

INDEX FOR NON BONDED GENERAL CONDITIONS

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SECTION 1 DEFINITIONS AND INTERPRETATION

110 1.1 Abbreviations

This document shall be interpreted using the abbreviations in the General Conditions 100(I).

1.2 Definitions

This document shall be interpreted using the definitions in the General Conditions 100(I). All definitions employed in this document will be capitalized to indicate a reference to the corresponding definition.

1.3 Interpretation

This Contract shall inure to the benefit of and be binding on the respective executors, administrators, successors and assigns of the Department and of the Contractor.

Where the Contractor as defined herein consists of more than one person or corporation their liability to perform the covenants herein contained to be performed by the Contractor shall be joint and several.

The words “contractor” and “he” or any derivatives thereof shall have a plural, feminine or neuter meaning where the context so requires.

The words “approved”, “directed”, “required”, “considered necessary”, “authorized”, “acceptable”, “satisfactory”, or words of like import, shall mean approved, directed, required, considered necessary or authorized by and acceptable or satisfactory to the Engineer.

This Contract has been entered into and shall be governed by and constructed in accordance with the applicable municipal, provincial and federal laws.

SECTION 2 GENERAL INFORMATION

110. 2.1 Manitoba Government Wide Contract Policy - Legislative and Safety Requirements

2.1.1 Contractor Requirements

To comply with the Province of Manitoba’s Government Wide Contract Policy – Legislative and Safety Requirements, the Contractor must execute a copy of the Contractor’s Certification Form – Legislative and Safety Requirements and comply with all requirements stated therein. Failing to comply with a commitment made or making an untrue statement in the Certification, or failing to provide additional information satisfactory to the Owner regarding anything in this Certification, may result in termination of the Contract, forfeiture of the performance bond (if applicable) and/or the Owner declaring that the Contractor is ineligible to bid on future tenders.

The fully executed Contractor’s Certification Form will form part of the Contract.

2.1.2 Subcontractor Requirements

The Contractor shall collect a fully executed Contractor’s Certification Form from all Subcontractors before the Subcontractor begins any Work. The Contractor shall produce the Contractor’s Certification Form for all Subcontractors on request. Subcontractors that have not provided a fully executed Contractor’s Certification Form will not be permitted to work and may be removed from the Site.

2.1.3 Subcontractor Exceptions

The following subcontractors are not required to submit the Contractor's Certification Form:

- a) Suppliers that are delivering products and are not directly participating in Work activities on the Site (i.e. supply only).
- b) Service providers that are not directly participating in Work activities on the Site.
- c) Subcontractors without employees (i.e. single owner-operators).

2.1.4 Safety Program Requirements

Where the Total Price of the Contract at the time of award is \$100,000 CAD or greater, the Contractor and all Subcontractors with a subcontract value of \$100,000 CAD or greater must have one of the safety program certifications listed below.

- a) Certification of Recognition (COR™) or other Safework Manitoba sanctioned certifications such as RPM
- b) Small Employer Certificate of Recognition (SECOR™)
- c) Evidence of COR™ equivalency issued in accordance with the Canadian Federation of Construction Safety Associations COR™ program and verified by either the Manitoba Heavy Construction Association Work Safely Program or the Construction Safety Association of Manitoba.

110. 2.2 Policy Requirements for Manitoba's Apprenticeship Employment Opportunities Act (Public Works Contracts)

2.2.1 Contractor Requirements

The Contractor must maintain an Apprenticeship Employment Opportunities Act Policy Letter ("Letter") from Apprenticeship Manitoba declaring that the Contractor is eligible to be awarded a Contract.

2.2.2 Subcontractor Requirements

The Contractor shall collect a Letter from all Subcontractors declaring that the Subcontractor is eligible to work on the Contract. The Letter must be collected before the Subcontractor begins any Work on the Contract. The Contractor shall produce copies of the Letter for all Subcontractors on request of the Contract Administrator. Subcontractors that have not provided the Letter to the Contractor will not be permitted to participate in the Work.

2.2.3 Commitment to Continual Employment of Apprentices

Where a Contractor or Subcontractor is employing apprentice(s), the Contractor or Subcontractor, by engaging in the Work of this Contract, commits to continually employing the apprentice(s) for the duration of the Contract. Any apprentices employed by the Contractor or Subcontractor are not required to be on the Site.

SECTION 4 SCOPE OF WORK

110. 4.1 Intent of Plans and Specifications

The plans and the specifications shall be part of the Contract.

When the Contractor is furnished a plan for the Work included in the Contract, it shall be his responsibility to check over and compare it with any other plans furnished and with work then in place.

The Contractor shall keep at least one complete set of the plans and specifications at the site at all times.

Figure dimensions on plans shall be given precedence over scaled ones. In case of an obvious error the dimension most consistent with the Contract shall be accepted.

4.2 Alterations in Plans

The Department may, from time to time, make alterations in the plans as determined by the Engineer, and these alterations will not be considered as a waiver of any condition of the Contract.

4.3 Items Covered by Unit and Lump Sum Prices

In addition to covering the cost of the items of work described in the Contract, the unit prices and lump sums shall cover the cost of furnishing materials, plant, labour, transportation and incidentals necessary for carrying out the Work.

4.4 Contingency (formerly Extra Work)

The amount shown for **Contingency (formerly Extra Work)** shall be included in the Total Price.

