Agreement Number

Lump Sum Agreement between the Municipality and

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Agreement Number

This *Agreement* is made effective

Between

Regional Municipality of Wood Buffalo
(the "***Municipality***")

and

(the "***Contractor***")

FORM OF AGREEMENT

RECITALS

A. The *Municipality* desires to retain the *Contractor* to perform the *Work* within the *Contract Time* for the *Contract Price*; and

B. The *Contractor* desires to perform the *Work* and take responsibility for the *Work* being performed in accordance with this *Agreement* in the *Contract Time* for the *Contract Price*.

In consideration of the mutual promises set out in this *Agreement*, and such other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the *Municipality* and the *Contractor* agree as follows:

ARTICLE A-1 THE PROJECT

1.1 This Agreement is in relation to the following project

ARTICLE A-2 THE WORK

2.1 The *Contractor* shall:

2.1.1 perform the *Work* as required by, and in accordance with, the *Scope of Work Documents* and the *Law*;

2.1.2 manage, and be responsible for, all *Subcontractors* and the *Work* performed by them;

2.1.3 ensure that the *Work* is performed within the *Contract Time* for the *Contract Price*;

2.1.4 be the *Prime Contractor for Safety* for the *Work*; and

2.1.5 do and fulfill everything indicated and required by this *Agreement*.

ARTICLE A-3 CONTRACT TIME

3.1 The *Contractor* shall, subject only to adjustment by *Change Order* or *Change Directive*:

3.1.1 commence the performance of the *Work* on XXXXX and shall perform the *Work* continuously up to and including the date of *Total Performance of the Work*, and, as applicable, during the *Warranty Period*.

3.1.2 achieve *Substantial Performance of the Work* and *Total Performance of the Work* by the following dates:

(a) *Substantial Performance of the Work* to be achieved on or before XXXXX and

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(b) *Total Performance of the Work* to be achieved within XX days following *Substantial Performance of the Work*, or so soon thereafter as is practical with respect to the completion of seasonal portions of the Work.

ARTICLE A-4 SCOPE OF WORK DOCUMENTS

4.1 The following are incorporated by reference into this *Agreement* and collectively comprise the *Scope of Work Documents*:

4.1.1 documents describing the scope of the *Work*, including the *Specifications*, the *Drawings* and Schedule B – Scope of Work;

4.1.2 at any point in time the current *Construction Schedule*; and

4.1.3 the following policies of the *Municipality*, although written to apply to the *Municipality's* employees, shall apply, with such modifications as necessary, to the *Contractor*, all *Subcontractors* and their respective personnel as if written to apply to them:

(a) Administrative Directive: Code of Conduct, dated January 1, 2016

4.2 Copies of the policies referred to in Article 4.1.3 may be obtained by requesting a copy from the *Municipality*.

ARTICLE A-5 CONTRACT PRICE

5.1 Subject only to adjustments by *Change Order* or *Change Directive*, the *Contract Price*, being the total amount payable by the *Municipality* to the *Contractor* for the timely and proper performance of the *Work*, is $XXXXX

5.2 Goods and services taxes are not included in the *Contract Price*.

5.3 Subject to the *Contractor* complying with this *Agreement*, the *Municipality* shall in accordance with this *Agreement*:

5.3.1 make progress payments to the *Contractor* on account of the *Contract Price* when due and owing in the amount certified by the *Prime Consultant* and approved by the *Municipality*; and

5.3.2 upon the achievement of *Total Performance of the Work* and the issuance of a final certificate for payment, pay the *Contractor* the unpaid balance of the *Contract Price* that is due.

5.4 All payments and release of holdback amounts will be made subject to the Builders' Lien Act.

ARTICLE A-6 RECEIPT OF AND ADDRESSES FOR NOTICES

6.1 Any *Notice* to be given by either *Party* pursuant to this *Agreement*, or the *Prime Consultant*, shall be in writing and delivered personally, by commercial courier or sent by email to the following addresses, as applicable:

***Municipality*:**
Regional Municipality of Wood Buffalo
9909 Franklin Avenue
Fort McMurray, AB T9H 2K4
Attention: BJ (Betty-Jane) Marks
Email: betty-jane.marks@rmwb.ca

***Contractor*:**

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6.2 A *Notice* shall be deemed to have been given and received on the date on which it was delivered or transmitted, if delivered or transmitted on a *Business Day* during the regular business hours of the recipient. If it is delivered or transmitted on a day that is not a *Business Day* or outside the regular business hours of the recipient, the *Notice* shall be deemed to have been delivered or transmitted on the following *Business Day*.

6.3 A *Party* may change its address for receipt of *Notices* at any time by giving *Notice* of the change to the other *Party* and the *Prime Consultant* in accordance with this provision. The *Prime Consultant* may change its address for receipt of *Notices* at any time by giving *Notice* of the change to the *Parties* in accordance with this provision. Such changed address for receipt of *Notices* will be effective 5 *Business Days* after receipt of the *Notice* by the recipient.

ARTICLE A-7 EXECUTION IN COUNTERPARTS

7.1 This *Agreement* may be executed and delivered by fax and in any number of counterparts, each of which shall be deemed an original and all of which taken together shall constitute one and the same *Agreement*.

IN WITNESS WHEREOF the *Parties* have executed this *Agreement* by the hands of their duly authorized representatives.

REGIONAL MUNICIPALITY OF WOOD BUFFALO	**CONTRACTOR:**
Signature	Signature
Name and Title:	Name and Title:
Signature	Signature
Name and Title:	Name and Title:
Date:	Date:

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GENERAL TERMS AND CONDITIONS

GC 1 DEFINITIONS AND INTERPRETATION

1.1 Definitions

In this *Agreement,* the following definitions shall apply:

Agreement means, collectively, the FORM OF AGREEMENT, GENERAL TERMS AND CONDITIONS and all of the Schedules, and incorporates any Scope of Work Documents referred to therein.

Business Day means any day other than a Saturday, Sunday or statutory holiday recognized in the Province of Alberta.

Change means an addition or deletion to the *Work* or the *Construction Schedule*, or the replacement of a proposed subcontractor or supplier in accordance with GC 4.10.4, which results in a material change to the *Contract Time* or *Contract Price*.

Change Directive means a written instruction, in the form attached in Schedule F – Forms, signed by the *Municipality* and issued by the *Prime Consultant* to the *Contractor* authorizing the *Contractor* to proceed with a *Change* notwithstanding the absence of an agreement as to adjustment of the *Contract Price* or *Contract Time*, or both, as applicable.

Change Order means a written record of a *Change*, in the form attached in Schedule F – Forms, prepared by the *Prime Consultant* and signed by the *Municipality*, the *Prime Consultant* and the *Contractor* stating their agreement to a *Change* and the method of adjustment of the *Contract Price* or *Contract Time*, or both, as applicable, and includes all ripple and cumulative effects of the current *Change Order* and any previous *Change Orders*, if any.

Claim or ***Claims*** means, as the case maybe, any one or more of the following: claims, demands, losses, *Consequential Damages*, costs, liabilities, damages, liens, encumbrances, actions, suits or proceedings, whether first party or third party, together with legal costs on a solicitor and his own client full indemnity basis.

Confidential Information means all information that is acquired by, or becomes known to, the *Contractor* or any of its personnel, agents or *Subcontractors* as a result of, directly or indirectly, performing the *Work*, or otherwise being involved in the *Project* and which is in the nature of one of the following categories of information:

(a) all information with respect to the *Municipality* operations, the *Project* and this *Agreement*; or

(b) all personal information as defined in the Freedom of Information and Protection of Privacy Act.

Consequential Damages means any one or more of: loss of profits or anticipated profits, loss of business opportunity, loss of revenue and loss of reputation.

Construction Schedule means the schedule for the *Work* which is prepared by the *Contractor* and approved by the *Municipality* in accordance with GC 4.7.1(b).

Construction Safety Plan means the plan developed by the *Contractor* to address safety on the *Project Site*, and anywhere else that the *Work* is performed, once approved by the *Municipality*.

Contract Price means the total amount payable by the *Municipality* to the *Contractor* for the timely and proper performance of the *Work* as stipulated in ARTICLE A-5 CONTRACT PRICE, as may be adjusted by *Change Orders* or *Change Directives*.

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Contract Time means the time stipulated in ARTICLE A-3 CONTRACT TIME as the period between commencement of the *Work* and achievement of *Total Performance of the Work*, as may be adjusted by *Change Orders* or *Change Directives*.

Contractor means the entity identified on the first page of this *Agreement* and includes, where applicable, *Contractor's* authorized representative as designated to the *Municipality* by *Notice*, from time to time.

Deficiencies means one or more defects or deficiencies in the *Work* or *Materials*.

Drawings means the graphic and pictorial drawings, sketches and representations, whether electronic or paper-based, prepared by the *Prime Consultant* to represent the *Work*, including plans, elevations, sections, details, schedules, and diagrams.

Event of Force Majeure means any occurrence, other than the financial incapability of a *Person*, which prevents or delays a *Party* from performing its obligations under this *Agreement* (except an obligation to pay any amount) within the time required for the performance of such obligation and which is beyond the control and without the fault or negligence of the *Party* relying on such occurrence, and which by the exercise of reasonable diligence that *Party* could not have reasonably contemplated happening and which, at the time of such occurrence, is beyond the reasonable control of the *Party* required to perform such obligation and such *Party* is unable to reasonably prevent or provide against such occurrence.

Facility Takeover means the turnover by the *Contractor* and the takeover by the *Municipality* of part, or all of, the *Project*, which may occur in phases, or not, as determined in the sole discretion of the *Municipality*, and which shall occur when all of the prerequisites identified in this *Agreement* have been completed by the *Contractor*, certified by the *Prime Consultant* and accepted in writing by the *Municipality.*

Facility Takeover Date means the date that *Facility Takeover* occurs in relation to a part, or all of, the *Project*.

FORM OF AGREEMENT means the recitals and provisions from ARTICLE A-1 THE PROJECT to ARTICLE A-7 EXECUTION IN COUNTERPARTS, inclusive, appearing at the beginning of this *Agreement*.

GENERAL TERMS AND CONDITIONS means those provisions from GC 1 DEFINITIONS AND INTERPRETATION to GC 17 FORCE MAJEURE, inclusive, appearing after the FORM OF AGREEMENT in this *Agreement*.

Governmental Authority means any federal, provincial or municipal government, official, administrative, regulatory, or legislative authority, commission, tribunal or court or any of the respective agencies or departments thereof having jurisdiction over any aspect of the *Project*, the *Work*, this *Agreement*, or any matters arising thereunder.

Law means the common law and all applicable decrees, statutes, laws, by-laws, rules, orders, codes, directives and regulations in effect from time to time and made or issued by any *Governmental Authority* having jurisdiction over any aspect of the *Project*, the *Work*, this *Agreement*, the *Municipality*, the *Contractor* and the *Subcontractors*, and includes any applicable replacement, amendment or supplementary legislation, and any applicable regulations, and further includes the *OH&S Legislation*.

Materials means materials, supplies, machinery, equipment and fixtures which are or which are to be permanently incorporated into the *Work,* but excludes machinery and equipment used to prepare, fabricate, convey, or erect the *Work*, which are referred to as construction machinery and equipment.

Municipality means Regional Municipality of Wood Buffalo and includes an individual, whom the *Municipality* may designate, by *Notice*, from time to time, as its representative in relation to this *Agreement*, but excludes the *Prime Consultant*.

Notice means a notice made in writing and delivered to one of the *Parties* or the *Prime Consultant* at the address stipulated for or any replacement address, and in the method required for, delivery as set out in ARTICLE A-6 RECEIPT OF AND ADDRESSES FOR NOTICE.

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Notice of Change means a written notification authorized and issued by or on behalf of the *Municipality*, providing notice to the *Contractor* and others of a proposed *Change*.

OH&S Legislation means, collectively, the Occupational Health and Safety Act, all of its regulations and the Occupational Health and Safety Code, which may be in force, from time to time.

Other Contractors means any other contractors or consultants which are retained directly by the *Municipality* in connection with the *Project*, other than the *Contractor*.

Party means one of the parties to this *Agreement* and ***Parties*** means the *Municipality* and the *Contractor*, collectively, as the case may be.

Person means any one of an individual, partnership, limited liability partnership, limited liability company, corporation, sole proprietorship, trust, unincorporated organization, association, society, government or any department or agency thereof.

Prime Consultant means the architect, the engineer or *Person* licensed to practice in the Province of Alberta who has been retained by the *Municipality* to perform the design services for the *Project* and, where applicable, includes the *Prime Consultant's* authorized representatives and subconsultants.

Prime Contractor for Safety means the role of "prime contractor", as that term is defined in the *OH&S Legislation*.

Project means the project described in ARTICLE A-1 THE PROJECT.

Project Site means the designated location of the *Work* on the *Project* lands as identified in the *Scope of Work Documents*, or, if not identified in the *Scope of Work Documents*, as identified by the *Municipality* by *Notice* to the *Contractor*, from time to time.

Schedules means, collectively, the following schedules and ***Schedule*** means one of the following schedules, as applicable, which are attached to and form part of this *Agreement*:

Schedule A – Supplementary Conditions;

Schedule B – Scope of Work;

Schedule C – Lump Sum Price;

Schedule D – Key Personnel;

Schedule E – Insurance and

Schedule F – Forms.

Scope of Work Documents means all of the documents, collectively, listed in ARTICLE A-4 SCOPE OF WORK DOCUMENTS and any amendments thereto agreed upon between the *Parties*, and includes Schedule B – Scope of Work and all *Site Instructions*, *Specifications*, *Drawings*, *Change Orders* and *Change Directives*.

Shop Drawings means one or more drawings, diagrams, illustrations, schedules, performance charts, technical brochures and other data which are to be provided by or through the *Contractor* or the *Subcontractors* to illustrate details of a portion of the *Work*.

Site Instruction means an instruction, not involving any adjustment to the *Contract Price* or *Contract Time*, in the form of specifications, drawings, schedules, samples, models or written instructions and which may be issued by the *Prime Consultant* to supplement the *Scope of Work Documents* as required for the performance of the *Work*.

Specifications means those documents, whenever issued by the *Prime Consultant*, setting out the requirements and standards for *Materials*, systems, workmanship and the services necessary for the proper performance of the *Work* or any part thereof.

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Subcontractor means a *Person* who performs part of the *Work*, including the supply of *Materials*, and either: (a) has a direct contract with the *Contractor* or (b) has no direct contract with the *Contractor* but is at any tier below the *Contractor*.

Substantial Performance of the Work has the meaning given that phrase in the Builders' Lien Act, but shall not be deemed to have been achieved for the purpose of this *Agreement* until the *Prime Consultant* has issued a certificate verifying that, in the opinion of the *Prime Consultant*, *Substantial Performance of the Work* has been achieved.

Total Performance of the Work means the *Work*, with the exception of *Warranty Work*, has been fully completed, including rectification of all known *Deficiencies*, which has been verified by the *Prime Consultant* and the *Prime Consultant* has provided *Notice* of the same to the *Municipality* and the *Contractor*.

Toxic or Hazardous Substances means any solid, liquid, gaseous, thermal or electromagnetic irritant or contaminant and includes all pollutants and hazardous substances or wastes whether or not defined in any *Law*.

Warranty Period means, subject to GC 9.1.8 and GC 12.2.3, that period of time set out in GC 12.2.2 during which the *Contractor* is obligated to warrant the *Work*.

Warranty Work means the work to remedy, correct or rectify any *Deficiencies*, including any work required to access the *Deficiencies* and any work required to make good the *Deficiencies* and any other *Work* or work performed by *Other Contractors* that is destroyed, disturbed or negatively affected by the performance of the work to remedy, correct or rectify any *Deficiencies*, which shall be performed by the *Contractor*.

Work means the construction work and supply of *Materials*, equipment and machinery, including temporary services, required for the construction of the *Project* as described in the *Scope of Work Documents*, together with anything ancillary thereto that is required for the proper completion of such work, including *Warranty Work*, and which shall be performed by the *Contractor*.

1.2 **Interpretation and General Provisions**

1.2.1 Wherever this *Agreement* requires an action to be performed or an obligation to be undertaken, unless otherwise specified, such action or obligation shall be performed in a prompt and commercially reasonable manner by the *Party* taking the action or fulfilling its obligation.

1.2.2 This *Agreement* supersedes all prior negotiations, representations, or agreements, either written or oral, relating in any manner to the subject matter of this *Agreement*, including any bid documents that are not expressly listed in ARTICLE A-4 SCOPE OF WORK DOCUMENTS.

1.2.3 This *Agreement* may only be amended by a document in writing signed by the *Parties*.

1.2.4 The provisions of this *Agreement* shall ensure to the benefit of, and be binding upon, the *Parties*, their respective successors and permitted assigns.

1.2.5 Wherever the term "including" is used, or any derivative thereof, it shall be read to mean "including, but not limited to" or an equivalent phrase for a derivative, as the case may be, if the context so permits such a construction.

1.2.6 All amounts referred to in this *Agreement* are in Canadian dollars, unless otherwise indicated.

1.2.7 If a court of competent jurisdiction determines that any provision of this *Agreement* is invalid or unenforceable, such determination shall not affect the validity or enforceability of the remaining provisions of this *Agreement*.

1.2.8 The words in this *Agreement* shall bear their natural meaning. The *Parties* have each had the opportunity of obtaining legal advice and accordingly any rule of construction to the effect that

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any ambiguity is to be resolved against the drafting *Party* shall not be applicable in the interpretation of this *Agreement*.

1.2.9 Time shall be of the essence in this Agreement.

1.3 **Law of the Agreement and Attornment**

1.3.1 This *Agreement* shall be governed by the laws of the Province of Alberta and the *Parties* agree to attorn to the exclusive jurisdiction of the Courts of the Province of Alberta.

1.4 **Interpretation of Scope of Work Documents**

1.4.1 Documents comprising this *Agreement* are complementary, and what is required by any one shall be as binding as if required by all.

1.4.2 Words and abbreviations that have customary technical or trade meanings are used in this *Agreement* in accordance with such recognized meanings.

1.4.3 References in this *Agreement* to the singular shall be considered to include the plural, as the context requires.

1.5 **Precedence of Document for Interpretation**

1.5.1 If there is a conflict within the documents that are incorporated in this *Agreement*, the order of priority, from highest to lowest, shall be:

(a) Schedule A – Supplementary Conditions;

(b) FORM OF AGREEMENT;

(c) GENERAL TERMS AND CONDITIONS;

(d) *Change Orders* and *Change Directives*;

(e) *Specifications*;

(f) *Drawings*;

(g) *Site Instructions*;

(h) *Construction Schedule* approved from time to time by the *Municipality*;

(i) applicable policies of the *Municipality* as referred to in Article 4.1.3; and

(j) any other *Scope of Work Documents* not referred to above.

