contractor will not conclude or agree to the settlement or resolution of such Claim without the prior written approval of the City's Representative. Where the Contractor concludes or agrees to the settlement or resolution of a Claim without the prior written approval of the City's Representative, the Contractor will be liable for the entire amount of such settlement or resolution, including any amount in excess of its indemnity obligations under the Contract, and will have no right to claim reimbursement, set-off or payment from the City, or any other Indemnified Party, with respect to any such excess amount.

18.5 Intellectual Property Indemnification

The Contractor will indemnify, hold harmless and assume the defense of, the Indemnified Parties in accordance with the provisions of GC. 18, from and against all third party Claims, including Claim Costs, at any time suffered or incurred by, or brought or made against, the Indemnified Parties, or any one of them, relating to or arising out of any actual or alleged unauthorized disclosure, use or infringement of a third party's patent or intellectual, proprietary or industrial property rights relating to or arising out of the performance of the Work or the actions or omissions of the Contractor, the Contractor's Affiliates or Subcontractors, or those for whom such Persons may in law be responsible, or otherwise asserted against the Indemnified Parties, or any one of them, and for any other consequences arising out of the breach by the Contractor of GC. 24.

GC. 19 LIMITATION OF LIABILITY

19.1 Limitation of Liability

Notwithstanding any other provision in the Contract, but subject to GC. 19.2 and GC. 19.3, the Contractor's maximum aggregate liability to the Indemnified Parties for Claims relating to or arising out of the Contract, whether or not terminated, and whether arising in contract, tort (including negligence), indemnity, by statute, as matters of strict or absolute liability, or from any other cause, will be limited to an amount equal to the Contract Price.

For certainty, any insurance proceeds received, recoverable or claimable (or which would have been received, recoverable or claimable but for the default or other failure, act or omission on the part of the Contractor, the Contractor's Affiliates or any Subcontractor, or those from whom such Persons may in law be responsible) under any insurance policy obtained and maintained or required to be obtained and maintained under the Contract, up to the minimum required amount of the applicable policy under the Contract, will not be included in determining whether the Contractor's maximum aggregate liability under this GC. 19.1 has been reached.

19.2 Consequential Damages

Neither party is liable to the other party for that other party's own:

- (a) special, contingent, exemplary, punitive, indirect, economic, incidental or consequential loss or damage;
- (b) loss of anticipated revenue, overhead or profit;
- (c) loss of production, business or contracts;
- (d) loss by reason of shutdowns, non-operation or increased costs of construction, manufacturing or operation; or
- (e) loss of business reputation or opportunities,

of any nature arising at any time or from any cause whatsoever relating to the Contract, and whether or not such losses or damages were foreseeable even if a party was advised of the possibility of them (collectively, "**Consequential Damages**").

For certainty, nothing in this GC. 19.2 will apply to, or be interpreted so as to, preclude, or otherwise limit:

- (f) recovery of liquidated damages specified as payable to the City pursuant to the Contract Documents, if any, and, any right of recovery for the Contractor's delay in the performance of the Work contrary to the provisions of the Contract, or any breach of the Contract by the Contractor, including for the City's increased costs of construction, repayment of third party funding, the costs of other contractors, any administrative costs, the cost of the City's own forces and resources and the cost of the Consultant; or
- (g) recovery of any of the types of loss or damage described in GC. 19.2(a) through GC. 19.2(e), if such losses or damages would be receivable, recoverable or claimable (or which would have been receivable, recoverable or claimable but for the default or other failure, act or omission on the part of the Contractor, the Contractor's Affiliates or any Subcontractor, or those for whom such Persons may in law be responsible) under any insurance policy obtained and maintained or required to be obtained and maintained under the Contract, up to the minimum required amount of the applicable policy under the Contract.

