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SECTION 2 - GENERAL CONDITIONS DRAWINGS, SPECIFICATIONS AND RELATED DATA

2.01 DRAWINGS, SPECIFICATIONS AND RELATED DATA

ARTICLE 1. DEFINITION OF TERMS

- .1 "APPROVAL" shall mean the approval granted by the City Engineer unless otherwise noted.
- .2 "CITY" shall mean a duly authorized representative of the City of Nanaimo.
- .3 "CITY ENGINEER" shall mean the person appointed to the office of City Engineer, by Council, acting, either directly or through authorized staff acting severally within the scope of the particular duties entrusted to them.
- .4 "CONSULTANT" shall mean a Professional Engineer acting either directly or through his/her authorized agents, acting severally within the scope of the particular duties entrusted to them.
- .5 "CONTRACT DOCUMENTS" OR "CONTRACT" shall mean the complete set of documents, specifications, drawings, and addenda incorporated therein, as listed in the Table of Contents.
- .6 "CONTRACTOR" shall mean the Contractor named in the Contract Agreement.
- .7 "DIRECTOR OF ENGINEERING AND PUBLIC WORKS" shall mean the City Engineer.
- .8 "ENGINEER" shall mean:
 - (a) the City Engineer acting either directly or through his/her properly authorized agents, Professional Engineers, Consultants, and authorized staff, acting severally within the scope of the particular duties entrusted to them or,
 - (b) notwithstanding Article 1.8 (a), for City construction contracts, the Manager of Construction acting either directly, or through his properly authorized agents, Professional Engineers, Consultants and staff, acting severally within the scope of the particular duties entrusted to them.
 - (c) notwithstanding Article 1.8 (a), for Private Developments, the Consultant acting on behalf of the developer. The City Engineer will monitor the Consultant and retains the right to direct the Consultant's application of the Engineer's responsibilities.
- .9 "EQUIPMENT" shall mean anything and everything except persons used by the Contractor in performance of the work and except material as defined herein.
- .10 "HEREIN" and "HEREOF" and similar expressions wherever used in the Contract Documents, shall relate to the whole of the Contract Documents and not to any one (1) paragraph alone, unless the context specifically requires it.
- .11 "INSPECTOR" shall mean a person or company authorized by the Engineer or by the Owner to inspect the work or any part of it.
- .12 "MATERIAL" or "MATERIALS" shall, unless otherwise specified, mean anything and everything other than persons or the Contractor's equipment which is manufactured, processed, or transported to the site, or existing on the site, and incorporated into the completed works.
- .13 "OWNER" shall mean the City of Nanaimo.

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- .14 "PLANT" shall mean the same as EQUIPMENT.
- .15 "PROFESSIONAL ENGINEER" shall mean a person registered with the Association of Professional Engineers of British Columbia as a Professional Engineer.
- .16 "PROVIDE" shall mean the same as SUPPLY.
- .17 "SUBCONTRACTOR" shall mean any person, engaged by the Contractor or another Sub-Contractor to perform or provide part or parts of the work or to supply material intended to be incorporated into the completed works, but does not include a worker or a person engaged by an architect, an engineer or a material supplier.
- .18 "SUPPLY" shall mean supply and pay for or provide and pay for.
- .19 "WORK" or "WORKS" shall, unless the context otherwise requires, mean the whole of the work, equipment, materials, labour, matters and things required to be done, furnished, and performed by the Contractor under this Contract.

ARTICLE 2. INTENT OF CONTRACT

- .1 The intent of the Contract is that the Contractor shall provide all materials, supervision, Labour, equipment, and all else necessary for, or incidental to, the proper execution of the work unless specifically noted otherwise. The Contractor shall do all the work shown on the drawings and/or described in the specifications and all other things necessary to complete the works.

ARTICLE 3. DRAWINGS AND SPECIFICATIONS FURNISHED

- .1 Except as provided for otherwise, a maximum of six (6) copies of drawings and specifications for the execution of the work shall be furnished to the Contractor without charge. Additional instructions may be issued by the Engineer during the progress of the work by means of drawings or otherwise for clarification of the drawings and specifications, or as may be necessary to explain or illustrate changes in the work to be done. One (1) complete set of all drawings and specifications shall be maintained at the jobsite by the Contractor and shall be available to the Engineer at all times.

ARTICLE 4. DOCUMENTS CONFLICT

- .1 In case of any inconsistency or conflict between the provisions of the Contract Documents the provisions of such documents and addenda thereto will take precedence and govern in the following order:
 - 1. Contract Agreement
 - 2. Supplementary General Conditions
 - 3. General Conditions
 - 4. Specifications
 - 5. Drawings
 - 6. Executed Tender Form
 - 7. Instructions to Tenderers
 - 8. Invitation to Tender
 - 9. All other documents

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- .2 Figured dimensions on a drawing take precedence over measurements scaled from the drawing, and large scale drawings take precedence over those of smaller scale. Supplementary drawings and specifications supersede their antecedents. In case of conflict between figured dimensions on a drawing and the dimensions of a specified product, the dimensions of the specified product will govern. In case of conflict in materials and methods, the specifications govern. The drawings and specifications complement each other and anything called for by one will be as binding as if called for by both.

ARTICLE 5. DISCREPANCIES

- .1 Any discrepancies found between the drawings and specifications or any errors or omissions in the drawings or specifications shall immediately be reported to the Engineer, who shall promptly correct such error or omission in writing. Any work done after discovery of such discrepancies, errors or omissions shall be done at the Contractor's risk.

ARTICLE 6. SHOP DRAWINGS

- .1 The Contractor shall furnish to the Engineer, at proper times, all shop drawings including diagrams, illustrations, schedules, performance charts, brochures and other data necessary to clarify the work intended or to show its relation to adjacent work of other trades. The Contractor shall provide such additional drawings and shall make any changes or additions to such drawings or diagrams which the engineer may require consistent with the Contract and will submit sufficient copies of the revised prints for review, all but three (3) of which all be returned to the Contractor following review
- .2 Prior to submission to the engineer the Contractor shall review all shop drawings. By this submission, the Contractor represents that he has determined and verified all field measurements, field construction criteria, materials, catalogue numbers and similar data and that he has checked and coordinated each shop drawing with the requirements of the work and of the Contract Documents.
- .3 The Contractor shall submit shop drawings to the Engineer for his review with reasonable promptness and in orderly sequence so as to cause no delay in the work of other contractors. If either the Contractor or the Engineer so requests, they shall jointly prepare a schedule fixing the dates for submission and return of shop drawings. Shop drawings shall be submitted in the form of a reproducible transparency or prints as the engineer may direct. At the time of submission, the Contractor shall notify the engineer in writing of any deviations in the shop drawings from the requirements of the Contract Documents.
- .4 The Engineer will review and return shop drawings in accordance with any schedule agreed upon, or otherwise with reasonable promptness so as to cause no delay. The Engineer's review shall be for conformity to the design concept and for general arrangement only and such review shall not relieve the Contractor of responsibility for errors or omissions in the shop drawings or of responsibility for meeting all requirements of the Contract Documents unless a deviation on the shop drawings has been specifically approved in writing by the Engineer.
- .5 The Contractor shall make any changes in shop drawings, which the Engineer may require consistent with the Contract Documents and resubmit unless otherwise directed by the Engineer. When resubmitting, the Contractor shall notify the Engineer in writing of any revisions other than those requested by the Engineer.