1.5.2 Amongst the documents referred to in GC 1.5.1, the following applies:

(a) larger scale shall govern over smaller scale of the same date;

(b) dimensions shown on *Drawings* shall govern over dimensions scaled from the same; and

(c) later dated documents shall govern over earlier documents of the same type.

1.6 **No Waiver**

1.6.1 No action or failure to act by the *Municipality*, the *Prime Consultant* or the *Contractor* shall constitute a waiver of any right or duty afforded or imposed on any of them under this *Agreement*, and such action or failure to act shall not constitute an approval of, or acquiescence in, any breach of this *Agreement*, except as may be expressly provided for or required by this *Agreement* or otherwise agreed in writing by the *Parties*.

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1.7 **No Assignment without Consent**

1.7.1 Neither *Party* to this *Agreement* shall assign their respective rights or responsibilities, or any portion thereof, without the prior written consent of the other *Party*. Notwithstanding the foregoing, the *Parties* accept that the *Municipality* may be differently constituted from time to time in accordance with the *Law* and any change in the organization or name of the *Municipality* shall not be an assignment of the *Municipality's* rights or obligations under this *Agreement*.

1.8 **Survival**

1.8.1 The following provisions of this *Agreement*, together with any other provision of this *Agreement* which expressly states or naturally implies that it survives the termination, cancellation, completion, suspension or expiration of this *Agreement*, including any other provision that is necessary for the interpretation or enforcement of the same, shall continue as valid and enforceable notwithstanding any such termination, cancellation, completion, suspension or expiration, namely:

(a) GC 1.3;

(b) GC 1.6;

(c) GC 10 DISPUTE RESOLUTION;

(d) GC 12 INDEMNIFICATION AND WARRANTY;

(e) GC 13 CONFIDENTIALITY AND FREEDOM OF INFORMATION; and

(f) GC 16 PROTECTION OF PERSONS AND PROPERTY AND TOXIC AND HAZARDOUS SUBSTANCES.

GC 2 GENERAL PROVISIONS

2.1 **Conduct of the Work**

2.1.1 The *Contractor* shall perform the *Work* in a professional, highly competent and safe manner with good workmanship which performance meets or exceeds the standards for construction on projects of a similar nature in the Province of Alberta.

2.1.2 The *Contractor* shall perform the *Work* diligently and take all measures necessary to ensure that the *Construction Schedule* is met.

2.1.3 The *Contractor* represents that it is highly knowledgeable and experienced in the type of work described in the *Scope of Work Documents*. The *Contractor* is being retained by the *Municipality* specifically because of its knowledge and expertise in that regard.

2.1.4 The *Contractor* shall in all respects be an independent contractor.

2.1.5 The *Contractor* shall undertake and complete the *Work* in accordance with the requirements of the *Scope of Work Documents*, and otherwise perform any and all of the obligations required by the *Scope of Work Documents*, in a manner consistent with and in all respects within the approved scope, cost, time and quality parameters stipulated by the *Scope of Work Documents*.

2.1.6 The *Contractor* shall not, in the performance of the *Work*, engage in practices which conflict with the *Municipality's* interest including, without limitation, disclosing information about the *Municipality's* business or operations; withholding information that could adversely affect the business interests or operations of the *Municipality*; accepting gifts from or offering gifts to the *Municipality* personnel that may lead to a perceived obligation; or engaging in any activity that would contravene any *Law*. *Contractor* shall inform the *Municipality*, in writing, of any potential conflict of interest that may arise.

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2.1.7 The *Contractor* shall cooperate and work with any independent consultants, who are appointed by the *Municipality* from time to time.

2.1.8 The *Contractor* shall perform the *Work* in such manner as to cause a minimum of interference with the *Municipality's* operations and the operations of *Other Contractors*. The *Contractor* and the *Municipality* shall cooperate fully with each other, *Other Contractors* and all other parties with whom the *Contractor* and the *Municipality* may be involved during the performance of the *Work*.

2.1.9 All proceeds from excess of or scrap and salvage of any *Materials* or consumables, owned or purchased by the *Municipality* shall be accounted for by the *Contractor* to the *Municipality*. Such accounting shall be performed as directed by the *Municipality*.

2.2 **Activities**

2.2.1 The *Contractor* shall ensure that all permits, licenses and building occupancy permits for the *Project* which are required by the *Scope of Work Documents* to be obtained by the *Contractor* are obtained in a timely manner and in accordance with the *Construction Schedule*.

2.2.2 The *Contractor* shall monitor its progress in performing the *Work* and report regularly to the *Municipality* in a format acceptable to the *Municipality*, which shall include:

(a) actual progress reports, with itemization of *Work* complete, in progress and scheduled for the next period and the *Materials* delivered to the *Project Site*;

(b) forecast progress and labour deployment;

(c) identification of any portions of the *Work* which has, or has the potential to be, delayed and the mitigation efforts being deployed by the *Contractor* to address such delay or potential delay;

(d) lost time incident reports; and

(e) other reports which may be requested by the *Municipality* from time to time.

2.2.3 The *Municipality* shall make reasonable efforts to furnish the *Contractor* with the necessary information regarding the *Project* which the *Municipality* has available. It shall be the *Contractor's* responsibility to:

(a) advise the *Municipality* if any further or additional information is required; and

(b) obtain and assemble adequate information to permit the *Work* to be completed in a proper and expeditious manner as required by and in accordance with the *Scope of Work Documents* and the *Construction Schedule*.

2.3 **Use of the Scope of Work Documents**

2.3.1 The intent of the *Scope of Work Documents* is that the *Contractor* will provide, directly or through a *Subcontractor*, all labour, *Materials*, related services, equipment or other matters or things necessary for the *Contractor* to perform the *Work*, as contemplated by the *Scope of Work Documents*.

2.3.2 Unless expressly stated otherwise, the *Contractor* may rely on the accuracy and completeness of the *Scope of Work Documents* without regard to the source of such information.

2.3.3 The *Contractor* shall not be responsible for verifying that the *Scope of Work Documents* are in compliance with the *Law*.

2.3.4 Subject to GC 2.3.5, the *Contractor* shall review the *Scope of Work Documents* provided by the *Municipality* or the *Prime Consultant* and shall promptly provide *Notice* to the *Municipality* and the

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Prime Consultant of any of the following that the *Contractor* discovers or becomes aware of or should discover or become aware of:

(a) any errors, inconsistencies, omissions or ambiguities in the *Scope of Work Documents*;

(b) doubt as to the meaning or intent of any part of the *Scope of Work Documents*;

(c) any variance between the content of the *Scope of Work Documents* and the *Law*; or

(d) if, subsequent to the initial review of the *Scope of Work Documents*, changes are made to the *Law* which require modification to the *Scope of Work Documents.*

2.3.5 The review by the *Contractor* described in GC 2.3.4 shall be to the best of the *Contractor's* knowledge, information and belief and shall be at or above the level of the industry standard of contractors performing similar work in Alberta. The *Contractor* shall not be liable for costs, expenses or damages resulting from any conditions described in GC 2.3.4 which the *Contractor* did not discover or become aware of or should not have discovered or become aware of, provided the *Contractor* conducts such review to the best of the *Contractor's* knowledge, information and belief and at the level of the industry standard of contractors performing similar work in Alberta.

2.3.6 If the *Contractor* does discover any conditions described in GC 2.3.4, the *Contractor* shall not proceed with the *Work* affected until the *Contractor* has received clarification of or revisions to the *Scope of Work Documents* from the *Municipality* or the *Prime Consultant*.

2.3.7 If *Notice* is given by the *Contractor* in accordance with GC 2.3.4 and clarifications or revisions to the *Scope of Work Documents* are required, the *Prime Consultant* shall revise the *Scope of Work Documents* and any *Change* shall be dealt with in accordance with GC 7 CHANGES AND CONCEALED OR UNKNOWN CONDITIONS.

2.3.8 If the *Contractor* fails to provide *Notice* as required in GC 2.3.4 or proceeds with the *Work* before receiving clarification of or revisions to the *Scope of Work Documents* from the *Municipality* or the *Prime Consultant* as provided for in GC 2.3.6, the *Contractor* shall be responsible for and shall bear the costs, expenses, and damages attributable to any such failure or proceeding in such manner.

2.3.9 Unless otherwise expressly agreed to in writing by the *Municipality*, nothing contained in the *Scope of Work Documents* shall create any contractual relationship between:

(a) the *Municipality* and any *Subcontractor*, including its agents, personnel, or other persons engaged in the performance of the *Work*; or

(b) the *Prime Consultant* and the *Contractor*, or any *Subcontractor*, or their respective agents, personnel, or other *Persons* engaged by them in the performance of the *Work*.

2.4 **Acceptance of the Work and the Project Site**

2.4.1 The Contractor accepts the *Project Site* and the obligation to perform the *Work* in the condition existing at the effective date of this *Agreement* and, except for subsurface conditions as described in GC 7.4, acknowledges that it has investigated and satisfied itself as to the following:

(a) the nature of the *Work*;

(b) the location of and all conditions relating to the Project Site, including, but not limited to, accessibility, general character, surface conditions, utilities, roads, uncertainties of seasonal weather and all other physical, topographical and geographical conditions;

(c) all environmental risks, conditions, *Law* and restrictions applicable to the *Contractor* or the *Work* that may affect the *Work*; and the magnitude of the *Work*.

2.4.2 The *Contractor* accepts the obligation to perform the *Work* and acknowledges that it has

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investigated and accepts what is known and can be reasonably anticipated regarding:

(a) the general character, quality, quantity and availability of resources required to execute and complete the *Work*; and

(b) all conditions affecting labour for the provision of the *Work*.

GC 3 ADMINISTRATION OF THE AGREEMENT

3.1 Authority of the Prime Consultant

3.1.1 The *Prime Consultant* shall have authority to act on behalf of the *Municipality* only to the extent provided for in this *Agreement* or as the *Municipality* may authorize, from time to time, but only to the extent that such authorization is communicated to the *Contractor* by *Notice* from the *Municipality*.

3.1.2 The duties, responsibilities, and limitations of authority of the *Prime Consultant* shall only be modified or extended by a *Notice* issued by the *Municipality* to the *Contractor*.

3.1.3 If the *Prime Consultant's* engagement is terminated, the *Municipality* shall, as soon as reasonably practicable, appoint a replacement *Prime Consultant*, whose status under the *Scope of Work Documents* shall be that of the former *Prime Consultant*. The *Municipality* shall provide *Notice* to the *Contractor* of the replacement.

3.2 Role and Responsibility of the Prime Consultant

3.2.1 The *Prime Consultant* shall, to the extent specifically provided for in this *Agreement*, be a representative of the *Municipality* during the performance of the *Work* until the date of the *Total Performance of the Work* and the completion of the *Warranty Work*. The *Prime Consultant's* instructions to the *Contractor* shall be forwarded directly from the *Prime Consultant*, or alternatively through the *Municipality*, as may be determined appropriate by the *Municipality* from time to time.

3.2.2 The *Prime Consultant* shall visit the *Project Site* as requested by the *Municipality* and at intervals appropriate to the progress of the *Work* to become familiar with the progress and quality of the *Work* and to determine if the *Work* is proceeding in general conformity with this *Agreement*.

3.2.3 Based upon the *Prime Consultant's* observations and evaluation of the *Contractor's* applications for payment, the *Prime Consultant* shall make an assessment as to the amounts owing to the *Contractor* under this *Agreement* and shall issue certificates for payment as provided for in GC 5 PAYMENT AND ALLOWANCES.

3.2.4 The *Prime Consultant* shall not be responsible for, and shall not have control, charge, or supervision of construction means, methods, techniques, sequences, or procedures, quality assurance programs or for safety precautions and other programs required in connection with the *Work* in accordance with the applicable construction safety *Law* or general construction practice.

3.2.5 The *Prime Consultant* shall not be responsible for the *Contractor's* failure to carry out its obligations in accordance with the *Scope of Work Documents*. The *Prime Consultant* shall not have control over, charge of, or be responsible for the acts or omissions of the *Contractor* or any *Person* for whom the *Contractor* is responsible at *Law*.

3.2.6 The *Prime Consultant* shall be, in the first instance, the interpreter of the requirements of this *Agreement* and shall make determinations as to the performance under it by the *Municipality* and the *Contractor* and the *Subcontractors*. Interpretations and determinations of the *Prime Consultant* shall be consistent with the intent of the *Scope of Work Documents*.

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3.2.7 *Claims*, disputes, and other matters in question relating to the performance of the *Work* or the interpretation of the *Scope of Work Documents*, shall be referred initially by *Notice* to the *Prime Consultant* for the *Prime Consultant's* interpretation and determination. The *Prime Consultant's* interpretation and determinations shall be given by *Notice* to both the *Municipality* and the *Contractor* within a reasonable time.

3.2.8 The *Prime Consultant* shall have authority to reject *Work* which, in the *Prime Consultant's* opinion, does not conform to the requirements of this *Agreement*. Whenever the *Prime Consultant* considers it necessary or advisable, the *Prime Consultant* shall have authority to require inspection or testing of *Work*, whether or not such *Work* is fabricated, installed or completed. However, neither the authority of the *Prime Consultant* to act, nor any decision either to exercise or not exercise such authority, shall give rise to any duty or responsibility of the *Prime Consultant* to the *Contractor*.

3.2.9 During the progress of the *Work*, the *Prime Consultant* shall furnish *Site Instructions* to the *Contractor* with reasonable promptness or in accordance with a schedule for such instructions agreed to by the *Municipality*, the *Prime Consultant* and the *Contractor*.

3.2.10 The *Prime Consultant* shall review and take appropriate action upon the *Contractor's* submittals such as *Shop Drawings* and samples, as provided in the *Scope of Work Documents*.

3.2.11 The *Prime Consultant* shall prepare *Change Orders*, *Change Directives*, *Notices of Change* and *Site Instructions* as provided in GC 7 CHANGES AND CONCEALED OR UNKNOWN CONDITIONS. Neither a *Change Order* nor a *Change Directive* shall constitute a *Change* unless signed by the *Municipality*.

3.2.12 The *Prime Consultant* shall conduct reviews of the *Work* to verify *Substantial Performance of the Work* and *Total Performance of the Work* as provided in GC 5.4 and GC 5.6.

3.2.13 The *Prime Consultant* shall make reasonable efforts to promptly review and take appropriate action with respect to all documents submitted by the *Contractor*, including written warranties and related documents, and upon the *Municipality's* request, shall establish a process for the *Municipality's* review of some or all such documents. In the event that the *Contractor* determines that the *Prime Consultant* is not promptly reviewing or taking appropriate action with respect to any documents submitted by the *Contractor*, the *Contractor* shall, within 5 *Business Days* of such event occurring, provide *Notice* to the *Prime Consultant* and the *Municipality* setting out which documents have not been promptly reviewed or in relation to which the *Prime Consultant* has not taken appropriate action and the affect of such conduct. If the *Contractor* does not provide such *Notice*, the *Contractor* shall have no *Claim* against the *Municipality* for any reason relating to the conduct of the *Prime Consultant*.

3.3 **Review and Inspection of the Work**

3.3.1 The *Municipality* and the *Prime Consultant* shall have access to the *Work* at all times provided they meet the *Contractor's* safety requirements.

3.3.2 The *Contractor* shall provide sufficient, safe, and proper facilities at all times for the review and inspection of the *Work* by the *Municipality*, the *Prime Consultant* and *Governmental Authorities*. If parts of the *Work* are in preparation at locations other than the *Project Site*, the *Municipality* and the *Prime Consultant* shall be given access to such *Work*.

3.3.3 The *Municipality's* Safety Representative may review and visit the *Project Site* at any time to determine if the *Contractor* is fulfilling its responsibilities as *Prime Contractor for Safety* and under the *OH&S Legislation*. Reviews may include: *Project Site* conditions, work processes, procedures and documentation of *Project Site* safety related activities.

SAMPLE

3.3.4 If any portion of the *Work* is designated for tests, inspections, or approvals in the *Scope of Work Documents*, or by the *Prime Consultant* or the *Municipality's* instructions, or by *Law*, the *Contractor* shall give the *Prime Consultant* and the *Municipality* reasonable *Notice*, of not less than two *Business Days*, of when the *Work* will be ready for review and inspection. The *Contractor* shall arrange for, and shall give the *Prime Consultant* and the *Municipality* reasonable *Notice* of, the date and time of inspections by all *Governmental Authorities*.

3.3.5 The *Contractor* shall furnish promptly to the *Municipality* and the *Prime Consultant* two copies of any certificates and inspection reports relating to the *Work*, or any portion thereof.

3.3.6 If the *Contractor* covers or permits to be covered, *Work* that has been designated for special tests, inspections, or approvals before such special tests, inspections, or approvals are made, given or completed, the *Contractor* shall, if so directed, uncover such *Work*, have the inspections or tests satisfactorily completed, and re-perform all such *Work*, all at the *Contractor's* expense.

3.3.7 Within one month of the commencement of the *Work*, the *Municipality* and the *Prime Consultant*, in conjunction with the *Contractor*, shall jointly develop a schedule of items of *Work* which are designated for special tests, inspections, or approvals.

3.3.8 The *Prime Consultant* or the *Municipality* may order any portion or portions of the *Work* to be examined to confirm that such *Work* is in accordance with the requirements of this *Agreement*. If the *Prime Consultant* or the *Municipality* provides *Notice* to the *Contractor* that the *Work* is not in accordance with the requirements of this *Agreement*, the *Contractor* shall correct the *Work* and pay the cost of examination, correction and restoration. If, on such examination, the *Work* has been completed in accordance with the requirements of this *Agreement*, the *Municipality* shall be responsible for the cost of examination and restoration.

3.3.9 Neither the failure of the *Prime Consultant*, or an inspection agency appointed by the *Municipality* to carry out any reviews or inspections, nor the performance of such reviews and inspections by the *Prime Consultant* or an appointed inspection agency, shall relieve the *Contractor* from responsibility that the *Work*, or any portion thereof, is performed in accordance with this *Agreement*.

3.3.10 The *Contractor* shall continuously monitor and inspect the *Work* of the *Subcontractors* for *Deficiencies* and ensure that all such *Deficiencies* are promptly corrected.