19.3 Exceptions to Limitation of Liability

Notwithstanding any other provision in the Contract, the limits on the Contractor's liability under GC. 19.1 and all other limitations of liability in favour of the Contractor specified in the Contract Documents will not apply to or limit the Contractor's responsibility and liability for, and the Contractor will be fully liable for:

- (a) Claims and Claim Costs relating to or arising out of the gross negligence, recklessness or willful, fraudulent, criminal or intentional misconduct on the part of the Contractor, the Contractor's Affiliates or any Subcontractor, or those for whom such Persons may in law be responsible;

- (b) Claims made by any third party and Claim Costs related to such third party Claims, including Claims and Claim Costs relating to or arising out of personal injury, including death, or property damage to the extent caused by the willful misconduct of the Contractor, the Contractor's Affiliates or any Subcontractor, or those for whom such Persons may in law be responsible;
- (c) Claims and Claim Costs relating to or arising out of the breach of any confidentiality obligations under the Contract by the Contractor, the Contractor's Affiliates or any Subcontractor, or those for whom such Persons may in law be responsible; and
- (d) Claims and Claim Costs relating to or arising out of any breach of any Laws by the Contractor, the Contractor's Affiliates or any Subcontractor, or those for whom such Persons may in law be responsible.

GC. 20 WARRANTY

20.1 Warranty

The Contractor warrants that all Work will be performed in accordance with the Contract Documents, free from defects in material, workmanship and any design or engineering furnished by the Contractor.

20.2 Quality in Equipment and Materials

The Contractor warrants that the equipment and materials furnished by or on behalf of the Contractor for the Work will be:

- (a) new and of recent manufacture;
- (b) first quality;
- (c) where such equipment and materials are not specified in the Contract Documents, fit for their intended purposes;
- (d) free from design defects, faults and faulty operation, including latent defects;
- (e) compliant with the Contract Documents; and
- (f) compliant with all applicable codes and regulations.

20.3 Length of Warranty

The warranty set out in GC. 20.1 and GC. 20.2 will expire (the "**Warranty Period**") on the later of:

- (a) 12 months after the date of Substantial Completion or earlier termination of the Contract; and
- (b) the expiry date of any Completed Operations Liability insurance coverage obtained and maintained or required to be obtained and maintained under the Contract,

except with respect to any matters for which a warranty claim has been made during such period. If any warranty claim is made pursuant to GC. 20 and any part of the Work is re-performed, a new Warranty

Period will commence for such re-performed Work from the date such re-performed Work is completed, unless such warranty work required only minor adjustment and not replacement to any equipment or component.

20.4 Partial Take Over

If the Contractor performs the Work in such a manner that portions of the Work may be used by the City before the date of Substantial Completion, then the City may, on written notice to the Contractor, take over and begin to use such portions even though a certificate of Substantial Completion has not been issued. If the City takes over and begins to use a portion of the Work before the date of Substantial Completion, then the Warranty Period with respect to such portion will commence to run from the date of the take over and use.

20.5 Assignment

Without limiting the generalities of GC. 20.1, GC. 20.2 or GC. 20.3, the Contractor will assign to the City the guarantees and warranties (such that they may enforceable directly by the City) provided by Subcontractors, manufacturers, suppliers and other Persons performing work for or on behalf of the Contractor with respect to the Work.

20.6 Defective Work

If defects, including latent defects, are discovered in the Work, including in any equipment and materials incorporated into the Work, then the Contractor will correct the defect or provide replacement equipment and materials promptly upon notification or instruction by the Consultant. The Contractor will be responsible for all costs associated with such repairs and replacements and will indemnify and save harmless the Indemnified Parties from any resulting damages. Other work removed or damaged due to such defects, or in making good such defects will also be made good by the Contractor without additional payment by the City.