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ARTICLE 7. LOCATION OF THE WORKS

- .1 Where location dimensions for the proposed works are not shown on the drawings or digital file, the locations are intended to be approximate.
- .2 Unless otherwise specified, the Engineer will provide the contractor with a copy of the digital drawing file for the Contractor and/or his surveyor to create a point file to be used for layout to perform the construction works.
- .3 The Contractor shall perform all layout as required from the digital drawing file and shall be responsible for all dimensions and elevations determined from the digital information.
- .4 The Contractor shall satisfy himself, before commencing any work, as to the meaning, intent, and accuracy of the information in the digital drawing file as it relates to control points, control lines, benchmarks, and the construction drawings.
- .5 Should the Contractor discover or suspect any errors in the digital drawing file provided by the Engineer, he shall at once discontinue the affected work until such errors are investigated by the Engineer and, if necessary, rectified.
- .6 The Contractor shall carefully preserve bench marks, reference points and stakes. In case of willful or careless destruction or disturbance of such markers, he shall be charged with the expense of replacing them and shall be responsible for any mistakes that may be caused by their destruction, loss or disturbance.
- .7 In any dispute between the Contractor and the Engineer on the correctness of grades, locations, elevations of the installations or constructed works, the Contractor shall be responsible for proving by means of cut sheets and undisturbed stakes, that he has made the installation or construction in accordance with the layout provided.
- .8 The contractor shall be required to maintain an "as-constructed" drawing set for the project, with all changes and notes marked in red ink and an "as-constructed" digital survey file. This information shall be available to the Engineer for review on request, and shall be submitted to the Engineer prior to issuing the Notice of Acceptance.
- .9 Legal survey markers, disturbed or removed by the construction operation that existed at a horizontal distance of 1.0 m or more from the maximum allowable trench width as shown on the standard drawings, shall be replaced at the Contractor's expense. If it is necessary to remove or disturb existing legal survey markers that are within the above limits, the Engineer shall be so notified a minimum of three working days before such removal or disturbance and replacement will be at the Owner's expense.

ARTICLE 8. LOCAL CONDITIONS

- .1 The Contractor shall, by personal inspection, examination, calculations or tests, or by any other means, satisfy himself with respect to the local conditions to be encountered and the quantities, quality, and practicability of the work and of his methods of procedure. No verbal agreement or conversation with any officer, agent, or employee of the Owner, either before or after the execution of the contract, shall affect or modify any of the terms or obligations herein contained.

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- .2 Failure to properly assess the local conditions to be encountered and the quantities, quality and practicability of the work and his methods of procedure is a risk to be borne by the Contractor.

SECTION 2 - GENERAL CONDITIONS ENGINEER, OWNER, CONTRACTOR RELATIONS

2.02 ENGINEER, OWNER, CONTRACTOR RELATIONS

ARTICLE 9. ENGINEER'S STATUS

- .1 The Engineer will be the Owner's representative during the construction period and will observe work in progress on behalf of the owner. The Engineer will have the authority to stop the work whenever such stoppage may be necessary, in his opinion, to ensure the proper execution of the work in accordance with the provisions of the contract. The Contractor shall obey such order immediately. Neither the giving or carrying out of such orders shall thereby entitle the Contractor to any extra payment.
- .2 The Engineer may delegate such of the powers of the Engineer to other persons, as the Engineer deems appropriate.
- .3 The Engineer or the Owner may appoint any persons or company or the employee of any such person or company or of the Engineer to be an Inspector. Such Inspector shall have the authority of the Engineer to reject materials, procedures or workmanship as not complying with the provisions of the Contract and to order the Contractor to stop work until the materials, procedures or workmanship comply with such provisions.

ARTICLE 10. INSPECTION OF WORK

- .1 The Contractor shall allow the Engineer and/or owner or their duly appointed Inspector access and provide adequate facilities for access to any part of the works at all times. If the specifications, Engineer's instructions, laws, ordinances or any public authority requires any work to be specially tested or approved, the Contractor shall give the Engineer advance notice of his preparedness for such inspection, and if the inspection is by an authority other than the Engineer, of the date fixed for such inspection. The Engineer will inspect the work promptly and without causing unreasonable delay to the Contractor. Extra payment will not be made to the Contractor for delay occasioned by an inspection, and extension of completion time will not be allowed for delay resulting therefrom.
- .2 On request by the Engineer, the Contractor shall open for inspection any part of the work that has been covered up. If the Contractor refuses to comply with such request, the Owner may employ other persons to uncover the work. If the work is found to be in accordance with the Contract requirements then the cost of uncovering and recovering the work shall be borne by the Owner. If any of the work was covered by the Contractor in contravention of the Engineer's instructions, or if the uncovered work is found not to be in accordance with the Contract requirements, then the cost of uncovering and recovering the work shall be charged to the Contractor.
- .3 The lack of comment on the part of the Engineer, on methods of construction by the Contractor shall not relieve the Contractor of his responsibility for any errors therein, and shall not be regarded as an acceptance of responsibility for work done by the Contractor.

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ARTICLE 11. SUPERVISION AND LABOUR

- .1 The Contractor shall keep on the work at all times during its progress a competent superintendent who is approved by the Engineer, which approval may be withdrawn at any time. The superintendent shall represent the Contractor in his absence and directions given to him shall be held as being given to the Contractor. The superintendent shall give efficient and effective supervision to the work until its completion.
- .2 When competent personnel are available locally they shall, whenever possible, be employed by the Contractor.

ARTICLE 12. LANDS BY OWNER

- .1 The Owner will provide the lands upon which the work is to be performed. Where work is to be performed on lands owned by others, the Owner, will obtain the necessary easements or rights-of-way. The Owner will endeavor to obtain the necessary easements or rights-of-entry in time to permit construction to proceed as scheduled by the Contractor. When this is not possible, the Contractor shall withhold work on property owned by others until such easements or rights-of-entry have been obtained. Delay in providing these lands, or in obtaining easements or rights-of-way which, in the opinion of the Engineer, delays the work or results in extra cost to the contractor, will be deemed proper cause for adjustment in the time of completion and adjustment of the Contract amount to cover the extra cost to the Contractor.

ARTICLE 13. LANDS REQUIRED BY CONTRACTOR

- .1 Any lands other than those which are to be provided by the Owner and which may be required by the Contractor for temporary facilities, storage purposes, or access to the work site, shall be obtained by the Contractor at no cost to the Owner.

ARTICLE 14. PRIVATE LAND

- .1 It shall be the Contractor's responsibility to ascertain the boundaries within which the work must be confined. The Contractor shall not enter lands other than those provided by the Owner for any purpose without obtaining prior written permission of the land owners and occupiers. The Contractor shall not enter upon lands owned by others on which the Owner has easements or rights-of-entry without having received the written authorization of the Owner for such entry. It shall be the Contractor's responsibility to ascertain from the Owner the conditions on which easements or right-of-entry have been granted on private lands and to abide by these conditions throughout the course of construction.

The Contractor shall notify the Owner and Engineer, in writing, of any supplementary construction agreements made between the Contractor and the Owner of private property in lieu of or in addition to the condition sheets provided by the Owner and forming part of this document.

- .2 The Owner will not be responsible for any supplementary construction agreements other than those to which the Owner is a signed party.

SECTION 2 - GENERAL CONDITIONS ENGINEER, OWNER, CONTRACTOR RELATIONS

ARTICLE 15. ASSIGNMENT OF CONTRACT

- .1 Neither party shall sublet, sell, transfer, assign, or otherwise dispose of the Contract or any portions thereof, or his right, title, or interest herein, or his obligations thereunder without written consent of the other party, except for an assignment to a bank of the payments to be received hereunder.

ARTICLE 16. SUSPENSION OF WORK BY OWNER

- .1 The Owner may at any time suspend the work, or any portion thereof, provided he gives the Contractor five (5) days written notice of suspension. The Contractor shall resume work upon written notice of the Owner within ten (10) days after the date set forth in such notice, or in a subsequent notice to resume work. The Owner will reimburse the Contractor for costs and expenses incurred by the Contractor necessitated by such suspension of work or portion thereof, but the Contractor shall not recover from the Owner payment for any loss of anticipated profits or damages.