3.3.11 The *Contractor* shall implement and follow a quality assurance program with respect to the performance of the *Work*, and shall ensure the compliance of the *Subcontractors* with its quality assurance program, to ensure that the quality of the *Work* meets or exceeds the standards of performance and quality required by this *Agreement*.

3.4 **Site Meetings and Meeting Minutes**

3.4.1 In order to assist the *Municipality* and the *Prime Consultant* with their review of the *Work*, meetings at the *Project Site*, or another location designated by the *Municipality*, will be held on a regular basis, or as otherwise reasonably required by the *Municipality*. The *Contractor* will have at least one of the key individuals identified in Schedule D – Key Personnel in attendance, who will be fully informed and able to discuss any issues identified prior to or raised for discussion or action at such regular meetings. Any issues of concern which the *Contractor* has regarding the *Work* will be raised at those meetings, including any concerns regarding the *Municipality's* or *Prime Consultant's* actions, inaction, or delays, if any.

3.4.2 In the event that the *Prime Consultant* does not keep, maintain and circulate written minutes of meetings referred to in GC 3.4.1, the *Contractor* will keep and maintain detailed written minutes of those meetings which will accurately record:

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(a) the date, time and place of the meeting;

(b) the issues discussed and any resolution of or further action required with respect to those issues, including the items mentioned in GC 3.4.1; and

(c) the *Persons* for whom action items are identified.

3.4.3 The minutes referred to in GC 3.4.2 will be circulated to the *Municipality* and the *Prime Consultant* within a reasonable period of time following those meetings.

3.4.4 The absence of any comments from the *Municipality* or the *Prime Consultant* during the meetings or in response to meeting minutes issued by the *Contractor* will not necessarily be construed as an acceptance of the events as being as recorded in the minutes.

3.5 **Deficiencies**

3.5.1 At all times during the performance of the *Work*, the *Contractor* shall promptly remedy, correct and rectify any *Deficiencies*, including any *Deficiencies* that have been rejected by the *Prime Consultant*, whether or not the *Deficiencies* have been incorporated in the *Work*, and whether or not the *Deficiencies* are the result of poor workmanship, use of defective *Materials*, or damage through carelessness, negligence or other act or omission of the *Contractor* or any *Person* for whom the *Contractor* is responsible at *Law*.

3.5.2 The *Contractor* shall remedy, correct and rectify, as required to ensure the timely performance of the *Work* in accordance with the *Construction Schedule*, any and all:

(a) *Deficiencies* in a manner acceptable to the *Prime Consultant* and the *Municipality*; and

(b) *Work*, or other work, that is destroyed or damaged as a result of the *Deficiencies* or the remedying or correction thereof.

3.5.3 If, in the opinion of the *Municipality*, it is not expedient to correct any *Deficiency*, or *Work* not performed as provided for in this *Agreement*, the *Municipality*, after consultation with the *Prime Consultant* and *Contractor*, may require the *Contractor* to deduct from the amount otherwise due to the *Contractor* the difference in value between the *Work* as performed and that called for by this *Agreement*. If the *Municipality* and the *Contractor* do not agree on the difference in value, they shall refer the matter for determination in accordance with GC 10 DISPUTE RESOLUTION.

3.5.4 In the event that the *Contractor* does not remedy, correct or rectify the *Deficiencies* as required herein, the *Municipality* may, upon *Notice* to the *Contractor*, take such steps as may be necessary to remedy, correct or rectify the *Deficiencies* or the *Work* or other work which is damaged or destroyed as a result of the *Deficiencies* or the remedying or correction thereof. In such event, the *Contractor* will promptly pay the *Municipality* for costs incurred by the *Municipality*, the *Municipality's* own forces, or *Other Contractors*, for remedying, correction or rectification of those *Deficiencies*, including both the *Work* or other work, if any, destroyed or damaged, or any alterations necessitated by the *Contractor* failing to remedy, correct or rectify the *Deficiencies* and any *Claims* incurred by the *Municipality* in so doing may be set-off against any monies due from the *Municipality* to the *Contractor*.

GC 4 EXECUTION OF THE WORK

4.1 **Control of the Work**

4.1.1 The *Contractor* shall have total control of the *Work* and shall effectively control, direct and supervise the *Work* so as to ensure conformity with the *Scope of Work Documents* and compliance with all *Law*.

SAMPLE

4.1.2 The *Contractor* shall be solely responsible for construction means, methods, techniques, sequences, procedures and safety and co-ordination of the various parts of the *Work*.

4.1.3 Without limiting the generality of the foregoing, the *Contractor* is responsible for the co-ordination of the various parts of the *Work* so that no part is left in an unfinished or incomplete condition, unless otherwise required or specified by the *Municipality* to be unfinished or uncompleted.

4.1.4 Prior to commencing any of the *Work*, the *Contractor* will verify all measurements, dimensions, and levels necessary for the proper, timely and complete performance of all aspects of the *Work*. Where measurements, dimensions or levels are not included in the *Scope of Work Documents* or exact locations or requirements are not apparent, the *Contractor* will immediately provide *Notice* to the *Prime Consultant*, with a copy to the *Municipality*, identifying the lack of information and shall obtain instructions from the *Prime Consultant* prior to proceeding with any part of the *Work* affected thereby.

4.2 **Laying Out of the Work**

4.2.1 Unless otherwise stated in the *Scope of Work Documents*, the *Contractor* shall be responsible for:

(a) laying out the *Work;*

(b) the cost of stakes, markers and related tools and equipment;

(c) the preservation of existing and Contractor applied benchmarks, reference points and stakes.

4.3 **Protection of Utilities**

4.3.1 The *Contractor* shall take all necessary precautions to protect from damage all existing utilities and structures located under or upon the *Project Site*.

4.3.2 Notwithstanding any other provision in this *Agreement*, the *Contractor* shall be responsible for determining the existence, location and elevation of all utilities on the *Project Site*, including sewer, water and gas mains, services or lines, electricity, power or telephone conduits.

4.3.3 Upon request of the *Prime Consultant*, the *Contractor* shall provide to the *Prime Consultant* written evidence that the location of all utilities has been determined.

4.4 **Construction by the Municipality or Other Contractors**

4.4.1 The *Municipality* reserves the right to award separate contracts in connection with other parts of the *Project* to *Other Contractors* and to perform work with its own forces.

4.4.2 When separate contracts are awarded for other parts of the *Project* by the *Municipality* to *Other Contractors*, or when work is performed by the *Municipality's* own forces, the *Municipality* shall:

(a) provide for the co-ordination of the activities and work of *Other Contractors* and the *Municipality's* own forces with the *Work*;

(b) provide *Notice* to the *Contractor* as to whether the *Contractor* will be *Prime Contractor for Safety* in relation to some, or all of the work that is performed by *Other Contractors*; and

(c) where the *Contractor* is *Prime Contractor for Safety* for the area of the *Project Site* where work is to be performed by *Other Contractors* or the *Municipality*'s own forces, contractually require that those *Other Contractors* or ensure that the *Municipality's* own

SAMPLE

forces, as the case may be, adhere to the work rules and procedures established by the *Contractor* to ensure safety and the protection of *Persons* and the *Work*.

4.4.3 When separate contracts are awarded for other parts of the *Project* or when work is performed by the *Municipality* own forces, the *Contractor* shall:

(a) provide the *Municipality's* and *Other Contractors* with a reasonable opportunity to bring onto the *Project Site* and store their respective *Materials* and to use their construction machinery and equipment to execute their respective work;

(b) co-ordinate and schedule the *Work* with the work of *Other Contractors* and the *Municipality's* own forces;

(c) connect such other work with the *Work* as specified or shown in the *Scope of Work Documents*;

(d) participate and assist with *Other Contractors* and the *Municipality* in reviewing and co-ordinating the construction schedules of those *Other Contractors*; and

(e) where part of the *Work* is affected by, or depends upon for its proper execution, the work of *Other Contractors* or the *Municipality's* own forces, promptly provide *Notice* to the *Prime Consultant*, prior to proceeding with that part of the *Work*, of any apparent deficiencies in such work as failure by the *Contractor* to provide *Notice* will invalidate any *Claims* of the *Contractor* against the *Municipality* by reason of the deficiencies in the work of *Other Contractors* or the *Municipality's* own forces.

4.4.4 When a *Change* is required as a result of the co-ordination, any interference or damage, and connection of the work of *Other Contractors* or the *Municipality's* own forces with the *Work*, the *Changes* will be dealt with in accordance with GC 7 CHANGES AND CONCEALED OR UNKNOWN CONDITIONS.

4.4.5 *Claims*, disputes and other matters relating to the *Project* between the *Contractor* and *Other Contractors* shall be dealt with as provided in GC 10 DISPUTE RESOLUTION, provided the *Other Contractors* have reciprocal obligations. The *Contractor* shall be deemed to have consented to the procedures set out in GC 10 DISPUTE RESOLUTION for any dispute with any *Other Contractor* whose contract with the *Municipality* contains a similar dispute resolution provision.

4.5 **Temporary Supports, Structures and Facilities**

4.5.1 The *Contractor* shall have the sole responsibility for the design, erection, operation, maintenance and removal of temporary supports, structures and facilities and the design and execution of construction methods required in their use.

4.5.2 The *Contractor* shall engage and pay for professional engineering personnel registered and in good standing in the Province of Alberta, skilled in the appropriate disciplines to perform those functions referred to in GC 4.5.1 where:

(a) required by the *Law* or by the *Scope of Work Documents*; and

(b) in all cases where such temporary supports, structures and facilities and their method of construction are of such a nature that professional engineering skill is required to produce safe and satisfactory results.

4.5.3 Notwithstanding any other provision of this *Agreement*, where the *Scope of Work Documents* include designs for temporary supports, structures and facilities or specify a method of construction in whole or in part, such facilities and methods shall be considered to be part of the design of the *Work* and the *Contractor* shall not be held responsible for that part of the design or the specified method of construction. The *Contractor* shall, however, be responsible for the

SAMPLE

execution of such design or specified method of construction in the same manner as for the execution of the *Work*.

4.6 **Specified Materials**

4.6.1 Where the *Scope of Work Documents* direct the *Contractor* to incorporate *Specified Materials* into the *Work*, the *Contractor* shall review the *Specified Materials* to determine whether such *Specified Materials* can be incorporated into the *Work* without interfering with the requirements of the *Work*.

4.6.2 If the *Contractor* determines that the *Specified Materials* cannot be incorporated into the *Work* without interfering with the requirements as set out in the *Scope of Work Documents*, then the *Contractor* shall provide *Notice* to the *Municipality* specifying the *Contractor's* concerns and providing details of the reasons for the same. If such *Notice* is not provided by the *Contractor*, then the *Contractor* shall be deemed to have accepted the *Specified Materials*.

4.6.3 Where the *Contractor* provides *Notice* to the *Municipality* in accordance with GC 4.6.2, the *Municipality* shall notify the *Contractor* of the *Municipality's* decision as to whether or not to include the *Specified Materials* in the *Work*. If the *Municipality* chooses to direct the *Contractor* to use the *Specified Materials* notwithstanding the *Contractor's Notice*, then the *Municipality* shall take sole responsibility for the requirements, but not the installation, of those *Specified Materials* in relation to which the *Contractor* has given *Notice*.

4.7 **Construction Schedule**

4.7.1 The *Contractor* shall:

(a) within 10 *Business Days* of award of this *Agreement*, prepare a draft construction schedule including all of the construction phases of the *Work* and which shall incorporate:

(i) the sequence and timing of the required major *Project* decisions;

(ii) on-site construction activities to demonstrate that the *Work* will be performed in conformity with the *Contract Time*;

(b) within the time referred to in GC 4.7.1(a) deliver to the *Municipality* the draft construction schedule and:

(i) at a time agreed to by the *Municipality*, present it to the *Municipality* for the purpose of requesting the *Municipality* to approve it; and

(ii) where the draft construction schedule cannot be approved by the *Municipality* without revision, the *Contractor* shall promptly revise the draft construction schedule and deliver and re-present it to the *Municipality* repeating the process until the draft construction schedule is approved and becomes the *Construction Schedule*;

(c) break-down the *Construction Schedule* into phases of the *Work* and show the milestone completion dates for the various phases;

(d) use the *Construction Schedule* as the baseline schedule which will be identified and compared to all subsequent schedule revisions and updates;

(e) at least monthly, or as more frequently requested by the *Municipality*:

(i) provide proposed updates to the *Construction Schedule*, which updates shall include:

SAMPLE

(A) a 14 day forecast of the planned progress of the *Work*;

(B) adjustments resulting from *Change Orders* and *Change Directives*; and

(C) identification of potential variances between the *Construction Schedule* and probable completion dates for all elements of the *Work*; and

(ii) review all schedules for *Work* not started or completed when required and prepare and plan for mitigation measures and provide the mitigation plan in writing to the *Municipality* for the *Municipality's* approval.

4.7.2 Approval by the *Municipality* of the *Construction Schedule* will not diminish or lessen the *Contractor's* obligations and responsibilities under this *Agreement*, including the obligation to achieve the *Contract Time*.

4.8 **Safety**

4.8.1 The *Contractor* shall be solely responsible for construction safety at the *Project Site* and in performing the *Work*, and for the *Contractor's* compliance and, that of the *Subcontractors*, with all *Law* and practices relating to health and safety. The *Contractor* shall be responsible for initiating, maintaining and supervising all safety programs, including the preparation of applicable hazard assessments, in connection with the performance of the *Work*.

4.8.2 The *Municipality* delegates and the *Contractor* accepts the role and responsibilities of the *Prime Contractor for Safety* for the entire *Project Site* until the *Facility Takeover Date* of the entire *Work*. A partial takeover of the *Project* by the *Municipality* shall not affect this delegation, unless *Notice* of a change in the designation of the *Contractor* as *Prime Contractor for Safety* is provided by the *Municipality* to the *Contractor*, in which case, the *Contractor* shall follow the directions of the *Municipality* as set out in the *Notice*.

4.8.3 In addition to any other requirements of the *OH&S Legislation*, this *Agreement* or the *Construction Safety Plan*, the *Contractor* shall:

(a) determine what level of personal protective equipment is required on the *Project Site* and ensure that all *Persons* comply with those requirements;

(b) maintain a process or system to ensure compliance with *OH&S Legislation* for all employers at the *Project Site*;

(c) advise the *Municipality* of changes in the status of its "Certificate of Recognition", Alberta Workers' Compensation Board coverage during the period of performance of any *Work*;

(d) orientate all workers to the *Project Site*;

(e) maintain material safety data sheets (MSDS) for each controlled product at the *Project Site*;

(f) provide to the *Municipality* any information and documentation required by the *Municipality*, from time to time; and

(g) perform safety audits and maintain documentation of the same.

4.8.4 In the event of any occurrence, circumstance or condition that caused, or has the potential to cause, injury or damage to any *Person*, property, reputation, security or the environment, the *Contractor* shall:

(a) immediately verbally notify the *Municipality* and the *Prime Consultant* of the same and follow up with prompt *Notice* providing details of the occurrence, circumstance or condition;

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(b) keep the *Municipality* informed and provide copies of all relevant documentation to the *Municipality* of all developments, including medical status and anticipated recovery of any individuals involved, investigations by any *Governmental Authority*, reports prepared by or submitted by the *Contractor* or any *Subcontractor* and the laying of any charges;

(c) cooperate and ensure the cooperation of all *Subcontractors* with investigations, whether instigated by the *Municipality* or any *Governmental Authority*, and provide copies of any investigations undertaken by the *Contractor* to the *Municipality*; and

(d) prepare a corrective action plan in a time period agreed to by the *Municipality* and provide a copy to the *Municipality*.

4.8.5 The *Municipality* may, at its sole and absolute discretion, for reasons of health and safety, cause parts of, or all of, the *Work* or *Project* to be stopped, or the *Contractor* or any of the *Subcontractors* to be removed or excluded from the *Project Site*. Such action shall not relieve the *Contractor* from its obligations under this *Agreement* or otherwise affect the *Contract Price*, the *Contract Time* or give rise to any *Claim* by the *Contractor* against the *Municipality*.

4.8.6 At any time, the *Municipality* may, upon giving the *Contractor*, *Notice* of not less than two days, withdraw the delegation of the role of *Prime Contractor for Safety* to the *Contractor* and either take on itself, or delegate to an *Other Contractor*, the role of *Prime Contractor for Safety*. In which case, the *Contractor* shall comply, and ensure the compliance of all *Subcontractors* and *Persons* for whom they are responsible at *Law*, with all safety directions made or imposed by the replacement *Prime Contractor for Safety*.

4.9 **Key Personnel and Supervisory Personnel**

4.9.1 The *Contractor* shall assign to the *Project* those qualified key individuals in the positions identified in Schedule D – Key Personnel. Those key individuals will remain assigned to the *Project* in their identified capacity up to and including the achievement of *Substantial Performance of the Work* and will dedicate substantially all of their full working time and attention to the *Project* and will not be removed, changed or re-assigned to another project without the prior written consent of the *Municipality*. The *Contractor* shall ensure that these key individuals are available at no additional cost for consultation and to provide direction during the correction of *Deficiencies* and performance of any *Warranty Work*.

4.9.2 Any replacement of the key individuals identified in Schedule D – Key Personnel is subject to the prior written consent of the *Municipality*, unless the individual leaves the employment of the *Contractor*.

4.9.3 A supervisor shall represent the *Contractor* at the *Project Site* on a full-time basis until all *Deficiencies* noted at the time of *Substantial Performance of the Work* have been corrected to the satisfaction of the *Prime Consultant* and the *Municipality. Notices* and instructions given to that supervisor shall be held to have been received by the *Contractor*.

4.9.4 The *Municipality*, may, with reasonable cause, at any time during the performance of the *Work* by *Notice* to the *Contractor*, require the replacement of any of the key individuals identified in Schedule D – Key Personnel or other supervisory personal assigned to the *Work*. Upon receipt of the *Notice*, the *Contractor* will immediately make arrangements to appoint a replacement acceptable to the *Municipality*.