20.7 Failure to Remedy Defects

If the Contractor fails to remedy any defect or damage within a reasonable time, then a date may be fixed by the City's Representative on or by which the defect or damage is to be remedied. The Contractor will be given reasonable written notice of this date. If the Contractor fails to remedy the defect or damage by such date and the remedial work was to be executed at the cost of the Contractor under GC. 20, then the City may, at its option:

- (a) carry out the work using the City's own forces or other contractors, in a reasonable manner and at the Contractor's sole cost and risk. The Contractor will pay to the City, within 30 days after receipt of an invoice, the costs reasonably incurred by the City in remedying the defect or damage;
- (b) require the Consultant to determine a reasonable reduction in the Contract Price; or
- (c) if the defect or damage deprives the City of substantially the whole benefit of the Work or any major part of the Work, terminate the Contract as a whole, or in respect of such major part which cannot be put to the intended use. Without prejudice to any of its other rights and

remedies under the Contract or otherwise, the City will then be entitled to recover all sums paid for the Work or for such part (as the case may be), plus financing costs and the cost of dismantling such Work or part, clearing the Site and returning equipment and materials to the Contractor.

20.8 Removal of Defective Work

If the defect or damage cannot be remedied expeditiously on the Site and the City's Representative gives its written consent, then the Contractor may remove from the Site for the purposes of repair such items as are defective or damaged. This consent may require the Contractor to increase the amount of the performance bond by the full replacement cost of these items, or to provide other appropriate security.

GC. 21 COMPLIANCE WITH LAWS

21.1 Compliance with Laws

The Contractor, its employees and agents and the Subcontractors, and their employees and agents will be fully knowledgeable of and comply with Laws.

21.2 Compliance with FOIPPA

Each of the City and the Contractor will comply with FOIPPA and with all other Laws pertaining to the use and protection of personal information and privacy. The City will not transfer any personal information, including Personal Information, provided to it by the Contractor to any other Person without the prior written consent of the Contractor. The Contractor will not transfer any personal information, including Personal Information, provided to it by the City to any other Person without the prior written consent of the City. Each of the City and the Contractor will notify its employees and agents of the legal provisions, duties and obligations of such Laws and of this GC. 21.2 and will instruct them to act accordingly.

21.3 Consent to Personal Information

Each of the City and the Contractor represents and warrants to the other that, in accordance with FOIPPA and with all other Laws pertaining to the use and protection of personal information and privacy, it has obtained or will obtain, as the case may be, the prior written consent of each and every individual whose personal information, including Personal Information, it has disclosed or will disclose to the other, whether such disclosure was made in procurement submission materials or pursuant to the Contract, or has occurred or will occur during the performance of the Work. The Contractor will provide copies of such consents to the City's Representative upon the City's Representative's request.

21.4 The City's Use of Personal Information

The Contractor acknowledges that:

- (a) all Personal Information disclosed to the City may be used by the City and disclosed and used by the City for the following purposes:

- (i) to permit the City to evaluate the Contractor's bid submission, if applicable, and to evaluate the educational and professional qualifications and experience of the Contractor's personnel;
 - (ii) to allow the City to review and audit the Contractor's performance in respect of its obligations under the Contract;
 - (iii) as otherwise required for the performance of the City's obligations or the exercise of the City's rights under the Contract; and
 - (iv) to comply with FOIPPA; and
- (b) the consents obtained or to be obtained under GC. 21.3 will reflect these purposes.

The City will protect Personal Information by taking reasonable security precautions against such risks as unauthorized access, collection, use, disclosure or disposal.

21.5 Contractor's Use of Personal Information

The City acknowledges that:

- (a) all Personal Information disclosed to the Contractor may be used by the Contractor and disclosed and used by the Contractor for the performance of the Contractor's obligations or the exercise of the Contractor's rights under the Contract; and
- (b) the consents obtained or to be obtained under GC. 21.3 will reflect this purpose.

The Contractor will protect Personal Information by taking reasonable security precautions against such risks as unauthorized access, collection, use, disclosure or disposal.

GC. 22 TAXES AND DUTIES

22.1 Tax Included in Contract Price

The Contract Price (and any part of the Contract Price) paid or payable by the City to the Contractor includes all applicable taxes, duties, levies and charges (excluding only GST/HST) payable in respect of the Contract Price (or any part of the Contract Price) assessed on any of the Contractor, Subcontractors, or their employees or other Persons engaged by or through them by any and all Governmental Authorities in connection with the Work and includes all customs duties with respect to all imported materials.