ARTICLE 17. OWNER'S TERMINATION OF THE CONTRACTOR'S RIGHTS

- .1 The Owner will have the right to terminate the Contractor's right to continue with the work if the Contractor at any time becomes bankrupt, makes an assignment of his property for the benefit of the creditors, or if a receiver or liquidator should be appointed. Such termination shall be effective upon the Owner giving notice thereof.
- .2 If at any time the Engineer is of the opinion and so states in writing to the Owner that the Contractor:
 - (a) has failed to commence work or to recommence work after a suspension within the time specified in the contract documents;
 - (b) has failed or is failing to furnish or to maintain a detailed work schedule and plan of operation as required by Article 38 - Schedule of Completion thereof;
 - (c) has failed or is failing to use diligence or has failed to comply with the instructions of the Engineer to expedite his work or is otherwise failing to make such progress with the work as is necessary to ensure the completion of the work or any part thereof in the time specified in the contract documents;
 - (d) has failed or is failing to supply enough competent workmen, management, materials or suitable equipment; or
 - (e) has failed, or is failing to pay, the minimum rate of pay as described in Article 28 – Personnel and Rates of Pay;
 - (f) has become in any way unable to carry on the work or any part thereof;
 - (g) has failed to ensure the safety of the workers and public; **(REVISED NOVEMBER 2016)**
 - (h) has failed or refused to comply with a regulation or order issued pursuant to the Workers Compensation Act. **(REVISED NOVEMBER 2016)**

the Owner may give notice in writing to the Contractor of such opinion and requiring that such default or defaults be remedied forthwith. If, within five (5) days of such notice, such default or defaults are not remedied to the satisfaction of the Engineer, the Owner may terminate the Contractor's right to perform further the work under the contract. Such termination shall be effective immediately.

SECTION 2 - GENERAL CONDITIONS ENGINEER, OWNER, CONTRACTOR RELATIONS

- .3 Upon such termination, the Owner may employ such means as he sees fit to complete the works. In such cases:
- (a) The Contractor shall have no claim for any further payment in respect of work performed, but shall be liable for all damages and expenses which may be suffered by the Owner by reason of such default or delay, or the non-completion by the Contractor of the works;
 - (b) No objection or claim shall be raised or made by the Contractor by reason of or on account of the ultimate cost of the works so taken over for any reason proving greater than, in the opinion of the Contractor, it should have been;
 - (c) All materials and all rights, proprietary or otherwise, licenses, powers and privileges, whether relating to or effecting real or personal property, acquired, possessed or provided by the Contractor for the purposes of the work under the provisions of this Contract will become or remain and be the property of the Owner for all purposes incidental to the completion of the works and may be used, exercised, and enjoyed by the Owner as fully to all intents and purposes connected with the works as they might therefore have been used, exercised and enjoyed by the Contractor; and,
 - (d) The Owner may forthwith enter into possession of all the Contractor's equipment on the site of the work and may use the same in any way it sees fit in order to complete the works without the Owner being in any way liable for damage or any other cost in connection with such use by the Owner. Upon completion of the work, such equipment may be returned to the Contractor or may be sold by the Owner and the net proceeds of such sale credited to the Contractor's account.
- .4 If the Contractor's right to perform the work is terminated in accordance with the provisions of this clause, the Contractor shall not be entitled to receive any further payment until the work is completed.
- .5 Upon completion of the work the Engineer shall determine:
- (a) The amount which would have been due to the Contractor under the Contract if all of the work had been performed by him;
 - (b) The costs and expenses borne by the Owner in completing the work and damages for delay in completion, if any.
- .6 The Contractor shall be entitled to receive the balance of the contract price less such costs and expenses, or if such costs and expenses exceed such price, the Contractor shall pay the amount of such excess to the Owner on demand.
- .7 The Owner shall have the option, under the provisions of this Article, to be exercised in its absolute discretion, to terminate the right of the Contractor to perform any part or parts of the work and to permit the Contractor to continue to perform the rest of the work. All the provisions of this article shall apply to such part or parts with such modifications as the circumstances may require.

ARTICLE 18. CONTRACTOR'S TERMINATION OF THE CONTRACT

- .1 The Contractor shall have the right to terminate the Contract for any of the following reasons:
- (a) In the event of any Order of any Court or other public authority, other than the Owner, causing the work to be stopped or suspended, and when the period of such stoppage

SECTION 2 - GENERAL CONDITIONS ENGINEER, OWNER, CONTRACTOR RELATIONS

- or suspension exceeds ninety (90) days, and when such stoppage or suspension occurs through no act or fault of the Contractor, his agent, or servants.
- (b) In the event that the Owner fails to pay, except as provided in the Contract documents, any sum certified by the Engineer within twenty (20) days from the due date of payment, and fails to remedy such default within ten (10) days of the Contractor's written notice to do so.
- .2 In either event, the Contractor will receive from the Owner payment for all work performed and losses sustained in respect of any materials. For termination under (a) above, the Owner will not be liable for any loss of anticipated profits, damages, or expenses incurred by the Contractor as a result of such stoppage or suspension, but under (b) above, the Contractor will be paid for loss of profits, damages and expenses. Such termination shall be effective upon the Contractor giving notice hereof.
- .3 The amount due to the Contractor for work performed and losses sustained shall be determined by the Engineer and certified by him to the Contractor and to the Owner.

ARTICLE 19. SEPARATE CONTRACTS

- .1 The Owner reserves the right to let other contracts in connection with the work. The Contractor shall afford other contractors reasonable opportunity for the introduction and storage of their materials and the execution of their work and shall properly connect and coordinate his work with theirs.
- .2 If any of the Contractor's work, as specified herein and shown on the drawings, depends upon the work of any other contractor, the Contractor shall inspect and measure the work in place and determine whether anything in such work renders it unsuitable for proper execution of his work. He shall promptly report the results of such inspection and measurement to the Engineer if anything in such work renders it unsuitable for proper execution of his work. His failure to inspect and report promptly shall constitute an acceptance of the other contractor's work and he shall have no claim against the Owner by reason of anything in such work rendering the same unsuitable for proper execution of his work.

ARTICLE 20. SUBCONTRACTS

- .1 The subcontractor named in the Tender Form, and others as may be approved by the Engineer following execution of the Contract Agreement, shall not be changed nor shall additional subcontractors be employed except with the written approval of the Engineer. The Contractor is responsible to the Owner for the acts and omissions of his subcontractors and of their employees, to the same extent that he is responsible for the acts or omissions of persons employed by himself. Nothing in the Contract Documents shall create any contractual relation between any subcontractor and the Owner. The Contractor shall bind every subcontractor to the terms of the Contract Documents.
- .2 Each Subcontract shall contain a provision that the Certificate of Completion of the work by the Subcontractor shall be binding on the Contractor and Subcontractor.

ARTICLE 21. ORAL AGREEMENTS

- .1 No oral instruction, objection, claim or notice by any party to the other shall affect or modify any of the terms or obligations contained in any of the Contract Documents, and none of the provisions of the Contract Documents shall be held to be waived or modified by reason of

SECTION 2 - GENERAL CONDITIONS ENGINEER, OWNER, CONTRACTOR RELATIONS

any act whatsoever, other than by a waiver or modification thereof in writing and agreed to by the parties to the contract.

ARTICLE 22. NON-WAIVERS

- .1 Any failure by the Owner or the Engineer at any time, or from time to time, to enforce or require the strict keeping and performance of any of the terms or conditions of the contract will not constitute a waiver of such terms or conditions and will not affect or impair such terms or conditions in any way or the right of the Owner or the Engineer at any time to avail itself or himself of such remedies as it or her may have for any breach or breaches of such terms or conditions.

- .2 No provision in the Contract which imposes or may be deemed to imposes extra or specific responsibilities or liabilities on the Contractor shall restrict the general or other responsibilities or liabilities of the Contractor in any way.

SECTION 2 - GENERAL CONDITIONS MATERIALS AND WORKMANSHIP

2.03 MATERIALS AND WORKMANSHIP

ARTICLE 23. MATERIALS BY CONTRACTOR

- .1 The Contractor shall supply all materials unless it is expressly specified to the contrary. Materials used in the work shall meet the requirements of the specifications, or where not detailed in the specifications, shall be to the Engineer's satisfaction. Unless otherwise specified, all materials shall be new.
- .2 Unless otherwise specified, the Contractor shall provide all water, light, power, heating and equipment necessary for the execution of the work.
- .3 Schedules of piping, fittings, reinforcing, or other materials indicating quantity and/or dimensions, which are shown on the drawings, or in the applicable sections of the specifications, are intended only to assist the Contractor in his quantity takeoff. Quantities and dimensions shown therein are not guaranteed to be accurate and the Contractor must satisfy himself as to the accuracy of the quantities and dimensions.
- .4 No variations between the quantities shown on the schedules and those actually installed shall give rise to any claim by the Contractor or to any right for additional payment in a lump sum price contract or to a variation in unit price in a unit price contract.
- .5 All materials provided by the Contractor shall remain in the custody and at the risk of the Contractor.