4.10 **Subcontractors**

4.10.1 The *Contractor* shall:

(a) enter into written subcontracts with *Subcontractors* to require them to perform their *Work* as provided in the *Scope of Work Documents*;

SAMPLE

(b) ensure that the relevant portions of this *Agreement* are incorporated into and form part of, the subcontracts entered into between the *Contractor* and its *Subcontractors*, including:

(i) provisions equivalent to those set out in GC 9 TERMINATION so that in the event of any kind of termination or delay the *Contractor* is only required to pay its *Subcontractors* for those types of costs and expenses that the *Municipality* is required to pay the *Contractor* and the *Contractor* shall indemnify the *Municipality* from any other *Claim* by any of its *Subcontractors*; and

(ii) an obligation for *Subcontractors* to protect the *Work*, the *Municipality's* property, property on or adjacent to the *Project Site* and *Materials* stored off the *Project Site* on terms equal to, or more favourable, than the terms set out in GC 16 PROTECTION OF PERSONS AND PROPERTY AND TOXIC AND HAZARDOUS SUBSTANCES;

(c) be fully responsible to the *Municipality* for acts and omissions of *Subcontractors* and any *Person*s engaged, employed or contracted by the *Subcontractors*; and

(d) ensure that all subcontracts entered into between the *Contractor* and its *Subcontractors* require those *Subcontractors* to ensure that all of their respective personnel engaged in the performance of the *Work* are skilled in the tasks assigned to them.

4.10.2 The *Contractor* shall provide *Notice* to the *Municipality*, of those proposed subcontractors and suppliers whose bids have been received by the *Contractor* which the *Contractor* would be prepared to accept for the performance of a portion of the *Work*. If the *Municipality* does not object to the engagement of a proposed subcontractor or supplier, or any *Person* of any tier for whom the proposed subcontractors or suppliers are, or could be, responsible, by providing *Notice* within 5 *Business Days* of the *Contractor* providing the initial *Notice* of the proposed subcontractors or suppliers, the *Contractor* shall engage those proposed subcontractors or suppliers for the performance of that portion of the *Work* to which their bid applies.

4.10.3 The *Municipality* may, for reasonable cause, including the circumstance where a proposed subcontractor or supplier is not on the *Municipality's* then current pre-qualification listing, at any time before the *Contractor* has signed the applicable subcontract, object to the use of a proposed subcontractor or supplier and require the *Contractor* to employ one of the other bidders.

4.10.4 If the *Municipality* requires the *Contractor* to change a proposed subcontractor or supplier pursuant to GC 4.7.2 for any reason other than reasonable cause, the *Contract Price* or *Contract Time*, or both as the case may be, shall be adjusted by the differences, if any, occasioned by such required *Change*.

4.10.5 Unless a *Subcontractor* is specified in Schedule B – Scope of Work, the *Contractor* shall not be required to engage as a *Subcontractor*, a *Person* whom the *Contractor* may reasonably object; however, in such case there shall be no adjustment to the *Contract Price* or the *Contract Time*.

4.10.6 If a *Subcontractor* provides the *Prime Consultant* with a copy of the relevant executed subcontract agreement, then the *Municipality*, through the *Prime Consultant*, may provide to a *Subcontractor* information as to the percentage of the *Subcontractor's Work* which has been certified for payment. The *Municipality* and the *Prime Consultant* shall endeavour to keep the *Contractor* apprised of any such communications.

4.10.7 The *Contractor* agrees not to change a *Subcontractor* without the *Municipality*'s prior written consent. Any change in *Subcontractors* will not result in an adjustment to the *Contract Price* or *Contract Time*.

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4.11 **Labour and Materials**

4.11.1 The *Contractor* shall provide and pay for all services, labour, *Materials*, tools, construction machinery and equipment, water, heat, light, power, transportation, and other facilities and services, including temporary services and utilities, necessary for the performance of the *Work*.

4.11.2 *Materials* provided shall be new, fit for the purposes intended by the *Municipality* and otherwise of the quality as depicted in and required by the *Scope of Work Documents*. *Materials* that are not specified shall be of a quality consistent with those specified and their use confirmed in writing in advance as being acceptable to the *Prime Consultant*.

4.11.3 The *Contractor* shall maintain good order and discipline among the *Contractor's* personnel, and the *Subcontractor's* personnel engaged in the performance of the *Work*, and shall not employ, or permit to be employed, any *Subcontractor* not skilled in the tasks assigned.

4.11.4 Until such time as the *Materials* are incorporated into the *Work*, the *Contractor* will be responsible for the safe and secure storage and preservation of *Materials* on the *Project Site*, or elsewhere if located off of the *Project Site*, so as to avoid damage, destruction, contamination, alteration, waste or spoilage to the *Materials*, injury to persons or damage or destruction to property resulting from such *Materials*.

4.12 **Documents at the Site**

4.12.1 The *Contractor* shall keep one copy of current *Scope of Work Documents*, submittals, reports, the *Construction Safety Plan*, together with documentation applicable to safety procedures and compliance with the *OH&S Legislation*, and minutes of meetings for the *Work* at the *Project Site*, in good order and available for review by the *Municipality* and the *Prime Consultant*.

4.12.2 The *Contractor* shall submit written progress reports to the *Municipality* and the *Prime Consultant*, in a timely manner, or as otherwise required by the *Municipality* or the *Prime Consultant* and shall keep a daily log available for review by the *Municipality* and the *Prime Consultant*.

4.12.3 The *Contractor* shall ensure that record drawings, as-built drawings, maintenance manuals, operating instructions, and such similar construction documents, are properly completed and handed over to the *Municipality* in a timely manner, or as otherwise required by the *Municipality*. The *Contractor* shall not achieve *Total Performance of the Work* until all record drawings, as-built drawings, maintenance manuals, operating instructions and such similar construction documents are complete and delivered to the *Prime Consultant*.

4.12.4 The *Contractor* shall ensure that all manufacturer's maintenance manuals, service agreements, warranties and guarantees are in order, and shall prepare a register of the same and deliver the register and the documents to the *Prime Consultant* and the *Municipality* in a timely manner, or as otherwise required by the *Municipality*, and, in any event, before *Total Performance of the Work*.

4.13 **Shop Drawings**

4.13.1 In consultation with the *Prime Consultant*, the *Contractor* shall establish and implement procedures for expediting the receipt, processing and review of *Shop Drawings* and samples. Upon request of either the *Municipality* or the *Prime Consultant*, the *Contractor* shall prepare a schedule of dates for submission, review and return of *Shop Drawings*.

4.13.2 The *Contractor* shall provide *Shop Drawings* as described in the *Scope of Work Documents* or as the *Prime Consultant* may reasonably request.

4.13.3 The *Contractor* shall review all *Shop Drawings* prior to submission to the *Prime Consultant* and represents by its review that:

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(a) the *Contractor* has determined and verified all field measurements and field construction conditions and will ensure that any *Subcontractor* submitting *Shop Drawings* has also determined and verified all field measurements and field construction conditions, *Material* requirements, catalogue numbers, and similar data; and

(b) the *Contractor* and the *Subcontractor* have checked and co-ordinated all *Shop Drawings* with the requirements of the *Work* and the requirements of the *Scope of Work Documents*.

4.13.4 The *Contractor* shall confirm this review of each of the *Shop Drawings* by stamp, date, and signature of the individual responsible. *Shop Drawings* not reviewed, stamped and signed by the *Contractor* may be rejected by the *Prime Consultant*.

4.13.5 The *Contractor* shall submit *Shop Drawings* to the *Prime Consultant* to review in an orderly sequence, in accordance with any schedule that may be agreed to for the submission of *Shop Drawings* and sufficiently in advance of the need for approved *Shop Drawings*, so as not to cause any delay to the *Construction Schedule* or to the work of *Other Contractors* or of the *Municipality's* own forces. At the time of submission, the *Contractor* shall provide *Notice* to the *Prime Consultant* of any deviations in the *Shop Drawings* from the requirements of the *Scope of Work Documents*.

4.13.6 Upon the *Prime Consultant's* request, the *Contractor* shall revise and resubmit *Shop Drawings* which the *Prime Consultant* rejects as inconsistent with the *Scope of Work Documents*. The *Contractor* shall provide *Notice* to the *Prime Consultant* of any revisions made to resubmitted drawings other than those requested by the *Prime Consultant*.

4.13.7 If the *Contractor* provides the *Shop Drawings* in accordance with the schedule agreed upon, the *Prime Consultant* shall review and return *Shop Drawings* in accordance with the schedule agreed upon, or otherwise with reasonable promptness, so as not to cause any delay to the *Construction Schedule*.

4.13.8 The *Prime Consultant's* review is for general conformity to the design concept, and for general arrangement only, and shall not relieve the *Contractor* of responsibility for errors or omissions in the *Shop Drawings* or for meeting all requirements of this *Agreement*.

4.13.9 *Shop Drawings* that require approval of any *Governmental Authority* shall be submitted to such *Governmental Authority* by the *Contractor* for approval so as not to adversely impact the *Construction Schedule*.

4.14 **Use of the Work**

4.14.1 The *Contractor* shall confine construction machinery and equipment, storage of *Materials*, and operations of personnel to the *Project Site*, permits, or the *Scope of Work Documents*, as applicable, and shall not unreasonably clutter or obstruct the *Work* or the *Project Site*.

4.14.2 The *Contractor* shall not load, or permit to be loaded, any part of the *Work* with a weight or force or in a manner that will endanger the safety of the *Work* or any *Persons*.

4.15 **Cutting and Remedial Work**

4.15.1 The *Contractor* shall ensure that the *Subcontractors* perform any and all cutting, coring or remedial work required to make the several parts of the *Work* come together in accordance with the *Scope of Work Documents*.

4.15.2 The *Contractor* shall co-ordinate the *Work* to ensure that the requirement for cutting, coring and remedial work is kept to a minimum.

4.15.3 Should the *Municipality*, the *Prime Consultant*, *Other Contractors* or anyone employed by them be responsible for ill-timed work necessitating cutting, coring or remedial work to be performed, then

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the *Contractor* shall provide *Notice* to the *Municipality* of such event and any resultant *Changes* shall be dealt with in accordance with GC 7 CHANGES AND CONCEALED OR UNKNOWN CONDITIONS.

4.15.4 Cutting and remedial work shall be performed by specialists familiar with the *Materials* affected, and shall be performed in such a manner as to neither damage, nor endanger, the *Work*, or the work of *Other Contractors* or the *Municipality's* own forces.

4.16 **Cleanup**

4.16.1 The *Contractor* shall ensure that the *Subcontractors* maintain the *Work* and the *Project Site* in a tidy condition free from the accumulation of waste products and debris, other than that resulting from the operations of the *Municipality* or *Other Contractors*.

4.16.2 The *Contractor* shall ensure that the *Subcontractors* remove waste products and debris, other than that resulting from the operations of the *Municipality* or *Other Contractors* and shall leave the *Work* and the *Project Site* clean and suitable for occupancy on each applicable *Facility Takeover Date*. The *Contractor* shall remove its tools, construction machinery, and equipment not required for the performance of the remaining *Work*.

4.16.3 In the event that any products or debris resulting from the operations of the *Municipality* or *Other Contractors* affects the *Work* or safety on the *Project Site*, the *Contractor* shall immediately verbally inform the *Prime Consultant* and the *Municipality* and provide *Notice* to the same of such condition within 24 hours of it occurring.

4.16.4 Prior to application for the final certificate for payment, the *Contractor* shall remove tools, construction machinery and equipment, and waste products and debris, other than that resulting from the *Work* undertaken by the *Municipality* or the *Other Contractors*.

4.17 **Start Up, Activation and Facility Takeover**

4.17.1 The *Contractor* shall maintain a close working relationship with the *Municipality's* operating staff to ensure an expeditious, efficient and orderly takeover of the *Project* by the *Municipality*, when and as required by the *Municipality*.

4.17.2 With the *Municipality's* maintenance personnel and the *Prime Consultant*, the *Contractor* will co-ordinate the check-out of utilities, operation of systems and equipment for readiness, and assist in their initial start-up and testing.

4.17.3 The *Contractor* shall co-ordinate the inspection, testing, calibration and remedial work with respect to all architectural, electrical and mechanical systems.

4.17.4 The *Contractor* shall ensure that all electrical, mechanical and architectural systems have been installed in accordance with this *Agreement*.

4.17.5 The *Contractor* shall co-ordinate the timely and orderly *Facility Takeover* of each portion of the *Project* and co-operate with the *Municipality* on the development and implementation of a plan with respect to the operation and maintenance of the building systems.

4.18 **Contractor Performance Evaluation**

4.18.1 The *Municipality* may evaluate the *Contractor* in accordance with the criteria set out in Schedule F – Forms and such performance evaluations may be used by the *Municipality* in the award of further work.

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GC 5 PAYMENT AND ALLOWANCES

5.1 General Provisions relating to Payment

5.1.1 Payments shall be made to the *Contractor* in accordance with this GC 5 PAYMENT AND ALLOWANCES and, as applicable, ARTICLE A-5 CONTRACT PRICE.

5.1.2 No payment by the *Municipality* under this *Agreement*, or partial or entire use or occupancy of the *Work* by the *Municipality* shall constitute an acceptance of any portion of the *Work* which is not in accordance with the requirements of this *Agreement*.

5.1.3 Payments made by the *Municipality* shall not be construed as an acceptance that all or any part of the *Work* is complete, is satisfactory or has been provided in accordance with the *Scope of Work Documents*.

5.2 Financial Information Required of the Contractor

5.2.1 At the request of the *Municipality*, from time to time, the *Contractor* shall provide to the *Municipality*, in writing, such financial or corporate information as may be reasonably required by the *Municipality*, to establish or confirm the ability of the *Contractor* to perform its obligations pursuant to this *Agreement*.

5.2.2 The *Contractor* shall keep the *Municipality* apprised of any material or significant changes in the ownership or financial position of the *Contractor* which take place or are to take place during the term of this *Agreement* or which may in any manner adversely impact on the *Contractor's* ability to perform its obligations in a timely, competent or complete manner.

5.3 Progress Payments

5.3.1 Applications for progress payment may be made monthly by the *Contractor* by means of a Certificate for Progress Payment ("CPP"). The CPP shall be dated the last day of the agreed monthly payment period and the amount claimed shall be based on the basis of the *Work* actually performed or *Materials* actually supplied and received at the *Project Site*.

5.3.2 The *Contractor* shall submit to the *Prime Consultant*, at least 14 days before the first application for progress payment, a schedule of values for the *Work*, which schedule is:

(a) subject to the written approval and acceptance of the *Prime Consultant* and the *Municipality*; and

(b) when accepted by the *Prime Consultant* and the *Municipality*, to be used as the baseline for applications for progress payments which will be made based on the cost incurred and paid, unless it is found to be in error.

5.3.3 Each CPP shall be submitted to the *Prime Consultant* and shall:

(a) be comprised a completion statement based upon the schedule of values described in GC 5.3.2; however, if no schedule of values is accepted by the *Prime Consultant* at the date of the CPP, then a completion statement will be based upon the percentage of the *Work* complete;

(b) not include any amount for *Materials* not incorporated into the *Project*;

(c) include with each CPP:

(i) a current Workers' Compensation Board "Letter of Clearance" indicating that all Workers' Compensation Board payments relating to the *Project* have been made; and

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(ii) after the first application, a statutory declaration in a form attached in Schedule E – Forms executed by the *Contractor*.

5.3.4 Each CPP shall be subject to the written approval and acceptance of the *Municipality* and the *Prime Consultant*.

5.3.5 The *Prime Consultant* shall issue to the *Municipality*, no later than 10 days after the receipt of a CPP from the *Contractor* submitted in accordance with this GC 5.3.1, a certificate for the amount applied for, or for such other amount as the *Prime Consultant* determines to be properly due. If the *Prime Consultant* amends the CPP, it shall promptly provide *Notice* to the *Contractor*, giving its reasons for the amendment.

5.3.6 Upon approval by the *Prime Consultant* of each CPP, the *Prime Consultant* shall advise the *Contractor* to submit an invoice to the *Municipality*.

5.3.7 Subject to GC 5.8, the *Municipality* shall make payment to the *Contractor* of amounts due by the *Municipality* no later than 30 days after either the receipt and approval by the *Municipality* of the certificate as issued by the *Prime Consultant* or the receipt and approval by the *Municipality* of an invoice as provided by the *Contractor*. All progress payments made by the *Municipality* will be subject to the Builders' Lien Act.

5.3.8 In the event that the *Municipality* becomes aware that a *Claim* has been registered or filed against or affect the title to the *Work*, *Project Site*, or other *Municipality* property, the *Municipality* has the right, but not the obligation, to withhold all payments from the *Contractor* until such *Claim* has been discharged, released or removed.

5.3.9 All certificates issued by the *Prime Consultant* shall be to the best of the *Prime Consultant's* knowledge, information, and belief. By issuing any certificate, the *Prime Consultant* does not assume any of the responsibility of the *Contractor* with respect to the correctness or completeness of the *Work*, including the *Contractor's* responsibility to ensure that the *Work* has been completed in accordance with this *Agreement*.

5.4 **Substantial Performance of the Work**

5.4.1 When the *Contractor* considers that it has achieved *Substantial Performance of the Work,* the *Contractor* shall prepare and submit to the *Prime Consultant*:

(a) a comprehensive list of items to be completed or corrected; and

(b) a certificate of *Substantial Performance of the Work* for verification by the *Prime Consultant* indicating the date that the *Contractor* believes *Substantial Performance of the Work* was achieved.

5.4.2 Failure to include an item on the comprehensive list of items described in GC 5.4.1(a) does not alter the responsibility of the *Contractor* to complete the *Work* or remedy, correct or rectify any *Deficiencies*.

5.4.3 The *Contractor* shall, within 3 days of the date stated on the certificate of *Substantial Performance of the Work*, post a copy of the certificate in a prominent location at the *Project Site*. If the certificate of *Substantial Performance of the Work* is not posted at the *Project Site* within 3 days of the date stated on the certificate, the date of *Substantial Performance of the Work* shall be changed to the actual date that the certificate is subsequently posted at the *Project Site*.

5.4.4 The *Prime Consultant* shall, no later than 14 days after the receipt from the *Contractor* of a certificate of *Substantial Performance of the Work* make an assessment of the *Work* to verify the validity of the certificate, and provide *Notice* to the *Contractor* of its approval, or reasons for disapproval of the certificate. In the event of disapproval, the *Contractor* shall immediately

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remove the certificate of *Substantial Performance of the Work* from the *Project Site*. The *Contractor* shall re-submit the certificate of *Substantial Performance of the Work* with a revised date of *Substantial Performance of the Work* when it has addressed the reasons for disapproval of the previous certificate of *Substantial Performance of the Work* and the process shall be repeated until approval is obtained.

5.4.5 The date of *Substantial Performance of the Work* shall be the date indicated on the approved certificate of *Substantial Performance of the Work* or such later date as determined in accordance with GC 5.4.3.