22.2 GST/HST

GST/HST will be identified as a separate line item on all invoices, and will be payable by the City to the Contractor as a separate item in addition to the Contract Price.

22.3 Input Tax Credits

Each party will provide to the other party at all times when any GST/HST is required to be paid, such documents and particulars relating to the supply as may be required by either the City or the Contractor, as the case may be, to substantiate a claim for any input tax credits as may be permitted pursuant to the *Excise Tax Act* (Canada) in respect of GST/HST.

22.4 Payment of Taxes

Except as expressly set out otherwise in the Contract Documents, the Contractor is solely responsible for and will pay all taxes, duties, levies and charges (excluding only GST/HST) payable in respect of the Contract Price (or any part of the Contract Price) assessed on any of the Contractor, Subcontractors, or their employees or other Persons engaged by or through them by any Governmental Authorities in connection with the Work ("**Contractor Taxes**"). The Contractor will be solely responsible for and pay all customs duties with respect to all imported equipment and materials regardless of whether such materials are held in the name of the Contractor, a Subcontractor or the City at the time of import ("**Contractor Duties**").

22.5 Tax Indemnity

The Contractor will indemnify and hold harmless the Indemnified Parties, or any one of them, from and against any liability and costs incurred by them in respect of any Contractor Taxes or Contractor Duties, or any other related charges, including any related interest, fines, or penalties and any related reporting obligations and costs incurred as a consequence of such. The Contractor will be registered with all Governmental Authorities in accordance with Law and will comply with all of its obligations to collect and remit any such Contractor Taxes and Contractor Duties. Notwithstanding any other provision in the Contract, the City may, in its sole discretion, withhold from any monies owed to the Contractor, whether such monies are owed under and pursuant to the Contract or otherwise, such amounts as are payable by the Contractor in respect of Contractor Taxes or Contractor Duties for which the City becomes or may become liable.

22.6 Non-Resident

The Contractor represents and warrants that it is not a non-resident of Canada for purposes of the *Income Tax Act* (Canada). In the event that the Contractor becomes a non-resident of Canada for purposes of the *Income Tax Act* (Canada), the Contractor will provide the City's Representative with written notice of such circumstance.

22.7 Tax Refunds

The Contractor will, where applicable, use all commercially reasonable efforts to obtain for the benefit of the City all available exemptions, deductions, rebates, remissions and refunds for all Contractor Taxes and Contractor Duties, including any other related charges, including any related interest, fines or penalties, and upon receipt of any amount in respect of any such exemption, deduction, rebate, remission or refund, the Contractor will promptly pay such amount to the City.

GC. 23 CONTRACTOR'S REPRESENTATIONS AND WARRANTIES

23.1 Contractor's Corporate Representations and Warranties

The Contractor hereby covenants with, and represents and warrants to the City that, as of the Effective Date, the following representations and warranties are true:

- (a) that unless otherwise disclosed to the City in writing before the Effective Date and agreed by the City in writing, the Contractor's performance of the Work will not create any conflict of interest in relation to any services provided by the Contractor to any other party prior to, during or subsequent to Total Completion;
- (b) it is an entity duly created and organized, validly subsisting and in good standing under the Laws of the jurisdiction of its creation and is validly subsisting and in good standing under the Laws of the jurisdiction in which the Work will be performed, and, if different, where the Site is located, and has all requisite power and authority to execute, deliver and perform its obligations under the Contract; and
- (c) the Contract has been duly authorized, executed, and delivered by the Contractor and constitutes a legal, valid, and binding obligation of the Contractor, enforceable against the Contractor in accordance with its terms.

23.2 Contractor's Performance Representations and Warranties

The Contractor acknowledges that the City is relying on the Contractor's skill, knowledge and expertise in performing the Work in accordance with the Contract Documents. The Contractor hereby represents and warrants, with respect to the Work performed by the Contractor and the Subcontractors, that:

- (a) the Contractor and the Subcontractors have the necessary qualified personnel, with the skills and expertise, to perform and to complete the Work and are experienced, ready and willing to perform the Work in accordance with the Contract Documents; and
- (b) the Contractor has or will obtain all required permits (including all Permits), licences and authorizations necessary to carry on its business and to be obtained by it to perform the Work.