ARTICLE 24. MATERIALS BY OWNER

- .1 The Owner will provide only such materials as are specifically listed as being supplied by the Owner.
- .2 The Contractor shall be responsible for materials from the point of delivery to the jobsite. The Contractor shall verify the delivery dates of materials provided by the Owner and shall arrange work schedules to comply therein.
- .3 The Owner shall not be liable in any way for a delay in such delivery arising out of any cause beyond the Owner's reasonable control.

ARTICLE 25. MATERIALS STORAGE

- .1 The Contractor, at his own cost, shall store all materials provided for the work either by himself or the Owner until they have been incorporated into the completed works. Materials shall be so stored as to ensure the preservation of their quality and fitness for the work, and shall be so protected from vandalism and theft. Stored materials shall be located so as to facilitate prompt inspection. Faulty materials shall not be stored on the site, and any material found to be faulty shall promptly be removed from the site by the Contractor.

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ARTICLE 26. TESTING, REJECTED WORK AND MATERIALS

- .1 If, in the opinion of the Engineer, testing is required, the Engineer will arrange for a testing firm to carry out tests to determine whether the applicable standards and specifications have been met. Where initial testing indicates inadequacies, additional testing may be required by the Engineer.
- .2 The Contractor, as directed by the Engineer, shall supply specimens or samples for testing.
- .3 All materials, which do not conform to the requirements of the Contract Documents, are not approved by the Engineer, or are in any way unsatisfactory or unsuited to the purpose for which they are intended, will be rejected. Any defective work, whatever the cause thereof, and without limiting the generality of the foregoing, whether the result of poor workmanship or use of defective materials, shall be removed within five (5) days after written notice is given by the Engineer, and the work shall be re-executed by the Contractor. The fact that the Engineer may have previously overlooked such defective work shall not constitute an acceptance. The removal of work and the re-execution thereof shall be at the expense of the Contractor, and he shall pay the cost of replacing the work which shall include materials of other contractors destroyed or damaged by the removal of the rejected work or materials and the subsequent replacement with acceptable work. The Contractor shall also reimburse the Owner for initial testing and any additional engineering, inspection, testing or other contractor's costs incurred in respect of rejected work or materials, whether such work or materials are replaced or not or are accepted at a lower price.
- .4 If, in the opinion of the Engineer, it is not expedient to re-execute defective work the Owner may deduct from the Contract price, the difference in value between the work as done and that called for by the Contract, the amount of which shall be determined by the Engineer.

ARTICLE 27. OWNER'S RIGHT TO CORRECT DEFICIENCIES

- .1 Upon failure of the Contractor to perform the work in accordance with the Contract Documents, and after five (5) days' written notice to the Contractor, or without notice if an emergency or danger to the work or public exists, the Owner may, without prejudice to any other remedy he may have, correct such deficiencies. The cost of work performed by the Owner in correcting deficiencies shall be paid by the Contractor.

ARTICLE 28. PERSONNEL AND RATES OF PAY

- .1 All workers must have sufficient knowledge, skill, and experience to perform properly the work assigned to them. Any foreman or workers employed by the Contractor or subcontractor who, in the opinion of the Engineer, does not perform his work in a skillful manner, or appears to be incompetent or to act in a disorderly or intemperate manner shall, at the written request of the Engineer, be removed from the site of the work immediately and shall not be employed again in any portion of the work without the approval of the Engineer.
- .2 In addition the minimum rate of pay to all workers for work performed under this Contract or under Sub-contract shall be as classified in the current Agreement between the City of Nanaimo and the Canadian Union of Public Employees, Local No. 401.

SECTION 2 - GENERAL CONDITIONS MATERIALS AND WORKMANSHIP

- .3 Failure of the Contractor to pay the minimum rate of pay as described in Article 28.2, may result in the Owner:
 - (a) terminating the contract, in accordance with Article 17- Owner's Termination of the Contractor's Rights
 - (b) suspending payments to the Contractor, in accordance with Article 44 - Payment Withheld, until the Owner is satisfied the Contractor is complying with Article 28.2.
 - (c) holding back sufficient funds to cover the difference between what the Contractor or Sub-Contractor is paying and what they should be paying under Article 28.2.

ARTICLE 29. GUARANTEE PERIOD

- .1 Neither the Notice of Acceptance nor a Notice of Partial Acceptance nor any payment by the Owner shall relieve the Contractor of responsibility for faulty materials or defective workmanship. The Contractor guarantees to maintain the work against any defects arising from faulty installation, faulty materials, supplied under the Contract or faulty workmanship which may appear within one (1) year of the date of the Notice of Acceptance. If a Notice of Partial Acceptance has been issued, the guarantee period shall begin from the date of such Certificate except for the work still to be performed and the defects and deficiencies still to be corrected which are listed on such Certificate. Faulty materials shall be replaced and defects discovered and failures which occur during the guarantee period shall be rectified to the satisfaction of the Engineer and in accordance with the Contract Documents, including, if deemed necessary by the Engineer, replacement of all or a portion of the work. The same guarantee as is here in provided and for the same period shall attach to such replacement materials or rectified work and the period shall begin on the date the Engineer accepts such replacement materials or rectified work.
- .2 If the Owner observes through use of the works, or if it is discovered by tests or inspection of the works prior to the end of the guarantee period, that a deficiency or defect exists in the materials or workmanship in respect to the works, the Owner shall immediately notify the Contractor, by whatever means are available, of the defect or deficiency and instruct him to rectify the fault. Such notification shall be confirmed by the Owner in writing to the Contractor. In the event that this work, in the opinion of the Owner, must be done immediately to prevent serious damage, injury or loss of life, the Owner may perform, or cause to be performed, the necessary work, and shall notify the Contractor accordingly. Work required under guarantee shall, except as otherwise provided herein for emergencies, be carried out by the Contractor or his representative within ten (10) days of the Owner's written instruction to perform the work. In the event that this work is not done by the Contractor within the ten (10) day period, or such further period as may be approved by the Engineer, the Owner may take whatever action is necessary to have the work done.
- .3 All costs relating from the necessity to do work under the guarantee requirement, whether it be done by the Contractor, his representative, or the Owner, as provided herein, shall be borne by the Contractor. The Contractor shall, in addition, be liable to the Owner for all expense, losses, or damages incurred by the Owner as a result of faulty materials and defective workmanship as are referred to in Article 29.1, or as a result of the Contractor's failure to meet the guarantee requirements as specified herein, including, but without limiting the generality hereof, all costs of engineering, inspection and testing. All costs will be deducted by the Owner from the guarantee amount described in Article 51 -Release of Guarantees.

SECTION 2 - GENERAL CONDITIONS MATERIALS AND WORKMANSHIP

- .4 The issuance of a Certificate of Completion in relation to a subcontract shall not relieve the Contractor of his obligation under this Article 29 - Guarantee Period.

SECTION 2 - GENERAL CONDITIONS LEGAL RESPONSIBILITY AND PUBLIC SAFETY

2.04 LEGAL RESPONSIBILITY AND PUBLIC SAFETY

ARTICLE 30. DAMAGE TO WORK

- .1 The Contractor shall be responsible for all loss and damage whatsoever which may occur on or to the works, completed or otherwise, until such time as the entire works have been completed and the Notice of Acceptance has been issued by the Owner. In the event of any loss or damage occurring, the Contractor shall, on notice from the Engineer, immediately put the works into the condition it was immediately prior to such loss or damage all at the Contractor's expense, except where such loss or damage was caused solely by an act of the Owner.

ARTICLE 31. INDEMNITY

- .1 The Contractor shall indemnify and save harmless the Owner from and against all losses and all claims, demands, payments, suits, actions, recoveries, and judgments of every nature and description brought or recovered against him, and/or the Owner, by reason of any act or omission or alleged act or omission of the Contractor, his agents, employees, or subcontractors in the execution of the work.