5.5 **Major Lien Fund Holdback**

5.5.1 After approval of the certificate of *Substantial Performance of the Work*, the *Contractor* may submit an application for payment of the major lien fund holdback amount to the *Prime Consultant* in accordance the requirements set out in GC 5.3.

5.5.2 The *Prime Consultant* shall issue to the *Municipality*, no later than 10 days after the receipt of an application for payment of the major lien fund holdback from the *Contractor* submitted in accordance with GC 5.5.1, a certificate for payment in the amount applied for, or in such other amount as the *Prime Consultant* determines to be properly due. If the *Prime Consultant* amends the application, it shall promptly provide *Notice* to the *Contractor*, giving its reasons for the amendment.

5.5.3 Subject to the Builders' Lien Act and GC 5.8, the *Municipality* shall make payment to the *Contractor* of amounts certified as due by the *Municipality*, after the later of the period designated for the release of holdback pursuant to the Builders' Lien Act and 30 days after receipt of the *Prime Consultant's* certificate of payment and upon the following conditions having been met:

(a) no liens have been registered arising from the *Work*; and

(b) there are no *Claims* that have been made, or that could be made, against the *Municipality* for the performance of the *Work* by any *Person* other than the *Contractor*.

(c) the *Contractor* confirms in writing that upon payment in the amount applied for, that the *Contractor* has no further *Claim* against the *Municipality* for the *Work*, for any reason, except to the extent of any *Claims* for which the *Contractor* has previously provided *Notice* of to the *Municipality* and the *Prime Consultant*.

5.6 **Total Performance of the Work and Final Payment**

5.6.1 When the *Contractor* considers that it has achieved *Total Performance of the Work,* the *Contractor* shall prepare and submit to the *Prime Consultant* a certificate of *Total Performance of the Work* stating that the *Contractor* has achieved *Total Performance of the Work*.

5.6.2 The *Prime Consultant* shall, no later than 14 days after the receipt from the *Contractor* of a certificate of *Total Performance of the Work* make an assessment of the *Work* to verify the validity of the certificate and notify the *Contractor* of its approval, or reasons for disapproval of the certificate. If disapproved, the *Contractor* shall re-submit the certificate of *Total Substantial Performance of the Work* with a revised date of *Total Performance of the Work* when it has addressed the reasons for disapproval of the previous certificate of *Total Performance of the Work* and shall repeat the process until approval is obtained.

5.6.3 After the *Prime Consultant* has approved the *Contractor's* certificate of *Total Performance of the Work* in accordance with GC 5.6.2, the *Contractor* shall submit an application for final payment. Such application for final payment shall meet all of the requirements for an application for progress payment as set out in GC 5.3.

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5.6.4 The *Prime Consultant* shall issue to the *Municipality*, no later than 10 days after the receipt of an application for final payment from the *Contractor*, a certificate for payment in the amount applied for, or in such other amount as the *Prime Consultant* determines to be properly due. If the *Prime Consultant* amends the application, it shall promptly provide *Notice* to the *Contractor*, giving its reasons for the amendment.

5.6.5 Subject to GC 5.8, the *Municipality* shall make payment to the *Contractor* of amounts certified as due by the *Municipality*, no later than 30 days after receipt of the *Prime Consultant's* certificate of payment and attainment of the following conditions:

(a) *Total Performance of the Work* has been achieved by the *Contractor*, verified by the *Prime Consultant* and approved by the *Municipality*;

(b) the period designated for the release of holdback pursuant to the Builders' Lien Act from the date of *Substantial Performance of the Work* has expired;

(c) no liens have been registered arising from the *Work*;

(d) there are no *Claims* that have been made, or that could be made, against the *Municipality* for the performance of the *Work* by any *Person* other than the *Contractor*; and

(e) the *Contractor* confirms in writing that, upon payment in the amount applied for, that the *Contractor* has no further *Claim* against the *Municipality* for the *Work*, for any reason, except to the extent of the minor lien fund holdback and any *Claims* for which the *Contractor* has previously provided *Notice* of to the *Municipality* and the *Prime Consultant*.

5.7 **Minor Lien Fund Holdback**

5.7.1 After the *Prime Consultant* has approved the *Contractor's* certificate of *Total Performance of the Work* in accordance with GC 5.6.2, the *Contractor* may submit an application for final payment of the minor lien fund holdback amount to the *Prime Consultant* in accordance the requirements set out in GC 5.3.

5.7.2 The *Prime Consultant* shall issue to the *Municipality*, no later than 10 days after the receipt of an application for payment of the minor lien fund holdback from the *Contractor*, a certificate for payment in the amount applied for or in such other amount as the *Prime Consultant* determines to be properly due. If the *Prime Consultant* amends the application, it shall promptly provide *Notice* to the *Contractor*, giving its reasons for the amendment.

5.7.3 Subject to the Builders' Lien Act and GC 5.8, the *Municipality* shall make payment to the *Contractor* of amounts certified as due by the *Municipality*, after the later of the period designated for the release of holdback pursuant to the Builders' Lien Act has expired and 30 days after receipt of the *Prime Consultant's* certificate of payment and upon the following conditions having been met:

(a) a statement setting out a final adjustment of accounts between the *Municipality* and the *Contractor* has been rendered and agreed to by the *Prime Consultant*, the *Municipality* and the *Contractor*;

(b) no liens have been registered arising from the *Work*; and

(c) there are no *Claims* that have been made, or that could be made, against the *Municipality* for the performance of the *Work* by any *Person* other than the *Contractor*.

5.8 **Withholding of Payment and Set Off**

5.8.1 Subject to GC 5.8.2, if for any reason there are any *Deficiencies*, any portion of the *Work* that is not performed or there is any *Claim* made against the *Municipality*, the *Municipality* may withhold

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from payment to the *Contractor* such amounts as the *Prime Consultant* and the *Municipality* determine are sufficient and reasonable to cover the cost of rectification, completion or resolution, until the *Deficiencies* are rectified, that *Work* is completed or such *Claim* is resolved.

5.8.2 The value of *Deficiencies* or *Work* not performed as referred to in this GC 5.8 shall be estimated by the *Prime Consultant* and the *Municipality* and a value equivalent to three times that amount shall be withheld from any payment. Subject to any other right the *Municipality* may have, the holdback amount shall be paid to the *Contractor* after proper completion of the applicable *Deficiencies*, outstanding *Work*.

5.8.3 Notwithstanding any other provision of this *Agreement*, the *Municipality* shall be entitled to withhold and set-off against any monies otherwise due and payable to the *Contractor* under this *Agreement*, any sums which the *Municipality* is permitted to withhold either pursuant to this *Agreement* or to any other agreement between the *Municipality* and the *Contractor*, howsoever arising.

5.9 **Time Limit for Submitting Claims for Payment**

5.9.1 In order for the *Municipality* to complete its accounting for this *Project*, the *Contractor* must submit all claims for payment or reimbursement to the *Municipality* in accordance with this *Agreement* within 6 months of *Total Performance of the Work*. Failure to submit claims for payment or reimbursement in this period will result in the *Contractor* forfeiting any and all claims to such payment or reimbursement and shall be deemed to have released the *Municipality* of its obligations to pay the same.

5.10 **Cash Allowances**

5.10.1 The *Contract Price* includes cash allowances stated in the *Scope of Work Documents*, which allowances shall be expended as the *Municipality* directs.

5.10.2 Cash allowances cover the net cost to the *Contractor* of services, *Materials*, construction machinery, tools and equipment, freight, unloading, handling, storage, installation and other authorized expenses incurred in performing the *Work* stipulated under the cash allowances.

5.10.3 Where costs under a cash allowance exceed the amount of the allowance, the *Contractor* shall be compensated for any excess incurred and substantiated and the *Contract Price* shall be adjusted by *Change Order* to provide for any difference between the actual cost and each cash allowance, together with any applicable adjustment for overhead and profit in accordance with the formulae set out in GC 7 CHANGES AND CONCEALED OR UNKNOWN CONDITIONS.

5.10.4 Where costs under a cash allowance are less than the amount of the allowance, the *Parties* shall enter into a *Change Order* to provide for any difference between the actual cost and each cash allowance, in accordance with GC 7 CHANGES AND CONCEALED OR UNKNOWN CONDITIONS, and GC 7.1.6 shall apply to each credit.

5.10.5 The value of the *Work* performed under a cash allowance is eligible to be included in progress payments.

5.10.6 The *Contractor* and the *Prime Consultant* shall jointly prepare a schedule that shows when the *Prime Consultant* and the *Municipality* must authorize ordering of items called for under cash allowances to avoid delaying the progress of the *Work*.

GC 6 TAXES AND DUTIES

6.1 **Responsibility for Taxes and Duties**

6.1.1 The *Contract Price* includes all taxes, except Goods and Services Tax, and customs duties in effect at the time of the execution of this *Agreement*. The *Contractor* shall be responsible to pay all taxes.

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6.1.2 In the event that new or additional taxes or duties in respect of the *Work* are applicable or required by the *Law* after this *Agreement* is executed, the *Contract Price* shall be adjusted to include such new or additional taxes and duties, if applicable.

GC 7 CHANGES AND CONCEALED OR UNKNOWN CONDITIONS

7.1 Changes

7.1.1 The *Municipality*, directly or through the *Prime Consultant*, without invalidating this *Agreement*, may make *Changes* at any time. In addition, the *Municipality* may add, delete or make other revisions to the *Work* at any time.

7.1.2 The Contractor (or consultant) waives any claims relating to cumulative or ripple effects arising from matters agreed to pursuant to this Change Order (or purchase order). This Change Order (or purchase order) constitutes compensation in full to the Contractor (or consultant) for all costs and mark ups directly or indirectly attributable to changes ordered herein, and for all resulting delays resulting, if any.

7.1.3 The *Contractor* shall not perform a *Change* without a written and signed *Change Order* or a *Change Directive* being issued by the *Municipality*.

7.1.4 The *Contractor* shall advise the *Prime Consultant* and the *Municipality* within 3 *Business Days* of the effect a proposed *Change* will have on the *Contract Price* and the *Contract Time*.

7.1.5 Where both additions and deletions are involved in a *Change Order* all calculations for profits and overhead shall be determined on a net basis for that *Change Order*.

7.1.6 When a *Change Order* results in a net decrease in the *Contract Price*, the amount of the credit given by the *Contractor* to the *Municipality* shall be the net savings in cost and, where the net decrease is:

(a) equal to or less than 5% of the *Contract Price* at the effective date of the *Agreement*, no proportionate share of overhead or profit; or

(b) greater than 5% of the *Contract Price* at the effective date of the *Agreement*, a proportionate share of the overhead or profit for that net decrease.

7.1.7 The *Municipality* shall make the final determination as to whether any *Change* is to be implemented.

7.1.8 It is intended in all matters related to *Changes* that the *Municipality*, the *Prime Consultant* and the *Contractor* shall act promptly so as not to adversely impact the *Construction Schedule*.

7.2 Notices of Change and Change Orders

7.2.1 The value of a *Change* shall be determined by one or more of the following methods: lump sum; unit rates; or cost plus a fixed or percentage fee.

7.2.2 When a *Change* is proposed or required, the *Municipality* or the *Prime Consultant* shall provide a *Notice of Change* describing the proposed *Change* to the *Contractor*. If, due to emergency circumstances, a *Notice of Change* cannot be issued by the *Municipality* or the *Prime Consultant*, the *Municipality* or the *Prime Consultant* may issue a *Change Directive*.

7.2.3 Promptly after receipt of a *Notice of Change*, the *Contractor* shall present, in a form acceptable to the *Prime Consultant* and the *Municipality*, a method of proposed adjustment or an amount of proposed adjustment to the *Contract Price*, if any, and the adjustment in *Contract Time*, if any, for the proposed *Change*. If no alteration in the *Contract Time* is identified in the proposed adjustment, the *Change* will not extend the *Contract Time* or entitle the *Contractor* to additional compensation or damages of any nature whatsoever for any scheduling issues or acceleration.

SAMPLE

7.2.4 In the case of *Changes* proposed to be paid for in whole or in part by lump sum, the *Contractor* shall include, in addition to any other documentation the *Municipality* may require:

(a) a cost breakdown to substantiate or justify the *Contract Price* adjustment;

(b) a complete listing of required *Materials*, including identification of each specific item and corresponding quantity;

(c) the labour component;

(d) a list of equipment required to perform the *Change* and the corresponding costs; and

(e) the amount of overhead, including incremental bonds and insurance costs, and profit for the *Contractor* and the *Subcontractors* provided that overhead and profit shall be based on the following maximum amounts:

(i) for the *Contractor*: 5% overhead on the actual cost to the *Contractor* of *Materials* and labour, 5% of the cost of *Subcontractors* and 5% profit on the sum of the above total; and

(ii) for the *Subcontractors*: 5% overhead on the actual cost to the *Subcontractor* of *Materials* and labour, 5% of the cost of their sub-subcontractors and 5% profit on the sum of the above total.

7.2.5 Subject to GC 7.2.6, in the case of *Changes* to be paid for in whole or in part by unit rates or cost plus a fixed or percentage fee, the form of presentation of costs and methods of measurement shall be agreed to by the *Municipality*, the *Prime Consultant* and the *Contractor* before proceeding with the *Change*. The *Contractor* shall keep accurate documentation of quantities and costs for *Changes*, and present an account of the cost of the *Change* to the *Prime Consultant*.

7.2.6 In addition to GC 7.2.5, in the case of *Changes* to be paid for in whole or in part by cost plus a fixed or percentage fee, the *Contractor* shall prepare and submit daily time sheets that shall be reviewed and signed on a daily basis by the *Prime Consultant* or the *Municipality* and submit a cost breakdown for the *Change*, which shall substantiate or justify its cost plus claim.

7.2.7 When the *Prime Consultant* and the *Municipality* agree to adjustments to the *Contract Price* or the *Contract Time*, or both, and the method to be used to determine the adjustments, a *Change Order* signed by the *Prime Consultant*, the *Municipality* and the *Contractor* shall be issued revising the *Contract Price* or the *Contract Time*, or both, as applicable. The value of *Work* performed as the result of a *Change Order* shall be included in applications for progress payment.

7.2.8 All direct and indirect costs and impacts related to or resulting from the implementation of a *Change* shall be deemed to be included in the amount stated on the *Change Order* as the sum by which the *Contract Price*, if any, and the *Contract Time*, if any, will be adjusted.

7.2.9 The *Municipality* reserves the right to withdraw any *Notice of Change* without additional compensation to the *Contractor* if such withdrawal occurs prior to issuance of the *Change Order*.

7.3 **Change Directives**

7.3.1 If the *Municipality* requires the *Contractor* to proceed with a *Change* prior to the *Municipality* and the *Contractor* agreeing upon the adjustment in *Contract Price* and *Contract Time*, the *Municipality*, through the *Prime Consultant*, may issue a *Change Directive*.

7.3.2 Upon receipt of a *Change Directive*, the *Contractor* shall proceed promptly with the *Change* and, in the case of an emergency identified in a *Change Directive*, proceed immediately with the *Change*.

SAMPLE

7.3.3 An adjustment in the *Contract Price* for a *Change* carried out by way of an *Change Directive* shall be determined on the basis of the cost of expenditures and savings to perform the *Work* attributable to the *Change*, calculated in the method of valuation specified by the *Municipality* and the costs, quantities and other applicable information shall be recorded by the *Contractor* as described in GC 7.2 for the applicable method of valuation.

7.3.4 If the method of valuation, measurement or corresponding increase or decrease in the *Contract Price* and *Contract Time* cannot be promptly agreed upon then, the *Prime Consultant* in the first instance, shall determine the method of valuation, measurement and corresponding increase or decrease in the *Contract Price* and the *Contract Time* subject to final determination in the manner set out in GC 10 DISPUTE RESOLUTION.

7.3.5 In the case of a dispute in the valuation of a *Change Directive*, and pending final determination of such value, the *Prime Consultant* shall certify the value of *Work* performed in relation to the *Change Directive* in accordance with its own evaluation of the *Change Directive*, and the *Contractor* shall include that amount in its application for progress payment.

7.3.6 If, at any time after the start of the *Work* directed by a *Change Directive*, the *Municipality* and the *Contractor* reach agreement on the adjustment to the *Contract Price* and to the *Contract Time*, such agreement shall be recorded in a *Change Order*.

7.4 **Concealed or Unknown Conditions**

7.4.1 Subject to GC 7.4.2, should one *Party* discover conditions at the *Project Site* which are:

(a) subsurface or otherwise inaccessible and concealed physical conditions, which existed before the commencement of the *Work*, and which differ materially from those indicated in the *Scope of Work Documents*; or

(b) physical conditions of a nature which differ materially from those ordinarily found to exist in similar locations and which are not generally recognized as inherent in construction activities of the character provided for in the *Scope of Work Documents*,

then the discovering *Party* shall provide *Notice* to the other *Party* within 5 days of discovering such conditions and, in any case, before such conditions are disturbed.

7.4.2 Physical conditions which are not visible but which form a logical extension, or part of an installed visible condition, and physical conditions which exist above accessible ceilings, shall not be considered as concealed for the purposes of this GC 7.4.

7.4.3 The *Prime Consultant* shall promptly investigate such conditions and decide as to whether the conditions fit within the parameters described in GC 7.4.1. If the determination is that the conditions:

(a) fit within the parameters described in GC 7.4.1 and the performance of the *Work* with such conditions being present requires a *Change* that increases or decreases the *Contract Price* or the *Contract Time*, or both, then a *Change Order* or a *Change Directive*, as applicable, shall be issued to deal with the consequences of the conditions; or

(b) do not fit within the parameters described in GC 7.4.1 or do fit within the parameters described in GC 7.4.1 but do not cause an increase or decrease in the *Contract Price* or *Contract Time*, or both, the *Prime Consultant* shall provide *Notice* of such determination to both the *Municipality* and the *Contractor*.

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GC 8 DELAY

8.1.1 Subject to the limitations and requirements expressly stated in this GC 8 DELAY, and the *Contractor's* obligation to mitigate the impact of any delay, if the *Contractor* is delayed in the performance of the *Work*:

(a) due to an action or omission of the *Municipality*, the *Prime Consultant* or any *Person* for whom the *Municipality* is responsible at *Law*, including a delay in commencement or suspension pursuant to GC 9.5; or

(b) by a "stop work" or similar order issued by a court or *Governmental Authority*, and providing that such order was not issued as the result of an act or fault of the *Contractor* or any *Person* for whom the *Contractor* is responsible at *Law*,

then the *Contract Time* shall be extended for such reasonable time as is appropriate to account for the delay directly associated causes set out above, not including parallel delays caused by the *Contractor* or a *Person* for whom it is responsible at *Law*, as the *Prime Consultant*, in the first instance, determines, or as may be subsequently determined in accordance with GC 10 DISPUTE RESOLUTION.