GC. 24 INTELLECTUAL PROPERTY

24.1 Ownership of Intellectual Property

All plans, maps, reports, specifications, manuals, preliminary and final drafts, data information, drawings, designs, images, models and all other property and materials which are produced by or on behalf of the Contractor relating to or arising out of the performance of the Work, including any and all copies of such material (collectively, the "**Intellectual Property**") are and will remain the property of the City whether the City has physical possession of the Intellectual Property. The Contractor hereby assigns and transfers to the City all its rights, title and interest in and to the copyright in the Intellectual Property that the Contractor may now or hereafter have. The City will have the right at all times and for all purposes to create and make use of images of the Project.

24.2 Use of Intellectual Property

The Intellectual Property may be used by the City and its contractors and consultants for the operation, maintenance, repair or alteration of the Project or any part of the Project, without the consent of or any payment to the Contractor.

24.3 Moral Rights

The Contractor hereby waives its own moral rights in and to the Intellectual Property and the Work, and has obtained or will obtain from its employees and Subcontractors assignments of all their rights, title and interest, including intellectual property rights and moral rights, in and to any Intellectual Property and the Work. Copies of assignments of Intellectual Property and moral rights from first authors and waivers shall be provided to the City and the original shall be available for inspection by the City and its agents on reasonable terms, at the Contractor's expense.

24.4 Royalty and Patent Fees

The Contractor will be solely responsible for and will pay all royalties, patent fees, license fees and other charges payable on the items or things furnished by or on behalf of the Contractor in connection with the Project or the Work.

24.5 Third Party Intellectual Property

The Contractor will make each third party with whom it deals and who may be affected by this GC. 24 aware of GC. 24 and will cause each such third party to comply with such provision so as to enable the Contractor to fulfill its obligations under such provision, prior to or upon entering into any contract or agreement with such third party.

24.6 Evidence of Ownership of Intellectual Property

The Contractor will execute and deliver, or cause to be executed and delivered, any and all documents or instruments as the City may reasonably request to effect and record the ownership and use of the Intellectual Property as described in GC. 24.

GC. 25 MISCELLANEOUS

25.1 City's Discretion

Nothing in the Contract will be interpreted as in any way amending or fettering the City's authority as a municipal government, including the City's authority with respect to the issuance of permits and approvals that relate to the Work or the Project.

25.2 International Sale of Goods

The parties expressly agree that the United Nations Convention on Contracts for the International Sale of Goods does not and will not apply to the Contract.

25.3 Duty to Mitigate

In all cases where the Contractor is entitled to receive from the City any additional compensation, damages, or extensions of time, the Contractor will use both all commercially reasonable efforts and all due diligence to mitigate and reduce the amount required under the Contract to be paid by the City to the Contractor or the amount of the extension of the time for the performance of the Work. This obligation will be taken into account in the determination of the Contractor's entitlement to an extension of time for the performance of the Work and reimbursement of costs or both.

25.4 Change of Law

If any Law that is directly applicable to the design or the manner of the performance of the Work is amended after the Effective Date and before Total Completion, and such amendment unavoidably results in a material increase or decrease in the costs incurred by the Contractor to perform the Work, then such amendment will entitle the Contractor to claim a Change pursuant to the provisions of GC. 7.4, except that the Contractor's notice obligation under GC. 7.4(a)(i) will be to give written notice of such claim to the City's Representative promptly upon the Contractor becoming aware of such amendment, or, in any event, promptly after the date when the Contractor should reasonably have become aware of such amendment.

25.5 Severability

Each provision of the Contract is severable. If any provision of the Contract is to any extent invalid or unenforceable, the remainder of the Contract will not be affected and each remaining provision of the Contract will be separately valid and will be enforceable.