ARTICLE 32. BONDS

- .1 To ensure the faithful execution and proper fulfillment of this Contract, the Contractor shall provide the Owner with the following bonds at the time of his execution of the Contract Agreement:
- (a) a Performance Bond in the amount of fifty percent (50%) of the total contract amount covering the faithful performance of the Contract and maintenance of the Contract for one year after the Notice of Acceptance;
 - (b) a Labour and Material Payment bond in the amount of fifty percent (50%) of the total contract amount; and the above bonds must be issued by a Surety Company licensed to conduct business in the Province of British Columbia and shall be provided in quadruplicate on the forms contained within the Contract Documents.
- .2 Notwithstanding anything contained elsewhere in the contract documents, the Owner shall not be required to make any payment whatever to the Contractor until the above bonds, duly executed, have been delivered to the Owner.

ARTICLE 33. PATENTS AND ROYALTIES

- .1 The Contractor shall pay all royalties and license fees with respect to and shall assume the defense of and indemnify the Owner and the Engineer, their employees, officers and agents from all claims relating to inventions, copyrights, trademarks, or patents used in doing the work and in the subsequent use and operation of the work or any part thereof upon completion. The contractor shall not be liable hereunder with respect to any claims arising from a construction method, process or equipment specified by the Owner in the documents submitted to the Contractor before he submitted his tender.

SECTION 2 - GENERAL CONDITIONS LEGAL RESPONSIBILITY AND PUBLIC SAFETY

ARTICLE 34. PERMITS AND REGULATIONS

- .1 The Contractor shall, at his own expense, procure all permits, certificates and licenses required for the construction of the work and shall comply with all federal, provincial, and local laws, regulations and ordinances affecting the execution of the work, save insofar as the Contract Documents specifically provide otherwise.
- .2 The Owner will obtain all necessary governmental approvals for the design of the completed work, and all permits and licenses required by law for the completed works.

ARTICLE 35. INJURY OR DAMAGE TO PERSONS OR PROPERTY

- .1 The Contractor shall use due care and take all necessary precautions to ensure the protection of persons and property and shall comply with the provisions of the Workers' Compensation Act of the Province of British Columbia and any safe work procedures as listed in Section 3.10 – WorkSafe BC. The Contractor shall be liable for any and all injury or damage which may occur to persons or to property due to any act, omission, neglect or default of the Contractor, or of his employees, workmen or agents.
- .2 The Contractor shall, without further order, provide and maintain at all times during the progress or suspension of the work, suitable barricades, fences, signs, signal lights and flagpersons as are necessary to ensure the safety of the public and those engaged in the work.
- .3 Notwithstanding the provision of Article 9 – Engineer's Status, in an emergency affecting the safety of life, or of the works, or of adjoining property, the Contractor, without the necessity of authorization from the Engineer, shall act in a reasonable manner to prevent loss or injury.
- .4 The work shall be carried out in a manner that will cause the least interruption to vehicular and pedestrian traffic. Where work is to be carried out on highways or properties other than those of the Owner, the Contractor shall familiarize himself with the requirements of the owner or controllers of those highways or properties which pertain to traffic control and safety or which place limitations on the work and shall comply with such requirements.

SECTION 2 - GENERAL CONDITIONS PROGRESS, COMPLETION OF WORK, AND PAYMENT

2.05 PROGRESS, COMPLETION OF WORK AND PAYMENT

ARTICLE 36. NOTICE TO PROCEED

- .1 Following the execution of the Contract Agreement by the Contractor and the provisions of the required bonds and insurance policies, written Notice to Proceed with the work will be given to the Contractor by the Owner. The Contractor shall begin work within fourteen (14) days following receipt of the Notice to Proceed and shall prosecute the work regularly and without interruption thereafter, unless otherwise directed in writing by the Engineer or Owner, in such a manner as to secure completion of the work within the time stated in the Contract Agreement. Time shall be of the essence of the Contract.
- .2 If, however, when the Notice to Proceed is given, as strike or lockout affecting workers of a classification required to organize or begin performance of the work reasonably prevents the Contractor from beginning work promptly, the completion date stated in the Contract Agreement will be extended by the same number of days as the strike or lockout. If the strike or lockout affects workers of several classifications and such strike or lockout ends on different dates, the end of the strike or lockout will be deemed to occur when all workers of a classification required to organize or begin performance of the work are permitted to work for the Contractor. No extension of time herein provided, shall be grounds for any claim whatsoever by the Contractor for extra payment.

ARTICLE 37. FAILURE TO COMPLETE ON TIME

- .1 If the work is not complete within the scheduled time, the Owner may extend the time of completion. If the time limit be so extended, the Owner shall have the right to charge to the Contractor and to deduct from the final payment for the work, the actual cost to the Owner of engineering, inspection, superintendence, and other overhead expenses which are directly chargeable to the contract and which accrue during the period of such extension, except that the cost of final surveys and preparation of final estimates shall not be included in such charges.

ARTICLE 38. SCHEDULE OF COMPLETION

- .1 The Contractor shall prepare a detailed work schedule and plan of operation approved by the Engineer. The schedule and plan of operation, unless otherwise approved by the Engineer, shall be submitted to the Engineer not later than fourteen (14) days after the date of the Notice of Award. The schedule and plan of operation shall describe the proposed labour force and equipment, sequence and methods of operation, and projected weekly progress to show completion of all work within the Contract time for completion. Upon receipt of such schedule and plan of operation by the Engineer, the schedule shall become the approved construction schedule. Neither the plan of operation nor the approved construction schedule shall be changed without the prior approval of the Engineer.
- .2 Unless otherwise approved by the Engineer, work shall be scheduled between the normal working hours of 8:00 a.m. and 4:30 p.m., Monday through Friday, excluding Statutory Holidays. For work scheduled outside the normal working hours, the owner shall have the right to charge to the contractor and to deduct from the Contractor's payments, the actual cost to the Owner for engineering inspection, superintendence and other overhead expenses which are directly chargeable to the contract and which accrue outside the normal working hours.

SECTION 2 - GENERAL CONDITIONS PROGRESS, COMPLETION OF WORK, AND PAYMENT

- .3 If the Engineer should be of the opinion, and so state in writing to the Contractor, that the rate of progress of the work is insufficient to enable the whole of the work or any part or parts thereof to be completed within the time or times specified for such completion in the approved construction schedule, the Contractor shall take whatever steps the Engineer may in his absolute discretion specify in writing to the Contractor to expedite the progress of the work. Such steps may include, but shall not be limited to adoption of shift work and/or the provision of additional men or equipment. The Contractor shall not be entitled to any extra payment by reason of such order of the Engineer.

ARTICLE 39. CHANGES IN THE WORK

- .1 The Owner, without invalidating the Contract, may make changes by altering, adding to, or deducting from the work. The Contractor shall proceed with the work as changed and the work shall be executed under the provisions of the Contract. No change shall be undertaken by the Contractor, without written order of the Engineer, except in an emergency endangering life or property, and no claims for additional compensation shall be valid unless the change was so ordered. No payment for extra work or changes in any contract will be entertained by the Owner unless a "Change Order Form" is completed prior to the change or commencement of the extra work.
- .2 If, in the opinion of the Engineer, such changes affect the time of Contract completion or the Contract amount, these will be adjusted at the time of ordering the changes. The value of the addition or deduction from the Contract amount, and the method of determining such value, shall be decided by the Engineer. The Engineer will use one (1) or more of the following methods in deciding such value:
- (a) by unit prices or combinations of unit prices in the Contract Tender Form:
 - (b) by unit prices submitted by the Contractor and accepted by the Owner:
 - (c) by lump sum submitted by the Contractor and accepted by the Owner:
 - (d) on a force account basis as specified in the next succeeding Article.
- .3 If the Contractor and the Owner cannot agree on the method of determining such value, the Engineer shall decide and certify the unit prices or lump sum to be used which are or is in his opinion fair and reasonable to both parties and his decision shall be final.
- .4 The Contractor shall obey, perform and comply with the Engineer's orders or instructions with respect to the work or concerning the conduct thereof promptly, efficiently and to the satisfaction of the Engineer. However, if the Contractor is of the opinion that such orders or instructions are not authorized under the provisions of the Contract or involve a change for which a Change Order should be issued as described in Article 39.1, he shall so notify the Engineer in writing before proceeding to carry them out and, in any event, within ten (10) days of the receipt of such orders or instructions. If the Contractor does not so notify the Engineer within the time so limited, he shall not claim at any time thereafter that the orders or instructions were not authorized or should have been subject to a Change Order. Nevertheless, the giving of such notice to the Engineer shall not relieve the Contractor of his obligations to carry out and obey such orders and instructions.