8.1.2 No extension of the *Contract Time* shall be made and no adjustment in the *Contract Price* shall be made for any delay except for a delay described in GC 8.1.1 and then only if the *Contractor* provides *Notice*, in accordance with GC 8.1.3, of such a *Claim* to the *Municipality* and the *Prime Consultant* within 5 *Business Days* after the occurrence of the event which has caused the delay.

8.1.3 The *Notice* prescribed by GC 8.1.2 must:

(a) contain sufficiently particularity to enable the *Municipality* and the *Prime Consultant* with the opportunity to identify the cause of the delay and to take steps to mitigate the impact of such delay;

(b) be provided by the *Contractor* to both the *Municipality* and the *Prime Consultant* with respect to each and every event of delay; and

(c) be provided as separate *Notice* as a reference in any meeting minutes will not suffice.

8.1.4 Knowledge by the *Municipality* or the *Prime Consultant* of any delay, or the impact of any delay, shall not constitute a waiver of the requirement for the *Contractor* to provide *Notice* in accordance with this GC 8 DELAY.

8.1.5 The failure to provide *Notice* in strict compliance with this GC 8 DELAY shall be deemed to be prejudicial to the *Municipality* and shall preclude the *Contractor* from claiming, or from any entitlement to, any *Claims* or adjustment to the *Contract Time* or *Contract Price* with respect to such delay or any impact of such delay.

GC 9 TERMINATION

9.1 **Municipality's Right to Terminate for Default**

9.1.1 If the *Contractor* is unable to pay its lawful debts as they come due, is adjudged bankrupt, makes a proposal pursuant to the Companies Creditors Arrangement Act, commits or threatens to do any act of bankruptcy, commits or seeks to liquidate or is involved in any similar action under any *Law* relating to bankruptcy or insolvency, the *Municipality* may, without prejudice to any other right or remedy it has, terminate this *Agreement* by giving the *Contractor*, trustee, monitor or receiver *Notice* that this *Agreement* will be terminated immediately and that the applicable provisions of this GC 9.1 apply.

SAMPLE

9.1.2 If the *Contractor* neglects to proceed with, undertake or complete any aspect of the *Work* promptly or properly, or otherwise fails to comply with the requirements of this *Agreement*, the *Municipality* may, without prejudice to any other right to remedy the *Municipality* may have, give *Notice* to the *Contractor* that the *Contractor* is in default of the *Contractor's* contractual obligations and instruct the *Contractor* to correct the default within 5 *Business Days* immediately following the receipt of the *Notice*.

9.1.3 If the default cannot be corrected within the 5 *Business Days* specified, the *Contractor* shall be in compliance with the *Municipality's* instructions if the *Contractor*:

(a) commences the correction of the default in a manner acceptable to the *Municipality*, within a different time agreed to by the *Municipality*;

(b) provides the *Municipality* with a written plan and schedule acceptable to the *Municipality* for such correction; and

(c) corrects the default in accordance with such schedule.

9.1.4 If the *Contractor* fails to correct the default in the time specified in GC 9.1.2 or subsequently agreed upon pursuant to GC 9.1.3, without prejudice to any other right or remedy the *Municipality* may have, the *Municipality* may, without further *Notice* to the *Contractor*, do one or both of the following:

(a) immediately correct such default and deduct the cost thereof, including any costs incurred by the *Municipality*, from any payment then or thereafter due to the *Contractor*, provided that the *Prime Consultant* has certified such cost as due to the *Municipality*; or

(b) immediately terminate the *Work*, in whole or in part, or terminate this *Agreement*, in whole or in part.

9.1.5 If the *Municipality* terminates the *Work*, in whole or in part, or terminates this *Agreement*, in whole or in part, whether pursuant to GC 9.1.1 or GC 9.1.4, or otherwise:

(a) the *Municipality* shall be entitled to take possession of the *Work* and *Materials*, and use the construction machinery and equipment at the *Project Site*, subject to the rights of third parties, and finish the *Work* by whatever method the *Municipality* may consider proper or expedient;

(b) the *Municipality* shall be entitled to withhold further payment to the *Contractor* until the total cost of construction of the *Work* and all backcharges to the *Contractor* are known; and

(c) in addition to any other amount that may be owing under this *Agreement*, the *Contractor* shall be liable to the *Municipality* for the amount by which the total cost of construction of the *Work*, together with a reasonable allowance or amount, as determined by the *Prime Consultant*, to cover the cost of *Warranty Work* and the compensation paid to the *Prime Consultant* and the costs and expenses (both external and internal and including legal fees on a solicitor and his own client full indemnity basis) incurred by the *Municipality* for its additional services and related to the termination of the *Work*, in whole or in part, or termination of this *Agreement*, in whole or in part, exceeds the *Contract Price*.

9.1.6 In the event that the *Municipality* terminates the *Work* in part or terminates this *Agreement* in part, the *Municipality* shall be entitled to apply GC 9.1.5 with an appropriate adjustment for the portion of the *Work* involved and the portion of the *Contract Price* attributable to that portion of the *Work*.

SAMPLE

9.1.7 If the *Municipality* terminates the *Work*, in whole or in part, or terminates this *Agreement*, in whole or in part, whether pursuant to GC 9.1.1 or GC 9.1.4, or otherwise, the *Contractor* shall:

(a) discontinue the *Work* in accordance with the directions provided by the *Municipality* and shall take such steps as may be necessary or desirable to minimize the costs to the *Municipality* associated with the termination and the *Municipality* shall not be liable for those costs incurred by the *Contractor* as a result of the termination; and

(b) execute and deliver to the *Municipality* all documents required by the *Municipality*, and shall take all steps required by the *Municipality*, to assign to and fully vest in the *Municipality* the rights and benefits of the *Contractor* under all subcontracts with its *Subcontractors* and any other warranties or guarantees for the *Project*.

9.1.8 The *Contractor's* obligations as to quality, correction, and warranty of the *Work* performed by the *Contractor* up to the date of termination shall continue in force after such termination. If *Substantial Performance of the Work* has not been reached by the date of termination, then the *Warranty Period* shall be deemed to commence from the date of termination.

9.1.9 Notwithstanding any other provision of this *Agreement*, termination of this *Agreement* in any manner by the *Municipality* shall not limit, affect or invalidate in any manner:

(a) those provisions of this *Agreement* for the benefit of the *Municipality* which, expressly or by implication, are to operate or have effect after termination;

(b) any right of action the *Municipality* may have as at the date of termination; or

(c) any other right or remedy the *Municipality* may have as a consequence of the *Contractor's* default and the resulting termination of this *Agreement*.

9.1.10 The *Municipality* shall not be liable for any penalties or *Claims* incurred or suffered by the *Contractor* and under no circumstances shall be liable for *Consequential Damages* as a result of termination pursuant to this GC 9.1.

9.2 **The Contractor's Right to Terminate for Default**

9.2.1 If the *Work* is stopped or otherwise delayed for a period of 90 consecutive days or more under an order or decision of a court or decision of another *Governmental Authority*, and providing that such order was not issued as the result of an act or fault of the *Contractor* or any *Person* for whom the *Contractor* is responsible at *Law*, the *Contractor* may terminate the *Work* without prejudice to any other right or remedy the *Contractor* may have, by giving the *Municipality Notice* 5 *Business Days* prior to such termination.

9.2.2 The *Contractor* shall provide *Notice* to the *Municipality*, with a copy to the *Prime Consultant*, if the *Municipality* is in default of its contractual obligations to pay the *Contractor* when due the amounts certified by the *Prime Consultant* and the *Municipality* or awarded by arbitration or court of competent jurisdiction. The *Notice* shall state that if the default is not corrected in the 30 *Business Days* immediately following the receipt of the *Notice*, the *Contractor* may, without prejudice to any other right or remedy it may have, stop the *Work* or terminate this *Agreement*.

9.2.3 If the *Contractor* terminates this *Agreement* under the conditions set out in this GC 9.2, the *Contractor* shall be entitled to be paid for all of the *Work* that has been properly performed in accordance with this *Agreement* to the date of termination and which have not been paid for or reimbursed to that date, and such other costs and expenses which the *Municipality* considers to be reasonable and which are supported by auditable documentation that the *Contractor* may have sustained as a direct result of the *Municipality*'s default, but shall not be entitled to any *Claims* for *Consequential Damages*.

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9.3 **Termination for Convenience**

9.3.1 The *Municipality*, in its sole discretion, shall have the right, which may be exercised at any time, to terminate all or a portion of the *Work* or this *Agreement*, without reason or cause, by giving not less than 10 *Business Days' Notice* to the *Contractor*.

9.3.2 If the *Work* or this *Agreement* is terminated by the *Municipality* pursuant to this GC 9.3:

(a) the *Contractor* shall be entitled to:

(i) the portion of the *Contract Price* owed but unpaid to the date of termination, computed in accordance with this *Agreement*; and

(ii) reasonable costs incurred by the *Contractor* in terminating the *Work* or this *Agreement*, provided such costs are approved in writing by the *Municipality* prior to being incurred by the *Contractor*.

9.3.3 If the *Work* or this *Agreement* is terminated by the *Municipality* pursuant to this GC 9.3, the *Municipality* shall not be liable to the *Contractor* for any amounts other than as stated in this GC 9.3, as applicable, including any *Claims* or *Consequential Damages*, except as expressly provided for herein, and the *Contractor* shall indemnify and hold harmless the *Municipality*, its officers, directors, personnel, agents and consultants from any such claims.

9.4 **Obligations on Termination**

9.4.1 Upon receipt of *Notice* of termination of this *Agreement*, for whatever reason or howsoever caused, the *Contractor* shall:

(a) subject always to considerations of safety and of the environment, immediately discontinue performance of the *Work*, except to the extent as may be necessary to carry out such discontinuance, and ensure that its operations and activities are brought to an orderly conclusion and that demobilization occurs in a proper and careful fashion with due attention being paid to the protection of the *Project* and the *Work*;

(b) comply in full with the *Municipality's* instructions regarding the termination;

(c) promptly deliver to the *Municipality* all of the deliverables and the *Municipality's Confidential Information* and intellectual property, including the originals and all copies;

(d) carry out all of the *Municipality's* instructions concerning subcontracts;

(e) upon the *Municipality's* request, immediately assign to the *Municipality*, or its nominee, those subcontracts and licenses specified by the *Municipality* and the *Contractor* hereby grants to the *Municipality* an irrevocable power of attorney for the purpose of executing any such assignment document if the *Contractor* fails to execute an assignment upon the *Municipality's* request; and

(f) assign to the *Municipality*, or its nominee, as directed, rights and titles relating to all *Materials* for which the *Contractor* has been paid or will be paid through the termination process.

9.5 **Delayed Commencement or Suspension**

9.5.1 The *Municipality*, in its sole discretion, may delay the commencement of or temporarily suspend all or any portion of the *Work*, or both, as the case may be, by giving *Notice* to the *Contractor* of that fact, which *Notice* shall be effective as at the date and time stipulated in the *Notice*. In the event that the *Municipality* chooses to delay the commencement of the *Work* or implement a temporary suspension:

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(a) the *Contractor* shall only commence or re-commence the performance of the *Work* as the case may be, upon being given *Notice* from the *Municipality* directing commencement or re-commencement;

(b) the *Contract Time* shall be adjusted by the *Municipality* to account for the period of delay or suspension affecting the *Work* and any seasonal impact on the *Work* directly resulting from the delay or suspension; and

(c) the *Municipality* shall pay the *Contractor's* direct costs of the delay of commencement of the *Work* or temporary suspension, upon the *Contractor* submitting a request for payment in accordance with GC 5 PAYMENT AND ALLOWANCES together with evidence of the direct costs having been incurred which is satisfactory to the *Municipality*.

9.5.2 In the event that a period of delay or suspension exceeds 180 consecutive days, the *Work*, or the portion of the same which is delayed or suspended, as the case may be, shall be deemed to have been terminated for convenience and GC 9.3 and GC 9.4 shall apply.

GC 10 DISPUTE RESOLUTION

10.1 Applicability to all Disputes

10.1.1 Disputes between the *Parties* relating to or arising out of the *Agreement* shall be settled in accordance with this GC 10 DISPUTE RESOLUTION. No legal action shall be taken or maintained without these provisions having been complied with, except to the extent that such legal action is necessary to:

(a) preserve a right or commence a *Claim* that would otherwise be barred by statute or another agreement if such legal action is not commenced or maintained; or

(b) obtain injunctive relief.

10.1.2 The Contractor shall prosecute the Work without delay pending the claim, whether or not the claim is being resolved to the Contractor's satisfaction, unless a suspension is otherwise consented to in writing by the owner.

10.2 Interim Directions

10.2.1 If, in the *Municipality's* opinion, it is necessary while a dispute is being resolved to give instructions for the proper and timely performance of the *Work* or to prevent delays to the *Project*, then the *Municipality* may issue instructions. The *Parties* shall act according to such instructions, it being understood that by so doing neither *Party* shall prejudice any *Claim* or position the *Party* may then have. If it is subsequently determined that the instructions were in error, or at variance with the *Agreement*, and to the extent that the *Contractor* has incurred direct costs as a result following the instructions, the *Municipality* shall pay the *Contractor* those direct costs actually incurred by the *Contractor* which are not already covered by the *Agreement*.

10.3 Negotiation

10.3.1 A disputing *Party* shall commence dispute resolution by serving a *Notice* requiring negotiation of the dispute on the other *Party* and the *Prime Consultant*. The *Notice* shall be served on the recipient *Party* in accordance with the applicable notice provisions of this *Agreement* and the date of delivery, or deemed date of delivery, as the case may be, is referred to in this GC 10 DISPUTE RESOLUTION as the "Negotiation Notice Date". The *Notice* shall describe the dispute and reference any time or money claimed and indicate all provisions of the *Agreement* that are relied on in relation to the dispute.

10.3.2 The *Parties* shall meet in person for the purpose of negotiating a resolution of the dispute within 14 days of the Negotiation Notice Date. Failure to meet within this time period means that, subject

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to the *Parties* otherwise agreeing, either *Party* can immediately commence mediation in accordance with GC 10.4.

10.3.3 Each of the *Parties* shall discuss the dispute in a professional and amicable manner and negotiate in good faith. The *Parties* agree to use all reasonable efforts to resolve any dispute, whether arising during the existence of this *Agreement* or at any time after the expiration or termination of this *Agreement*, which touches upon the validity, construction, meaning, performance or effect of this *Agreement* or the rights or liabilities of the *Parties* or any matter arising out of, or in connection with this *Agreement*.

10.3.4 All meetings and communications during the negotiation are without prejudice and cannot be used in evidence in any proceeding. The *Parties* shall treat the negotiation as confidential and neither of the *Parties* shall disclose any part of the negotiation to any third party, except for the sole purpose of dealing with the dispute.

10.3.5 In the event that the *Parties* cannot resolve the dispute within 28 days of the Negotiation Notice Date, then, subject to the *Parties* otherwise agreeing, the *Parties* shall participate in a mediation in accordance with GC 10.4.

10.4 **Mediation**

10.4.1 When the process under GC 10.3 is complete, or deemed complete pursuant to GC 10.3.2, either *Party* is entitled by *Notice* to the other *Party* to call for the appointment of an individual to act as a mediator. The *Notice* shall be served on the recipient *Party* in accordance with the applicable notice provisions of this *Agreement* and the date of delivery, or deemed date of delivery, as the case may be, is referred to in this GC 10 DISPUTE RESOLUTION as the "Mediation Notice Date".

10.4.2 Within 14 days of the Mediation Notice Date, the *Parties* shall jointly nominate a mediator or, if that cannot be achieved, either *Party* may, by a written request to the Chair of the Alberta Arbitration and Mediation Society ("AAMS") which is copied to the other *Party*, request that the AAMS appoint a mediator. Once appointed by the AAMS, the mediator shall be deemed to be acceptable to the *Parties* and to have been appointed by them.

10.4.3 The *Parties* shall submit their positions relating to the dispute in writing to the mediator and afford to the mediator access to all records, documents and information the mediator may reasonably request. The *Parties* shall meet with the mediator at such reasonable times as may be required and shall, as facilitated by the mediator, negotiate in good faith to resolve the dispute. All meetings and communications with or involving the mediator are without prejudice and cannot be used in evidence in any proceeding. The *Parties* shall treat the mediation as confidential and neither of the *Parties* shall disclose any part of the mediation to any third party, except for the sole purpose of dealing with the dispute.

10.4.4 The cost of the mediator shall be shared equally between the *Parties*.

10.4.5 If the dispute has not been resolved within 45 days of the Mediation Notice Date then, subject to the *Parties* otherwise agreeing, the mediation shall be deemed to have been concluded.

10.4.6 Once the mediation is concluded, or deemed to be concluded, any dispute not settled may be litigated in accordance with the *Law*.

GC 11 INSURANCE, WORKERS' COMPENSATION AND BONDS

11.1 **Insurance**

11.1.1 The *Municipality* and the *Contractor* shall place and maintain the insurance coverage as designated as their responsibility in Schedule E – Insurance, unless otherwise indicated in writing by the

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Municipality. The *Municipality* reserves the right to supplement or add insurance coverage from time to time as may be required by *Change Order*.

11.1.2 The insurance required to be obtained and maintained by the *Municipality* or the *Contractor* shall in no manner limit the *Contractor's* obligations to indemnify or otherwise perform the obligations required of it pursuant to the terms of this *Agreement*.

11.2 **Workers' Compensation**

11.2.1 The *Contractor* shall ensure all of its and the *Subcontractors'* respective personnel, agents, representatives and visitors attending at the *Project Site* are registered for workers' compensation coverage regardless of whether such coverage is required by the statutory requirements of the Province of Alberta. The *Contractor* shall indemnify the *Municipality* for any and all *Claims* incurred by the *Municipality* as a result of the *Contractor* failing to comply with this GC 11 INSURANCE, WORKERS' COMPENSAITON AND BONDS.

11.2.2 The *Contractor* shall at all times pay or cause to be paid any assessment or contribution required to be paid pursuant to the Workers' Compensation Act. If the *Contractor* fails to do so, the *Municipality*, in addition to any of its other rights under this *Agreement*, may retain the amount of the assessment or contribution from any payment then due, or to become due, to the *Contractor* under this *Agreement*.