25.6 Joint and Several Liability

Where the Contractor is a joint venture, partnership or consortium:

- (a) each member of such entity agrees to be jointly and severally liable for the obligations of the Contractor; and
- (b) the Contractor will not change its composition or legal status without the prior written consent of the City.

25.7 Independent Contractor

The relationship between the City and the Contractor under the Contract is that of the Contractor being an independent contractor, notwithstanding any other provision in the Contract or anything arising out of the actions of the parties. The City and the Contractor expressly deny that it is their intention to create any partnership, joint venture, agency or other relationship. Unless otherwise agreed in writing, the Contractor is not the agent of the City in any capacity whatsoever under the Contract, and has no authority to act as an agent of the City.

25.8 Third Persons

Except as expressly set out otherwise in the Contract Documents, nothing in the Contract, expressed or implied, is intended or will be construed to confer upon or to give any Person which is not a party to the Contract any rights or remedies under or by reason of the Contract.

25.9 Public Communications

The Contractor acknowledges that the City will not provide any endorsement of the Contractor or the Work performed pursuant to the Contract. The Contractor will not erect any sign or advertising, use any the City trademark, logo or device in any sign or advertisement or make any public announcement or disclosure whether for publication in the press, radio, television or any other medium regarding the existence of the Contract, the Project or the Work without the prior written consent of the City, which consent may be arbitrarily withheld.

25.10 Attornment

Subject to GC. 13, for the purposes of any legal actions or proceedings brought by any party against the other party, the parties hereby irrevocably accept and submit to the exclusive jurisdiction of the courts of the Province of British Columbia and acknowledge such courts' competence and the convenience and propriety of the venue and agree to be bound by any judgment of such courts and not to seek, and hereby waive, review of its merits by the courts of any other jurisdiction.

25.11 Rights and Remedies Cumulative

All rights and remedies under the Contract (other than those which are expressly specified in the Contract Documents as exclusive rights and remedies) are cumulative and are in addition to and not in substitution for any other rights or remedies available under the Contract or Law or at equity.

25.12 Survival

All representations and warranties of the Contractor to the City and all provisions of:

- (a) GC. 15;
- (b) GC. 16;
- (c) GC. 18;
- (d) each other provision of the Contract providing for indemnification of a party by the other party;
- (e) GC. 20;
- (f) GC. 24;
- (g) GC. 25.2 and 25.6; and
- (h) each other provision of the Contract which, in accordance with its terms, expressly survives the termination, suspension, cancellation, completion or expiration of the Contract,

including each other provision necessary for the interpretation or enforcement of such provision, will continue as valid and enforceable obligations of the parties notwithstanding any termination, suspension, cancellation, completion or expiration of the Contract.

APPENDIX B – SCOPE OF WORK

SCOPE OF WORK

New Bridge

The New Bridge includes everything between Chainage 10+289.307 and Chainage 10+421.606 as set out in the Contract Documents, including abutments, piers, foundations, superstructure, counterweight, railings, illumination, paving, drainage, control room, electrical room, access ladders and platforms, and all electrical and mechanical components as required by the Contract Documents.

Related Works

Related Works includes all work except the New Bridge within the contract limits as shown on Drawing 5010751-PDR-G-PLN-105 and Drawing 5010751-PDR-G-PLN-106, including excavation, removals and disposal, grading, roads and paths, environmental and traffic management during construction, electrical works, drainage works, signage, traffic lights, road and path illumination, landscaping, management of contaminated soils, navigation channel fendering, retaining walls, utility relocations and other work as required by the Contract Documents. Related Works also includes removal of the existing bridge, including substructures and fendering, as required by the Contract Documents.

Design-Build Work

The Related Works also includes the design and construction of the proposed retaining wall as shown between station 0+000 and station 0+101.500 on the drawing entitled Johnson Street Bridge Replacement Galloping Goose Trail Retaining Wall #11, No. 5012802-100-C-PLN-951.

[Note: Insert description of the portion of the Project/ New Bridge/ Related Works, if any, that the Contractor will perform on a design-build basis.]