SECTION 2 - GENERAL CONDITIONS PROGRESS, COMPLETION OF WORK, AND PAYMENT

ARTICLE 40. FORCE ACCOUNT WORK

- .1 Force account rates for personnel shall be based on the direct cost to the Contractor. A markup of 20% of the total direct costs will be paid to cover overhead and profit. The total direct costs shall be calculated based on:
 - (a) The rate of pay as outlined in Article 28, or the employees actual rate of pay, if higher.
 - (b) All applicable employee benefits.
 - (c) All small tools and equipment, signage and transportation required by the employee to perform the duties of the listed occupation.
 - (d) All applicable Federal, Provincial and Municipal taxes, duties and charges.
- .2 Force account rates for equipment shall be determined by the Engineer based on the B.C. Government Blue Book Equipment Rental Rate Guide as follows: **(REVISED NOVEMBER 2016)**
 - (a) For Contractor owned equipment, "all found" rates will be paid which include allowances for the equipment operator, small tools, overhead and profit.
 - (b) For Non-Contractor owned equipment, the lower of, Blue Book rates; or the actual rental costs, as evidenced by invoice, plus a 10% markup to cover overhead and profit.
 - (c) Attachments on equipment will only be paid when in use and not because the equipment has the attachment(s).
- .3 Subcontractors will be paid the subcontractor's proper bill for such work performed with a markup of 10% to cover overhead and profit.
- .4 Materials will be paid based on the supplier's invoice price with a markup of 10% to cover overhead and profit.
- .5 The cost of the work done each day shall be submitted to the Engineer by the Contractor in a satisfactory form on each succeeding day after force account work is carried out and shall be approved or adjusted by the Engineer. No claim for compensation for extra work or materials shall be considered or allowed unless such report shall have been made, or the Engineer shall have extended the time for such reports or released the Contractor therefrom. The submission to, or acceptance or approval by, the Engineer of daily force account cost records shall not at any time be deemed to be an admission that the work is properly chargeable to force account.
- .6 The Contractor will be required to demonstrate to the Engineer's satisfaction the personnel force account rates are in fact the direct cost to the Contractor. The Contractor will also be required to provide any necessary information required by the Engineer to determine equipment rates.

ARTICLE 41. DELAYS

- .1 If the Contractor is delayed during the performance of the work, the time for completion of the work under the Contract may be extended by the owner in the event of one (1) or more of the following:
 - (a) Where extra work as herein provided is added to the work under this Contract.

SECTION 2 - GENERAL CONDITIONS PROGRESS, COMPLETION OF WORK, AND PAYMENT

- (b) Where the work is suspended as provided for in Article 16 – Suspension of Work by Owner.
 - (c) Where the work is delayed on account of conditions which could not have been foreseen or which were beyond the control of the Contractor and which were not the result of the fault or negligence of the Contractor, his agents, or employees, provided, however, rain, wind, flood, or other natural phenomena of normal intensity for the area shall not be construed as cause for an extension of time for completion of the work.
 - (d) Where work is delayed on account of conditions that are beyond the reasonable control of the Engineer or the Owner.
 - (e) Where delay occurs in the progress of the work as a result of the negligent act of the Owner or his employees, in the administration of this contract.
 - (f) Where delay occurs as a result of an act of a public authority.
 - (g) Where the Engineer causes delay in furnishing of drawings or necessary information.
 - (h) Where strikes, lockouts, or labour disputes prevent or substantially interfere with the progress of the work.
 - (i) Where, in the opinion of the Engineer, the Contractor is entitled to an extension of time.
- .2 A claim for extension of Contract time shall only be considered when submitted by the Contractor to the Engineer in writing within seven (7) days of the occurrence of the delay on which the claim is based, provided, however, that in the case of a continuing cause of delay only one (1) claim shall be necessary. Within a reasonable period after the Contractor submits a request for an extension of time, the Engineer will present his written recommendation to the Owner stating his opinion on whether or not the delay justifies an extension of time; and, if so, the number of days extension due to the Contractor. The Owner will make the final decision on all requests for extension of time.
- .3 Delays, pursuant to Article 41, shall not entitle the Contractor to reimbursement for any additional costs, except as outlined in .1 (b) or (e) above.

ARTICLE 42. USE OF COMPLETED PORTIONS

- .1 The Owner will have the right to take possession of and use any completed or partially completed portions of the work, whether the time for completing the entire work or such portions has or has not expired, but such taking possession and use will not be deemed an acceptance of any work so taken possession of or used. If such prior use increases the cost of, or delays the completion of uncompleted work or causes refinishing of completed work, the Contractor shall be entitled to such extra compensation or extension of time, or both, as the Engineer may determine.

ARTICLE 43. PROGRESS PAYMENT CERTIFICATES

- .1 At the end of each calendar month the Contractor will estimate project quantities for that month and provide to the Engineer for review and approval. Where unit prices apply, payment will be calculated on the basis of the tendered prices and the units of work completed as determined by the Engineer. Where a lump sum price applies, payment will be calculated on the basis of the Engineer's estimate of the percentage of work completed. The Engineer will prepare final payment certificate for payment by the Owner.
- .2 The payment certificate shall show as of the end of the last day of each calendar month the value of all labour and materials incorporated into the works, including extras, and all adjustments previously made whether additions or deductions. The certificate shall also

SECTION 2 - GENERAL CONDITIONS PROGRESS, COMPLETION OF WORK, AND PAYMENT

show the aggregate of previous payments, the amounts withheld to comply with the Builders Lien Act, and the amount, if any, of the holdback released in respect of completed subcontracts. Except in respect of the final progress payment, the gross amount shown on such certificate, less the aggregate of all previous payments, previous sums withheld, and the amount then required to be withheld to comply with the Builders Lien Act as set out below, shall become due and be payable by the Owner to the Contractor on or before the last day of the next month. In those cases where the work is such that the Builders Lien Act does not apply or does not require the retention of a holdback, the Owner will nevertheless retain holdbacks to the same extent as if such legislation applied to the work.

- .3 Ten percent (10%) of each progress payment shall be retained by the Owner to comply with the Builders Lien Act until payment is due in accordance with the provisions of Article 50 – Release of Holdback.
- .4 The monthly estimates shall not bind the Owner or Engineer in any manner in the preparation of the final estimate of the work done, but shall be construed and held to be approximate only, and shall in no case be taken as an acceptance of the work or as a release of the Contractor from his responsibility therefore.

ARTICLE 44. PAYMENT WITHHELD

- .1 Upon receipt of a certificate in writing from the Engineer stating that, in his opinion, justification exists and stating the basis and the amount of such deduction, the Owner may withhold or nullify, on written notice to the Contractor specifying the ground or grounds relied on, the whole or part of any progress payment to the extent necessary to protect himself from loss on account of one (1) or more of the following:
 - (a) The Contractor is not making satisfactory progress in the opinion of the Engineer.
 - (b) That defective work is not being remedied at all or in a manner satisfactory to the Engineer.
 - (c) That there are claim of liens (or a lien) filed, against the holdback funds, lands and premises on which the work is done or is being done, or reasonable evidence of the probable filing of claim of lien or registration of liens (or a lien).
 - (d) That the Contractor is failing to make prompt payments as they become due to subcontractors or for material or labour.
 - (e) That there exist unsatisfied claims for damages caused by the Contractor to anyone employed on the site or in connection with the work.
 - (f) That the Contractor or any Sub-Contractor has failed, or is failing to pay the minimum rate of pay as outlined in Article 28.
- .2 Where subcontractors or suppliers of materials are not receiving prompt payment, the Owner may make payment to such subcontractors or suppliers directly and deduct the amount of such payments from amounts otherwise due to the Contractor.

ARTICLE 45. BUILDER'S LIENS

- .1 The Contractor shall remove or cause to be removed all claim of lien or liens filed or registered against the holdback funds, lands and premises on which the work is being performed which claim of lien or liens arise out of anything done or to be done under the Contract. Such removal shall be effected by the Contractor forthwith upon demand by the Owner or the Engineer.