11.2.3 At any time during the term of this *Agreement*, when requested by the *Municipality*, the *Contractor* shall provide evidence of compliance by the *Contractor* and *Subcontractors* with the obligations under this GC 11 INSURANCE, WORKERS' COMPENSAITON AND BONDS.

11.3 **Bonds**

11.3.1 Unless otherwise expressly waived in writing by the *Municipality*, the *Contractor* shall, prior to commencement of the *Work*, pay for and provide to the *Municipality*:

(a) 50% of *Contract Price* performance bond covering the performance of this *Agreement,* including any warranty requirements; and

(b) 50% of *Contract Price* labour and material payment bond.

11.3.2 The *Municipality* will not be obligated to make any payment to the *Contractor* until such time as the bonds set out in GC 11.3.1 have been delivered to the *Municipality* by the *Contractor*.

11.3.3 The bonds set out in GC 11.3.1 shall be:

(a) in the form which is in accordance with the latest edition of the CCDC approved bond forms, or such other form as may be approved by the *Municipality*;

(b) issued by a duly licensed surety company authorized to transact a business of suretyship in the Province of Alberta;

(c) acceptable to the *Municipality*; and

(d) maintained in good standing until completion of the *Work*.

GC 12 INDEMNIFICATION AND WARRANTY

12.1 **Indemnification by the Contractor**

12.1.1 The *Contractor* shall at all times and without limitation, be fully liable for, and shall indemnify and save harmless the *Municipality*, its councillors, directors, officers, personnel, contractors, agents and representatives from and against all liabilities, losses, injuries, costs, damages, legal fees (on a solicitor and client full indemnity basis), disbursements, fines, penalties, expenses, all manner of actions, causes of action, *Claims*, demands and proceedings, all of whatever nature and kind, which

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any of the *Municipality*, its councillors, directors, officers, personnel, contractors, agents and representatives may sustain, pay or incur or which may be brought or made against all or any of them, and whether or not incurred, in connection with any action or other proceedings or *Claims* or demands made by third parties, relating to, or resulting from or arising out of all or any of the following:

(a) the misconduct, negligent action or negligent failure to act, as the case may be, of the *Contractor* and/or any of those *Persons* for whom the *Contractor* is responsible at *Law* (including, without limitation, any of its personnel or subcontractors);

(b) the costs of repairs, clean-up or restoration paid by the *Municipality* and any fines levied against the *Municipality* or the *Contractor*;

(c) any breach, violation or non-performance of any representation, warranty, obligation, covenant, condition or agreement in this *Agreement* set forth and contained on the part of the *Contractor* to be fulfilled, kept, observed or performed, as the case may be; or

(d) any damages to third parties caused by, resulting at any time from, arising out of or in consequence of the misconduct, negligent action or failure to act of the *Contractor* and/or any of those *Persons* for whom the *Contractor* is responsible at *Law* (including, without limitation, any of its personnel or subcontractors).

12.1.2 The provisions in this Section are in addition to and shall not prejudice any other rights of the *Municipality* at *Law* or in equity.

12.2 **Warranty**

12.2.1 The *Contractor* warrants that the *Work*, including all workmanship, labour, *Materials* and equipment supplied by the *Contractor*, either directly or indirectly, and incorporated into the *Work*, shall comply in all respects with this *Agreement* and shall be free from *Deficiencies*.

12.2.2 Subject to 12.2.3, the *Warranty Period* with regard to the *Work* shall be the longer of:

(a) two years from the date of *Substantial Performance of the Work*, for any *Materials* or portions of the *Work* which are supplied or completed before *Substantial Performance of the Work* is attained, unless a longer period is specified in the *Scope of Work Documents* for such *Materials* or portions of the *Work*;

(b) two years from the date of *Total Performance of the Work*, for any *Materials* or portions of the *Work* which are supplied or completed after *Substantial Performance of the Work* is attained, unless a longer period is specified in the *Scope of Work Documents* for such *Materials* or portions of the *Work*; and

(c) where a period longer than that described in GC 12.2.2(a) or GC 12.2.2(b) is specified in the *Scope of Work Documents,* then that period specified in the *Scope of Work Documents* shall apply from the date specified in the *Scope of Work Documents* or, if no date is specified, from the date of *Total Performance of the Work*.

12.2.3 Where *Warranty Work* is performed, regardless of the initial *Warranty Period*, the *Warranty Period* shall recommence for that *Warranty Work* for the same period as initially contemplated commencing on the date of completion of the *Warranty Work*.

12.2.4 The *Contractor* shall promptly perform the *Warranty Work*, at the *Contractor's* expense, for all *Deficiencies* of which the *Contractor* is provided *Notice* by the *Municipality* or the *Prime Consultant* during the *Warranty Period* or 30 days thereafter.

SAMPLE

12.2.5 All *Warranty Work* carried out by the *Contractor* shall be performed during periods of time acceptable to the *Municipality*.

12.2.6 The *Contractor* acknowledges that the completed *Project* is a municipality service or facility and that certain *Deficiencies*, if not remedied immediately, may pose a risk to the residents or visitors to the *Municipality*. Accordingly, the *Contractor* shall ensure that any *Warranty Work* which is of an emergency nature, as reasonably determined by the *Municipality*, is performed immediately upon receipt of *Notice* from the *Municipality* or the *Prime Consultant*.

GC 13 CONFIDENTIALITY AND FREEDOM OF INFORMATION

13.1 **Confidentiality**

13.1.1 The *Contractor* shall:

(a) hold, and shall take all reasonable steps to ensure that anyone or entity employed, engaged or contracted by it holds all *Confidential Information* in strict confidence;

(b) not use, and shall take reasonable steps to ensure that anyone or entity employed, engaged or contracted by it does not use any *Confidential Information* other than to perform the *Work*;

(c) not disclose, and shall take reasonable steps to ensure that anyone or entity employed, engaged, or contracted by it does not disclose, any *Confidential Information* to anyone other than those persons or entities engaged to perform the *Work* and then only to the extent that such *Confidential Information* is directly required to be disclosed in order to properly perform the *Work*; and

(d) not disclose, and shall take reasonable steps to ensure that anyone or entity employed, engaged contracted by it does not disclose any *Confidential Information* to any third party at any time during or subsequent to the duration of this *Agreement*.

13.1.2 The obligations set forth in GC 13.1.1 apply to any and all *Confidential Information* except that which:

(a) is required to be disclosed by applicable *Law*; or

(b) subject to the applicable *Law*, is in the public domain or is provided to its financial and legal advisors in confidence.

13.1.3 The *Contractor* agrees that it shall not include any reference to the *Municipality*, the *Work* or the *Project* in any advertisement, public announcement or statement, or promotional materials without the prior written consent being obtained from the *Municipality*.

13.2 **Freedom of Information and Protection of Privacy Act**

13.2.1 Notwithstanding the termination or expiry of this Agreement, the *Contractor* acknowledges that information and records compiled or created under this Agreement which are in the custody of the *Contractor* are subject to the Freedom of Information and Protection of Privacy Act. If a request is received for any of these records, the *Contractor* shall forward the information and records, at the *Contractor's* expense, to the *Municipality* within five (5) calendar days of official notification by the *Municipality*.

SAMPLE

GC 14 INTELLECTUAL PROPERTY AND TITLE TO THE WORK

14.1 Intellectual Property

14.1.1 All *Drawings*, *Specifications*, reports, calculations, other documents and models prepared by the *Prime Consultant*, or other consultants to the *Municipality*, for the *Project* are the property of the *Municipality*.

14.1.2 All *Specifications*, *Drawings*, and models furnished by the *Prime Consultant* are to be used only with respect to the *Project* and are not to be used for other work and are not to be copied or altered in any manner without the prior written authorization of the *Municipality*.

14.1.3 The *Contractor* shall indemnify and hold harmless the *Municipality*, its personnel, agents and consultants, including the *Prime Consultant*, from any and all *Claims* arising out of or as a result of an infringement or an alleged infringement of a patent or invention used or incorporated into the *Work* by the *Contractor*, the *Subcontractors*, or any *Person* for whom the *Contractor* is responsible for at *Law*.

14.1.4 Subject to the limitations of liability expressly provided for in this *Agreement* and any *Law*, the *Municipality* shall, to the extent it can provide an indemnity in accordance with the *Law*, indemnify the *Contractor* against *Claims* arising out of or as a result of an infringement or an alleged infringement of a patent relating to a model, plan, equipment or design which was provided to the *Contractor* by the *Municipality* as part of the *Scope of Work Documents*.

14.2 Title to the Work

14.2.1 The *Contractor* warrants that title to all of the *Work* and other matters or things produced for the benefit of the *Municipality* shall be free of all *Claims*.

14.2.2 *Materials* covered by any application for payment shall pass to the *Municipality* at the earlier of:

(a) the time of payment, exclusive of any holdback or set-off; and

(b) delivery to the *Project Site*.

14.2.3 The *Contractor* shall promptly discharge, release or remove at its cost any *Claim* from title to the *Work*, *Project Site*, or other *Municipality* property.

14.2.4 The *Contractor* warrants that *Materials* delivered to the *Project Site* shall:

(a) not be removed from the *Project Site* or changed except with the prior written authorization of the *Municipality*; and

(b) at all times be kept secure and protected to the satisfaction of the *Municipality*.

14.3 Discharge of Claims

14.3.1 The *Contractor* shall promptly discharge, release or remove at its cost any *Claim* from title to the *Work*, *Project Site*, or other *Municipality* property.

14.3.2 In the event that the *Contractor* does not discharge, release or remove a *Claim* within 10 days of receipt of *Notice* from the *Municipality*, then the *Municipality* shall have the right, but not the obligation, to discharge, release or remove the *Claim* as it sees fit and all costs and expenses incurred by or claimed against the *Municipality*, including legal costs on a full indemnity, solicitor and his own client full indemnity basis, shall be to the account of the *Contractor* and the *Contractor* shall pay to the *Municipality* the amount so claimed by the *Municipality* within 3 days of *Notice* from the *Municipality* to the *Contractor* stating the amount owed

SAMPLE

GC 15 AUDIT

15.1 Records

15.1.1 At any time during normal business hours until 7 years after *Total Performance of the Work*, the *Municipality,* or its nominees, shall have the right to inspect and audit the *Contractor's Records;* except that the *Municipality*, or its nominees, shall not be entitled to see those portions of the *Records* that are priced by lump sum. The *Contractor* shall provide the *Municipality* with proper access and facilities to enable the *Municipality,* or its nominees, to undertake such inspection and audit. The *Contractor* shall allow the *Municipality* to make copies as reasonably required. The *Contractor* shall provide to the *Municipality* an electronic file of the data underlying the information in the *Records* upon the *Municipality's* request.

15.1.2 In the event an audit discloses an:

(a) overpayment by the *Municipality* to the *Contractor*, the *Contractor* shall immediately reimburse the *Municipality* for such overpayment plus interest at the *Prime Rate* plus 2% from the date of such overpayment to the date of reimbursement; or

(b) underpayment to the *Contractor* by the *Municipality*, the *Municipality* shall immediately pay the outstanding amount plus interest at the *Prime Rate* from the date of such overpayment to the date of reimbursement.

15.1.3 The costs of any audit pursuant to this GC 15 AUDIT shall be borne by the *Municipality* unless the audit discloses an overpayment of more than 3% of the total amounts paid to the *Contractor* for the audited period, in which case the costs of the audit shall be paid by the *Contractor*.

GC 16 PROTECTION OF PERSONS AND PROPERTY AND TOXIC AND HAZARDOUS SUBSTANCES

16.1 Protection of Work and Property

16.1.1 The *Contractor* shall protect the *Work*, the *Municipality's* property, property on or adjacent to the *Project Site* and *Materials* stored off of the *Project Site* from damage which may arise as the result of acts or omissions of the *Contractor*, the *Subcontractors* or any *Person* for whom the *Contractor* is responsible at *Law*.

16.1.2 Should the *Contractor*, the *Subcontractors* or any *Person* for whom the *Contractor* is responsible at *Law*, damage the *Work*, the *Municipality's* property, property on or adjacent to the *Project Site* or *Materials* stored off of the *Project Site*, in the performance of the *Work*, or otherwise, the *Contractor* shall be responsible for making good such damage at the *Contractor's* expense.

16.1.3 Should damage occur to the *Work*, the *Municipality's* property or property on or adjacent to the *Project Site* or *Materials* stored off of the *Project Site*, for which the *Contractor* is not responsible, the *Contractor* shall, if and to the extent the *Municipality* so directs, make good such damage to the *Work* and to the *Municipality's* property, and the *Contract Time* and *Contract Price* shall be adjusted as provided for in GC 7 CHANGES AND CONCEALED OR UNKNOWN CONDITIONS.

16.1.4 Unless the *Municipality* provides *Notice* to the *Contractor* stating otherwise, in the event of a shutdown of the *Work*, the *Contractor* shall continue to be responsible for the care, protection and maintenance of the *Work* during the period of the shutdown.

16.1.5 The *Contractor* will provide, at its cost, adequate site security at all times during the performance of the *Work*. The *Municipality* will not be responsible for the costs of any theft, damage, alteration, loss or replacement.

SAMPLE

16.2 **Toxic or Hazardous Substances**

16.2.1 Prior to commencement of the *Work*, the *Municipality* shall:

(a) take reasonable steps to determine whether any *Toxic or Hazardous Substances* are present at the *Project Site*; and

(b) provide the *Contractor* with a written list of such *Toxic or Hazardous Substances* known by the *Municipality* to be present on the *Project Site*.

16.2.2 The *Municipality* shall take reasonable steps to protect persons on the *Project Site* from suffering injury, sickness or death, and property from being damaged or destroyed as a result of exposure to, or the presence of, *Toxic or Hazardous Substances* which were at the *Project Site* prior to the commencement of the *Work*.

16.2.3 Unless otherwise directed by *Notice* by the *Municipality*, the *Contractor* shall take, or cause to be taken, the necessary actions to dispose of, store or otherwise render harmless, *Toxic or Hazardous Substances* which are identified by the *Municipality* as being present at the *Project Site* prior to the commencement of the *Work*. The *Contract Time* and *Contract Price* shall be adjusted as provided in GC 7 CHANGES AND CONCEALED OR UNKNOWN CONDITIONS to the extent that such actions are not already required pursuant to this *Agreement*.

16.2.4 If the *Contractor*:

(a) encounters *Toxic or Hazardous Substances* at the *Project Site*; or

(b) has reasonable grounds to believe that *Toxic or Hazardous Substances* are present at the *Project Site*, which were not disclosed by the *Municipality* as required under GC 16.2.1,

then the *Contractor* and the *Subcontractors* shall take the necessary actions, including stopping the *Work*, to ensure that no *Person* suffers injury, sickness, or death and that no property is damaged or destroyed as a result of exposure to, or the presence of, the *Toxic or Hazardous Substances*, and shall immediately provide *Notice* of the circumstances to the *Municipality* and the *Prime Consultant*.

16.2.5 If the *Contractor* is delayed in performing the *Work*, or incurs additional costs as a result of taking steps required under GC 16.2.4, the *Contract Time* and the *Contract Price* shall be adjusted in accordance with GC 7 CHANGES AND CONCEALED OR UNKNOWN CONDITIONS, to the extent that costs are not recoverable from the insurance required to be placed and maintained pursuant to GC 11.1.

16.2.6 Unless otherwise specified in the *Scope of Work Documents* or a *Notice* issued by or on behalf of the *Municipality*, the *Work* shall not include and the *Contractor* shall not permit the use or placement of any *Toxic or Hazardous Substances*, other than those *Toxic or Hazardous Substances* that are necessary to perform the *Work* in accordance with the requirements of the *Scope of Work Documents*, in which event such *Toxic or Hazardous Substances* will only be used in accordance with the *Law* and the then prevailing industry practice that is used by a prudent and contractor. The *Contractor* shall, and shall compel all *Persons* for whom the *Contractor* is responsible at *Law*, to comply strictly with this GC 16.2.6.

16.2.7 In the event that *Toxic or Hazardous Substances* are used or placed in the *Work* or onto the *Project Site* by the *Contractor*, or any *Person* for whom the *Contractor* is responsible at *Law*, the *Contractor* shall take the necessary steps to ensure that no *Person* suffers injury, sickness, or death, and that no property is damaged or destroyed as a result of exposure to, or the presence of, such *Toxic or Hazardous Substances*.

SAMPLE

16.2.8 The *Contractor* shall indemnify and hold harmless the *Municipality*, its personnel, agents and consultants, including the *Prime Consultant*, from any and all *Claims* arising out of or as a result of the *Contractor's* failure, or the failure of any *Person* for whom the *Contractor* is responsible at *Law*, to comply with the requirements of this GC 16.2.

GC 17 FORCE MAJEURE

17.1.1 If either *Party* is delayed by an *Event of Force Majeure* and provides *Notice* of the *Event of Force Majeure* to the other *Party* within 72 hours of the first occurrence of the *Event of Force Majeure*, and provides such further evidence of the *Event of Force Majeure* as may be reasonably requested by the other *Party* promptly thereafter, the *Contract Time* shall be extended for such reasonable time as is appropriate to account for the delay directly associated with the *Event of Force Majeure* as the *Prime Consultant*, in the first instance, determines, or as may be subsequently determined in accordance with GC 10 DISPUTE RESOLUTION.

17.1.2 Under no circumstances shall the *Contractor* be entitled to payment or compensation for any *Claims* incurred or suffered as a result of an *Event of Force Majeure* claimed by either the *Contractor* or the *Municipality*, except to the extent that the *Contractor* incurs costs to protect the *Project* after an occurrence of an *Event of Force Majeure* which costs are pre-approved by the *Municipality*.

17.1.3 Unless an *Event of Force Majeure* is established and, in which case, this GC applies, no shortage of labour, *Materials*, machinery, equipment or supplies; any kind of vandalism; non-receipt of properly ordered materials from *Subcontractors* or weather shall constitute a basis for entitlement for any *Claims* related to delay by the *Contractor* or justify an extension in *Contract Time* or any *Claims* for reimbursement for any impact thereof, including an adjustment of the *Contract Price* or any *Claims* or any other form of compensation or payment.

SAMPLE

SCHEDULE A – SUPPLEMENTARY CONDITIONS

GC 1.1 Definitions

The following is added:

COVID-19 Contingency Plan means a plan developed by the *Contractor* that provides how the Contractor will undertake performance of the *Work* considering the COVID-19 pandemic and the resulting need for compliance with *COVID-19 Requirements and Guidelines*.