SECTION 2 - GENERAL CONDITIONS PROGRESS, COMPLETION OF WORK, AND PAYMENT

- .2 Certificate of Completion shall have the interpretation assigned to it by the Builder's Lien Act.
- .3 Application for the Certificate of Completion shall be in accordance with the Builder's Lien Act and shall include a written statement from the Contractor that all claims and demands of the Contractor for extra work or otherwise in connection with the Contract were presented in writing to the Engineer.
- .4 The Owner shall release a holdback in respect of a completed subcontract if a Certificate of Completion has been issued in respect of that subcontract and the holdback period established under the Builder's Lien Act has expired without any claims of lien being filed that arose under that subcontract.
- .5 Notwithstanding anything elsewhere contained in the contract documents, the Contractor shall indemnify and hold harmless the Owner from all demands, damages, costs, losses and actions arising in any way out of claims or lien or liens which arise out of anything done or to be done under the Contract whether the lien period binding on the Contractor has expired or not.
- .6 The obligations imposed on the Contractor by the provisions of this Article 45 shall not extend to claims of lien or liens properly filed by the Contractor himself.

ARTICLE 46. COMPLETION

- .1 When the Contractor is of the opinion that he has completely performed the work, he shall inspect the work to ensure that all work has in fact been performed, that it is in a clean and tidy condition and that it is ready in all respects for acceptance by the Owner. He shall then submit a written request to the Engineer that he make a final inspection.
- .2 The Engineer will make an inspection and notify the Contractor in writing of any defects or deficiencies, which require correction by the contractor. When the defects or deficiencies are corrected, and the Contractor has submitted to the Engineer the "as-constructed" drawings, digital survey file and a written statement that all claims and demands of the Contractor for extra work or otherwise in connection with the Contract were presented in writing to the Engineer, the Engineer will recommend to the Owner to issue a Notice of Acceptance to the Contractor. The Owner, subject to their acceptance of the Engineer's recommendation, will issue the Notice of Acceptance.

ARTICLE 47. PARTIAL COMPLETION

- .1 If the Contractor considers that, by reason of climatic or similar problems beyond his reasonable control, not all the work can be performed or defects or deficiencies corrected promptly, he may in writing request the Engineer for a Notice of Partial Acceptance. Such request shall be accompanied by a written statement that all claims and demands of the Contractor for extra work or otherwise in connection with the work to be accepted have been presented in writing. If the Engineer considers such request to be reasonable, he will carry out an inspection and will notify the Contractor in writing of any defects or deficiencies which require correction before he will recommend partial acceptance. He will prepare an additional list of defects and deficiencies which in his opinion do not impair the usefulness to the Owner of the whole work and the correction of which may reasonably be deferred. This list shall show the amount, which the Engineer considers to be 200% of the cost of completing such work and correcting such defects and deficiencies. When all work has been performed and defects and deficiencies corrected other than those on this list, he will

SECTION 2 - GENERAL CONDITIONS PROGRESS, COMPLETION OF WORK, AND PAYMENT

recommend to the Owner that a Notice of Partial Acceptance be issued to the Contractor. If the owner accepts this recommendation, he will issue a Notice of Partial Acceptance which shall list the work to be performed and the defects and deficiencies to be corrected and 200% of the estimated cost thereof. The Notice of Partial Acceptance shall fix a date within which all such works shall be performed and the defects and deficiencies corrected.

- .2 The Owner may make his acceptance conditional on the Contractor providing written consents of sureties under any Performance or Labour and Materials Payment Bonds or other evidence that no guarantor or surety will be relieved of his obligations.
- .3 When all such work has been performed and the defects and deficiencies corrected, the Contractor shall call for final inspection in accordance with Article 46 - Completion.
- .4 If all work is not performed and all defects and deficiencies are not corrected by the date set out in the Notice of Partial Acceptance, the Owner may have the work performed and the defects and deficiencies corrected by any means he thinks suitable, and may recover the costs thereof from any money withheld from the Contractor or from the Contractor if such money is insufficient.

ARTICLE 48. FINAL PROGRESS PAYMENT

- .1 The final progress payment certificate will be prepared following the issuance of the Notice of Acceptance. The Engineer will review with the Contractor all work quantities and all claims and demands of the Contractor for extra work in connection with the Contract. The final progress payment certificate will show the total amount of the payment due to the Contractor less the amount required to be retained under the Builder's Lien Act whether a lien can be filed or not and less a 2% guarantee amount or five thousand (\$5,000) dollars, guarantee amount, whichever is greater.
- .2 The final progress payment shall be made by the Owner within thirty (30) days of the date of the final progress payment certificate provided the Contractor supplies the Owner with a full and final payment receipt in respect of the work in the Contract, covering and including acknowledgment of full payment for the cost of all extra work and material furnished by the Contractor in the fulfillment of the works and all incidentals thereto and releasing the Owner from all claims whatsoever out of the Contract.

ARTICLE 49. PROGRESS PAYMENT AFTER PARTIAL COMPLETION

- .1 If the Owner issues a Notice of Partial Acceptance, the Engineer will prepare a Progress Payment Certificate in the same detail as required for a Final Progress Payment Certificate. From the amount shown on such certificate to be due to the Contractor shall be deducted the amount required to be retained under the applicable lien legislation and twice the amount shown on the Notice of Partial Acceptance to be 200% of the estimated cost of performing the remaining work and correcting the defects and deficiencies. Payment of the net amount due to the Contractor shall be made by the Owner within thirty (30) days of the date of this progress payment certificate. If the amount to be withheld in respect of work still to be performed or defects and deficiencies still to be corrected exceeds the amount otherwise payable to the Contractor, the excess shall be withheld from the amount of the lien holdback to be paid under the provisions of Article 50 - Release of Holdback.

SECTION 2 - GENERAL CONDITIONS PROGRESS, COMPLETION OF WORK, AND PAYMENT

ARTICLE 50. RELEASE OF HOLDBACK

- .1 If applied for, the Certificate of Completion shall, in accordance with the Builder's Lien Act, start the period within which liens must be filed. Otherwise, a Notice of Partial Acceptance or where none is issued, a Notice of Acceptance shall be conclusively deemed between the Owner and the Contractor to start the period within which liens must be filed by the Contractor in accordance with the Builder's Lien Act.
- .2 The Owner shall pay the holdback to the Contractor within fourteen (14) days of the expiry of the statutory time release of holdback, provided that:
 - (a) The Contractor has provided to the Owner a Certificate from the proper office to register liens to prove that, as of a date two days after the expiry of the statutory period, no notice of lien or liens has been filed or other matters recorded to make effective any lien.
 - (b) The Contractor has complied with any conditions imposed by the Owner in his acceptance of the recommendation of the Engineer to issue a Notice of Partial Acceptance.
 - (c) The Workers' Compensation Board has, at the request of the Contractor, filed with the Owner a certificate that all assessments due to the Board by the Contractor have been paid; such certificate shall be dated after the expiry of the statutory period for filing liens.
 - (d) If in accordance with the Builder's Lien Act, there is no person who can provide the certificate referred to in (a) above, the Contractor shall furnish to the Owner a Statutory Declaration, dated not earlier than seven (7) days after the expiry of the statutory lien period, stating that all materials, labour, work and services incurred directly or indirectly on account of the work have been paid for by the Contractor.

ARTICLE 51. RELEASE OF GUARANTEES

- .1 The Performance Bond and 2% of the final contract price, or five thousand dollars, (\$5,000), whichever is greater, or a letter of credit in lieu of the 2% amount or five thousand dollars, (\$5,000), whichever is greater, will be held by the Owner for one year from the date of Notice of Acceptance.
- .2 The 2% guarantee amount, or five thousand dollars (\$5,000), guarantee amount, held back during the one year guarantee period, or remaining portion thereof, will be released to the Contractor one year following Notice of Acceptance. No interest will be allowed.
3. Prior to the expiration of the one year guarantee period and subsequent release of guarantees, the Owner, Engineer and Contractor shall conduct an inspection to determine that all deficiencies have been corrected and that no new defects or deficiencies exist in the materials or workmanship in respect to the works. Any faults corrected at this time will be covered as set out in Article 29 – Guarantee Period and sufficient guarantees retained for an additional one year period from acceptance of the replacement materials or rectified work.
4. As an alternate to Article 51.1 and Article 51.2, a Contractor may deposit with the City an irrevocable letter of credit for \$50,000 to cover the guarantee for all works undertaken for the City in any calendar year. This letter of credit would serve as an overall guarantee in place of individual guarantees for each project completed and would be renewed on its anniversary date each year. No interest will be allowed.

SECTION 2 - GENERAL CONDITIONS PROGRESS, COMPLETION OF WORK, AND PAYMENT

ARTICLE 52. INSURANCE

- .1 The Contractor shall, at his own expense, provide the following insurance. Each policy shall contain a clause stating that: "This policy will not be cancelled or materially changed without the Insurer giving at least thirty (30) days written notice to the Owner." Certified copies of these policies shall be filed by the Contractor with the Owner prior to commencement of the work. Wherever the word "Owner" or "Engineer" is to appear in these policies, the legal name shall be inserted. The Contractor shall ensure all Subcontractors comply with these insurance requirements. **(REVISED NOVEMBER 2016)**

- .2 Builder's Risk Course of Construction Insurance:
 - (a) The Contractor shall at all times during construction and until all conditions of this Contract (except guarantee provisions) have been fully complied with, keep all buildings, structures, works, equipment (other than Contractor's mobile equipment), and supplies, including materials which will form part of such building, works, or structure, which is the subject matter of this contract, insured in the name of the Owner and the Contractor for any amount not less than the Contract price against the following perils: "All risks of direct physical loss or damage from any cause whatsoever, including flood and earthquake. **(REVISED NOVEMBER 2016)**"
 - (b) Such insurance shall be with Insurers and on forms acceptable to the Owner and shall contain the following clause:

"It is agreed that the right to subrogation against the Owner and the Engineer or any of their parent, subsidiary, or affiliated companies or corporations or any employee thereof is hereby waived."
 - (c) Coverage shall be on an "All Risks" basis, subject to a deductible provision not exceeding \$2,500 for any one occurrence. The following exclusions shall be deemed permissible (additional or modified exclusions subject to permission of the Owner). **(REVISED NOVEMBER 2016)**
 - (i) Any loss or use of occupancy howsoever caused;
 - (ii) Penalties for non-completion of or delay in completion of Contract or non-compliance with Contract conditions;
 - (iii) Cost of making good faulty workmanship, construction, or design, but this exclusion shall not apply to damage resulting from such faulty workmanship, construction, or design;
 - (iv) Wear, tear, normal upkeep, and normal making good;
 - (v) Loss, damage, or liability occasioned by, happening through or in consequence of war, invasion, hostilities, acts of foreign enemies, civil war, rebellion, insurrection, military or usurped power or martial law or confiscation by order of any government or public authority;
 - (vi) Any weapon or war employing atomic fission or radioactive force whether in time of peace or war;
 - (vii) Claims or liability arising directly or indirectly from nuclear fission, nuclear fusion, or radioactive contamination;
 - (viii) Loss or damage caused by frost or freezing unless resulting from damage occasioned by fire and/or lighting and/or windstorm and/or hail and/or riot attending a strike and/or civil commotion and/or vehicles and/or smoke;
 - (ix) Loss due to disappearance or revealed by inventory shortage alone;
 - (x) Mechanical breakdown, but this exclusion shall not be deemed to exclude loss or damage arising as a consequence of mechanical breakdown;
 - (xi) Infidelity of the Assured's employees;

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- (xii) Loss or damage to material and/or equipment while in the course of ocean marine shipment, but this exclusion shall not apply to shipments by regular coast-wise vessels, regular ferry lines, or railway car transfer barges;
- (xiii) Automobiles or Contractor's equipment of every description.

.3 Liability Insurance:

- (a) The Contractor shall buy and keep in force until twelve (12) months after the date of acceptance, and with respect to completed operations twenty-four (24) months, Comprehensive General Bodily Injury and Property Damage Liability Insurance. Such insurance shall be in the name of the Contractor, the Engineer and the Owner, and shall include a Cross Liability or Severability of Interest Clause. Such insurance shall be on a form and with an Insurer acceptable to the Owner. Both Personal Injury and Property Damage sections are to provide coverage on an "occurrence basis". Any property damage deductible shall not exceed \$2,500 for any one occurrence. **(REVISED NOVEMBER 2016)**
- (b) Exclusion pertaining to the following operations are to be deleted, if such operations are to be performed by the Contractor or anyone on his behalf:
 - (i) Blasting or use of explosives;
 - (ii) Pile driving;
 - (iii) Excavation;
 - (iv) Underpinning, shoring or removal or rebuilding of support;
 - (iv) Demolition.
- (c) Such insurance shall indemnify the Contractor for claims arising out of all premises, operations, subcontracted operations, completed operations, products, and for all liability for personal injury or property damage assumed by the Contractor under any contract or agreement (including this Contract). **(REVISED NOVEMBER 2016)**
- (d) Such insurance shall be for the following minimum limits:
Bodily Injury and Property Damage - \$5,000,000 Inclusive. **(REVISED NOVEMBER 2016)**

.4 Owned and Non-Owned Automobile Insurance:

- (a) The Contractor shall maintain, until all conditions of the Contract have been fully complied with, such insurance as required under the Insurance (Motor Vehicle) Act of British Columbia. Such insurance shall be for the following limits: **(REVISED NOVEMBER 2016)**
Bodily Injury and Property Damage \$3,000,000 Inclusive. **(REVISED NOVEMBER 2016)**
- (b) The Contractor shall provide a Certificate of Insurance, ICBC for No. APV47 for owned or leased vehicles as evidence of third party motor vehicle insurance coverage. **(REVISED NOVEMBER 2016)**

.5 Contractor's Equipment Insurance:

- (a) Notwithstanding anything contained elsewhere herein, it is understood and agreed that the Owner and/or Engineer will not be liable for any loss or damage to Contractor's equipment including loss of use thereof. Each and every policy insuring Contractor's equipment to be used on this project shall contain the following clause:

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"It is agreed that the right to subrogation against the Owner and the Engineer or any of their parent, subsidiary or affiliated companies or corporations or any employee thereof is hereby waived."

ARTICLE 53. ARBITRATION

- .1 In the case of any dispute between the Owner or the Engineer on his behalf, and the Contractor, during the progress of the work or afterwards, or after the determination of breach of Contract, as to any matter arising thereunder, either party hereto shall be entitled to give to the other notice of such dispute and to demand arbitration thereof. Such notice shall be in writing and shall specify the matter to be submitted to arbitration, and in it said party shall name a person to act as arbitrator; thereupon within fifteen (15) days after receipt of such written notice the other party by written notice shall choose and name a second arbitrator; the two (2) arbitrators so chosen shall forthwith jointly select a third arbitrator, giving written notice to both parties of the choice so made, and fixing a place and time for meeting not later than thirty (30) days thereafter, at which both parties may appear and be heard, touching such controversy relating to the matters aforesaid. In case the two (2) arbitrators shall fail to agree upon a third arbitrator, or in case the party notified of the demand for arbitration shall fail to name the second arbitrator within the time stipulated, such third arbitrator (or such second arbitrator as the case may be) upon the application of either party, of which the other shall be given notice, shall be named by a Justice of a Superior Court of the Province of British Columbia. The parties may agree to submit the matter to one (1) arbitrator, whose award shall be as binding as that of three (3) arbitrators.
- .2 The submission and the arbitration proceedings shall be under the provisions of the Arbitration Act of the Province of British Columbia provided nevertheless that any statutory limitation on the fees payable to the arbitrator or arbitrators shall be waived. The decision of the said arbitrator(s) shall be made in writing within thirty (30) days after the completion of hearings thereon, and when signed by a majority of them shall be final and conclusive upon the parties thereto.
- .3 Arbitration proceedings shall not take place until after the completion or alleged completion of the work except; (a) on a question of certificate for payment; or (b) in a case where either party claims that the matter in dispute is of such a nature as to make immediate arbitration proceedings necessary while the evidence is available. The arbitrator(s) in their decision shall determine which party shall bear all or a portion of the costs and expenses of the arbitration including the fees of the arbitrator(s), and said arbitrator(s) may in any such decision allocate such costs and expenses between the parties in such amounts as they may deem fair and equitable by reason of such decision.