COVID-19 Requirements and Guidelines means any laws, bylaws, regulations, orders, or guidelines issued by the Municipality, the Government of Alberta, the Government of Canada or any other governmental authority related to the COVID-19 pandemic.

GC 4.7 Construction Schedule

The following is added:

4.7.3 The *Contractor* shall prepare a *COVID-19 Contingency Plan* and update it from time to time if required by the Municipality or necessitated by changes to *COVID-19 Requirements and Guidelines.* The *Contractor* shall update the *Construction Schedule* to reflect the *COVID-19 Contingency Plan* and communicate same to the Municipality.

GC 4.8 Safety

A new paragraph (f) is added to GC 4.8.3 and existing paragraphs (f) and (g) are renumbered as (g) and (h) to provide as follows:

(f) shall amend the *Construction Safety Plan* as required from time to time to include measures that the *Contractor* will undertake on the *Project Site* to comply with all *COVID-19 Requirements and Guidelines* and the *Contractor* shall be responsible for implementing all such measures.

(g) provide to the *Municipality* any information and documentation required by the *Municipality*, from time to time; and

(i) perform safety audits and maintain documentation of the same.

GC 18 LIQUIDATED DAMAGES

Time is of the essence of this Agreement. Without limiting the provisions set out in this Agreement, liquidated damages of $3,000.00 per day shall apply and be immediately payable by the Contractor to the Municipality in the event that the Contractor fails to achieve Substantial Performance of the Work or Total Performance of the Work in strict accordance with such time requirements contained within this Agreement. Liquidated damages will be calculated on the number of days from the date that Substantial Performance of the Work was required to be achieved pursuant to Article A-3 to the actual date of Substantial Performance of the Work (less any days granted for time extension as provided for in this Agreement) and from the date that Total Completion of the Work was required to be achieved pursuant to Article A-3 to the actual date of Total Completion of the Work (less any days granted for time extension as provided for in this Agreement). The Parties agree that such liquidated damages are not a penalty but represent a genuine and reasonable pre-estimate of the damages that the Municipality will suffer. If the Municipality is able to establish actual damages in an amount greater than the liquidated damages set out herein, the Municipality shall be entitled to claim such actual damages.

SAMPLE

SCHEDULE B – SCOPE OF WORK

SAMPLE

Agreement Number

SCHEDULE C – LUMP SUM PRICE

SAMPLE

SCHEDULE D – KEY PERSONNEL

The key personnel that are assigned to this *Project* are as follows:

SAMPLE

Schedule E – Insurance

1. Without in any way limiting the liability of the *Contractor* under this *Agreement*, the *Contractor* shall, at its sole cost, obtain and maintain in force during the term the following insurance, all satisfactory to the *Municipality*, acting reasonably;

   (a) standard automobile, bodily injury and property damage insurance providing coverage of at least $5,000,000.00 inclusive and in respect of any one *Claim* for the injury to or death of one or more *Person*s or damage to or destruction of property;

   (b) Commercial general liability insurance policy providing coverage of at least $5,000,000.00 inclusive and in respect of any one *Claim* for injury to or death of any one or more *Person*s or damage to or destruction of property. Coverage to include:

      (i) non-owned automobiles;

      (ii) independent subcontractors;

      (iii) contractual liability including this *Agreement*;

      (iv) environmental liability;

      (v) products and completed operations coverage; and

      (vi) employer's liability or workers compensation insurance if appropriate.

   (c) Errors and omission coverage for professional services with limits of liability of not less than $2,000,000 per claim made;

   (d) Builders' Risk, Course of Construction, or Installation Floater insurance(s) in the amount of this project or Agreement and such other insurance as described in Section 2 of this Schedule E; and

   (e) such other insurance as the *Municipality* may from time to time reasonably require.

2. If applicable and without limiting Section 1 of this Schedule E, the *Contractor* will, prior to any construction in connection with the *Project*, ensure that the following insurance coverages are placed with a company licensed to do business in Alberta and in a form acceptable to the *Municipality*. These insurances will remain in force until *Total Performance of the Work* in accordance with this *Agreement*, unless otherwise stipulated. Each policy will contain a waiver in favour of the *Municipality* of any breach or violation of any warranties, representations, declarations or conditions contained in such policies:

   (a) Wrap up liability insurance issued in the name of the *Contractor* with the *Municipality*, the architects, engineers and contractors named as additional insureds protecting all participants, including subcontractors, their respective agents and employees, in all activities pertaining to the *Work*, which limits of not less than FIVE MILLION DOLLARS ($5,000,000) on an occurrence basis for bodily injury, death and property damage losses including loss of use thereof. This insurance will be maintained continuously throughout the entire term of the Agreement until *Total Performance*

SAMPLE

of the Work, and thereafter, in the case of completed operations coverage, for the *Warranty Period* and will contain the following extensions coverage:

(i) Broad Form Property Damage and Completed Operations;
(ii) Personal injury;
(iii) Blanket Contractual Liability;
(iv) Cross Liability and Severability of Interest Clause;
(v) Contingent Employer's Liability;
(vi) Non-Owned Auto Liability;

and where such further risks exist the following extensions of coverage will be included:

(vii) hoist liability; and
(viii) operation of attached machinery.

(b) *Contractor*'s Equipment Insurance covering all equipment owned or rented by the *Contractor* or its contractors, subcontractors, and their respective servants, agents or employees against all risk of loss or damage with coverage sufficient to allow for immediate replacement; and

(c) All-Risks Insurance, including the perils of flood and earthquake, covering the *Work* and all property of every description to be used in the construction or installation of the *Work*. This insurance will be primary, including the *Municipality* as a named insured.

3. Each insurance policy referred to in this Schedule E – Insurance except automobile and except errors and omissions insurance, shall name the *Municipality* as additional insured so far as concerns the subject matter of this *Agreement* as their interest may appear and such policies will contain where appropriate:

(a) a waiver of any subrogation rights which the *Contractor*'s insurers may have against the *Municipality*, its councilors, directors, officers, employees, contractors, agents and representatives;

(b) a severability of interests clause or a cross liability clause;

(c) a clause stating that the *Contractor*'s insurance policy will be considered as the primary insurance and shall not call into contribution any other insurance that may be available to the *Municipality*.

4. The *Contractor* shall cause all insurance coverage to provide that no such insurance policy may be cancelled or materially changed without the insurer providing no less than 30 days' written *Notice* of such material change or cancellation to the *Municipality* delivered to:

Regional Municipality of Wood Buffalo
Risk & Compliance Department (Risk Management Branch)
9909 Franklin Avenue
Fort McMurray, Alberta, T9H 2K4

5. The *Contractor* shall, upon the request of the *Municipality*, furnish written documentation, satisfactory to the *Municipality*, evidencing the required insurance coverage. The cost of all of the insurance required to be held by the *Contractor* as set forth herein shall be borne by the *Contractor*.

SAMPLE

SCHEDULE F – FORMS

Change Directive

Change Order

Statutory Declaration

Vendor/Contractor Performance Evaluation for Services & Construction

SAMPLE

Change Directive
Municipality Standard Unit Rate Agreement

Project No.		RMWB Contract No.
Project Name:	Date of Issuance:	Effective Date:
Prime Consultant Name:	Contractor Name:	Project Manager:

Your are directed to proceed promptly with the following change(s):

Description:

Purpose of the work Change Directive:

Attachments: (List documents supporting change)

If the claim is made that the above change(s) have affected the Contract Price or Contract Times, the value of any claim on a Change Order shall be determined by following methods: Lump Sum, Unit Rates, Cost Plus a Fixed or Percentage Fee.

Estimate increase or decrease in Contract Price:

$_____

If the change involves an increase, the estimated amount cannot be exceeded without further authorization.

Recommended: Prime Consultant Name:	Authorized: RMWB Employee Name:
Signature:	Signature:
Date:	Date:

SAMPLE

REGIONAL MUNICIPALITY OF WOOD BUFFALO

☐ **Contemplated Change Order** ☐ **Contract Change Order**

TO: VENDOR: _____ DATE: _____

_____ RMWB CCO #: _____

_____ RMWB C/O # : _____

_____ PROJECT I/O.: _____

PROJECT NAME : _____ RMWB PO #: _____

SUBJECT : _____

The following change to the contract is proposed, to be performed and paid for in accordance with the terms of the contract.
DO NOT PROCEED WITH WORK UNTIL AUTHORIZED TO DO SO BY CHANGE TO PURCHASE ORDER FROM RMWB SCM

SAMPLE

ITEM	DESCRIPTION & BREAKDOWN OF WORK	EXTRA	CREDIT
	TOTAL REQUEST		

Reason Code 1 Change Order Log Attachment ☐ Reference Drawings / Attachments ☐

Codes: **1**. Design Discrepancy **2**. Regulatory Change **3**. Unforeseeable Condition **4.** Design Upgrade **5**. Scope Change
6. Others, Please specify _____

NOTE: By signing this CO, the vendor waives any claims relating to cumulative or ripple effects arising from matters agreed to pursuant to this change order. This change Order constitutes compensation in full to the vendor for all costs and mark ups directly or indirectly attributable to changes ordered herein, and for all resulting delays, if any.

EFFECT OF THIS CHANGE ON THE CONTRACT COMPLETION DATE		TOTAL AMOUNT OF THIS CHANGE ORDER	EXTRA	$
☐ NO EFFECT ON CONTRACT COMPLETION DATE			CREDIT	$
☐ EXTEND THE DATE BY: _____	CALENDAR DAYS	PREVIOUS CONTRACT AMOUNT		$
☐ REDUCE THE DATE BY: _____	CALENDAR DAYS	REVISED CONTRACT AMOUNT		$

SIGNATURE BY: (CONTRACTOR)	RECOMMENDED BY: (CONSULTANT/ENGINEER)
PER:	PER:
DATE:	DATE:
SIGNATURE BY: PROJECT MANAGER (RMWB)	**AUTHORIZED BY: (RMWB)**
PER:	PER:
DATE:	DATE:

REGIONAL MUNICIPALITY OF WOOD BUFFALO

Statutory Declaration
of Payment Distribution

Identification of Contract

Contract Name (location and description of the Work as it appears in the Contract Documents)

Contract ID: _____

Date of this application for Payment:

_____ _____ _____
Month Day Year

Date of last (immediate preceding) application for payment for which payment has been received:

_____ _____ _____
Month Day Year

Identification of Declarant (person making the declaration)

Full Name of Declarant	Position or Title (with Contractor)	
Legal Name of Contractor (the "Contractor")	Trade or Operating Name of Contractor, if applicable	
Business Address		
City or Town	Province	Postal Code

Declaration

I, the undersigned, solemnly declare that as of the date of this application for payment, I am an authorized signing officer or partner of the Contractor named in the Contract identified above, and as such have authority to bind the Contractor, and further declare that:

.1 All the Contractor's lawful obligations, in respect of workers and in respect of labour and materials contracted for and performed before the date of the last payment received (as identified above), are fully discharged, except for hold back monies properly retained payments deferred by lawful agreement, or amounts withheld by legitimate dispute as clearly identified to the party to whom the funds have been withheld;

.2 All payments required to be made by the Contractor have been made in full including all previous Progressive Holdback Payments (if any), and these payments were made within 10 calendar days from the date of last payment received by the Contractor on this Contract;

.3 No liens related to the Work of this Contract are registered against the lands upon which the Work is performed; and

.4 The Contractor has received from its Subcontractors a declaration consistent with this declaration; and

.5 I have personal knowledge of the contract identified and verily believe the facts stated in this Statutory Declaration to be true.

I make this solemn declaration conscientiously believing it to be true, and knowing that it is of the same force and effect as if made under oath.

Making a false or fraudulent declaration is a contravention of the Criminal Code of Canada, and could carry, upon conviction, penalties including fines, imprisonment, or both.

_____
Signature of declarant

DECLARED before me at _____ this _____ day of _____ 20 _____
City/Town and Province

_____
Signature of person before whom declaration is made

_____
Authority to receive solemn declarations

_____
Name (please print)

Any changes or corrections on this Statutory Declaration must be initialed by the Individual before whom the declaration is made.

SAMPLE

REGIONAL MUNICIPALITY OF WOOD BUFFALO

REGIONAL MUNICIPALITY OF WOOD BUFFALO
VENDOR / CONTRACTOR PERFORMANCE EVALUATION FOR SERVICES & CONSTRUCTION

ALL FIELDS ARE MANDATORY

Contractor Name:		Contract Title and Number:	
Purchase Order Number:	Contract Term:	Contract Period: From:	To:
Contract Value:		Department:	

Performance Evaluation completed:

☐ Six (6) Month Interval
☐ Contract Closeout

PERFORMANCE

EXCEPTIONAL (7)	VERY GOOD (5)	SATISFACTORY (3)
Meets contractual requirements and exceeds many to the District's benefit. The scope of services was accomplished. Corrective actions taken by the contractor were highly effective. All significant program elements, including technical performance and schedule, are above what was planned.	Meets contractual requirements and exceeds some to the District's benefit. The scope of services was accomplished with minor problems. Corrective actions taken by the contractor were effective. Significant elements were as planned.	Meets contractual requirements. The actions taken by the contractor appear or were satisfactory. Some significant program elements are behind what was planned or above the negotiated cost.

MARGINAL (2)	UNSATISFACTORY (0)	N/A	INSUFFICIENT INFO. TO RATE
Does not meet some contractual requirements. The scope of services was not accomplished. Problems were serious. The contractor has yet to identify corrective actions, or the contractor's proposed actions appear only marginally effective or were not implemented. Some significant program elements are significantly behind.	Does not meet most contractual requirements, and recovery is not likely in a timely manner. The contractor's corrective actions appear or were ineffective.	Not Applicable	There is not sufficient information to rate performance.

PERFORMANCE RATING		Score (0,2,3,5,7)	COMMENTS (Attach additional sheets if necessary)
Work performed in compliance with contract terms	☐ Exceptional ☐ Very Good ☐ Satisfactory ☐ Marginal ☐ Unsatisfactory ☐ N/A ☐ Insufficient info. to rate		

SAMPLE

PERFORMANCE RATING		Score (0,2,3,5,7)	COMMENTS (Attach additional sheets if necessary)
Materials, supplies and equipment provided as required?	☐ Exceptional ☐ Very Good ☐ Satisfactory ☐ Marginal ☐ Unsatisfactory ☐ N/A ☐ Insufficient info. to rate		
Staff availability	☐ Exceptional ☐ Very Good ☐ Satisfactory ☐ Marginal ☐ Unsatisfactory ☐ N/A ☐ Insufficient info. to rate		
Staff training	☐ Exceptional ☐ Very Good ☐ Satisfactory ☐ Marginal ☐ Unsatisfactory ☐ N/A ☐ Insufficient info. to rate		
Staff professionalism	☐ Exceptional ☐ Very Good ☐ Satisfactory ☐ Marginal ☐ Unsatisfactory ☐ N/A ☐ Insufficient info. to rate		
Customer service	☐ Exceptional ☐ Very Good ☐ Satisfactory ☐ Marginal ☐ Unsatisfactory ☐ N/A ☐ Insufficient info. to rate		
Staff turnover	☐ Exceptional ☐ Very Good ☐ Satisfactory ☐ Marginal ☐ Unsatisfactory ☐ N/A ☐ Insufficient info. to rate		

SAMPLE

PERFORMANCE RATING		Score (0,2,3,5,7)	COMMENTS (Attach additional sheets if necessary)
Communication and Accessibility	☐ Exceptional ☐ Very Good ☐ Satisfactory ☐ Marginal ☐ Unsatisfactory ☐ N/A ☐ Insufficient info. to rate		
Prompt and effective correction of situations and conditions	☐ Exceptional ☐ Very Good ☐ Satisfactory ☐ Marginal ☐ Unsatisfactory ☐ N/A ☐ Insufficient info. to rate		
Contractor compliance with Wage & Benefits (if appropriate)	☐ Exceptional ☐ Very Good ☐ Satisfactory ☐ Marginal ☐ Unsatisfactory ☐ N/A ☐ Insufficient info. to rate		
Documentation records, receipts, invoices and computer generated reports received in a timely manner and in compliance with contract specifications	☐ Exceptional ☐ Very Good ☐ Satisfactory ☐ Marginal ☐ Unsatisfactory ☐ N/A ☐ Insufficient info. to rate		
Licensing requirements met	☐ Exceptional ☐ Very Good ☐ Satisfactory ☐ Marginal ☐ Unsatisfactory ☐ N/A ☐ Insufficient info. to rate		
Insurance certificates and documentation, timely and complete	☐ Exceptional ☐ Very Good ☐ Satisfactory ☐ Marginal ☐ Unsatisfactory ☐ N/A ☐ Insufficient info. to rate		

SAMPLE

PERFORMANCE RATING		Score (0,2,3,5,7)	COMMENTS (Attach additional sheets if necessary)
Safety: ▪ Reporting of incidents ▪ Completing safety talks with employees ▪ Compliance of hazard assessment / site safety plans ▪ Total Recordable Injury Rate (TRIR) for the duration of the contract	☐ Exceptional ☐ Very Good ☐ Satisfactory ☐ Marginal ☐ Unsatisfactory ☐ N/A ☐ Insufficient info. to rate		
Would you recommend this firm again?	☐ Yes ☐ No (Explain)		

SAMPLE

REGIONAL MUNICIPALITY OF WOOD BUFFALO

REGIONAL MUNICIPALITY OF WOOD BUFFALO
VENDOR / CONTRACTOR PERFORMANCE EVALUATION FOR SERVICE

OVERALL ASSESSMENT:

Total score out of 91

- ☐ Exceptional (66-91)
- ☐ Very Good (40-65)
- ☐ Satisfactory (27-39)
- ☐ Marginal (10-26)
- ☐ Unsatisfactory (<10)

Comments: _____

_____

_____

_____

_____

_____

_____

Name of Evaluator: _____ _____
(Print) (Signature)

Title: _____ Date: _____

The Procurement Branch will arrange performance review meetings with vendors receiving a "Marginal" score or less on a Vendor Performance Evaluation report.

FISCAL COMPLIANCE:

Number of Financial Change Orders _____

Original Contract/Award Value $_____

Dollar amount of increase (decrease) $_____

Percent of increase (decrease) _____ %

Reason for increase (decrease) _____

_____

MANAGER/DIRECTOR REVIEW:

_____ _____
Title Signature

_____
Date

SAMPLE