The amount shown for **Contingency (formerly Extra Work)** is only an estimate. The actual amount paid to the Contractor under this item will be based on the actual work done and may be nil, less than or greater than the estimated cost.

No **Contingency (formerly Extra Work)** will be paid for unless it has been authorized by an Extra Work Order. The Contractor shall perform all authorized **Contingency (formerly Extra Work)**.

4.5 Basis of Payment for Extra Work

When Extra Work is authorized and performed, the Contractor will be paid in accordance with whichever of the following provisions are decided upon:

- (a) At the rate or rates as set forth in the Contract for similar work, or
- (b) At the rate or rates per unit set out in the Extra Work order, or
- (c) At the Contractor's actual cost. Actual cost is considered to be the total of:
 - (i) wages of supervisory staff and employees other than operators of equipment, including overtime payments, plus 30% to cover payments made pursuant to the Workers Compensation Act, Vacation with Pay Act, Unemployment Insurance, Pension Plans, Sick Leave, work breaks and other like employee benefits and payroll costs,
 - (ii) the cost of room and board when supplied by the Contractor, for other than operators of equipment, at a standard rate per man-hour,
 - (iii) rental of equipment at the rates approved for Department use, of any equipment on or adjacent to the site at the time the Extra Work is carried out. A 10% overhead cost for administration will be added to the rates when the equipment supplied is not owned by the Contractor, Sub-Contractor or an Associated Company,
 - (iv) rental of equipment at approved rates, this equipment considered by the Engineer as being necessary to perform the Extra Work and is not included in (iii) above. A 10% overhead cost for administration will be added to the

approved rates when the equipment supplied is not owned by the Contractor, Sub-Contractor or an Associated Company,

- (v) cost of materials,
- (vi) 15% of items (i) and (v).

- 4.5 When Extra Work is performed on an actual cost basis, the Contractor shall keep a daily record. The record shall include the names and number of hours worked by each worker and the number of hours worked by each piece of equipment. The record shall be signed by the Contractor or his representative in charge of the work and submitted to the Engineer for approval. Claims for materials in connection with Extra Work shall be submitted by the Contractor to the Engineer, on certified statements, not later than the tenth day of the month following that in which the Extra Work was performed. The Contractor shall submit receipted bills for materials included in the statements.

SECTION 5 CONTROL OF WORK

110. 5.1 Authority of the Engineer

The Engineer will decide all questions which may arise as to:

- (a) the quality and acceptability of materials furnished and work performed and as to the manner of performance and rate of progress of the Work,
- (b) the interpretation of the plans and specifications,
- (c) the acceptable fulfilment of the Contract on the part of the Contractor,
- (d) disputes and mutual rights between Contractors,
- (e) compensation.

The Engineer will have authority to make effective any order which the Contractor fails to carry out promptly.

5.2 Layout of the Work

Where appropriate, construction stakes will be placed by the Engineer to mark the location, alignment and elevation of the Work. The Contractor shall assume full responsibility for dimensions and elevations measured from the stakes and shall be responsible for maintaining all stakes set by the Engineer. The cost of damage to construction stakes caused by neglect on the part of the Contractor will be deducted from the progressive payments.

If an error in the plans, specifications or the directions of the Engineer is suspected, work shall be discontinued until the error is rectified.

Insofar as bridge work is concerned, the Contractor shall supply to the Engineer, as necessary, boats and crew, scaffolding, labour, and any other assistance that may be required by the Engineer.

The Engineer will establish the structure centreline, the location offset stakes for one of the substructure units and one benchmark. The Contractor shall be responsible for all measurements and elevation settings taken from the substructure unit and the benchmark established by the Engineer. The Engineer will check the Contractor's measurements and elevations prior to start of construction.

5.3 Starting Location

The location at which the Contractor commences construction and the sequence of operations will be as permitted or directed by the Engineer.

5.4 Instructions

The Contractor shall, at all times, have a responsible representative in charge of the Work who shall be authorized to receive on behalf of the Contractor written or verbal instructions. Copies of the written instruction shall be signed as having been received by the representative in charge at the time that these are issued.

5.5 Incompetent Worker

Any employee or agent employed by the Contractor who, in the opinion of the Engineer, does not perform the Work in a proper skilful manner, is disrespectful, intemperate, disorderly, or otherwise objectionable, shall, at the written request of the Engineer, be promptly removed from the Work.

The foreman or worker shall not be employed again on the Work without the written consent of the Engineer.

5.6 Protection of Survey Monuments

Before commencing construction, the Contractor shall identify the location of survey monuments located on the site. Monuments disturbed by the Contractor will be restored by the Department. The cost of restoring the monuments will be deducted from the progressive payments.

5.7 Conduct of Operations

The Contractor shall not undertake construction which may interfere with the progress of those engaged in other work for the Department without first discussing, with others, plans for doing the Work. If the parties are unable to arrive at a mutually satisfactory time for doing the Work, the matter shall be referred to the Engineer for his decision. The Contractor shall save harmless the Department from and against all just claims arising as a result of any action on his part or the action of anyone working for him which interfered with the progress of those engaged in other work for the Department.

5.8 Camps

Camps shall be constructed and operated in accordance with the requirements of the appropriate government authorities responsible for public health, safety and the environment.

5.9 Equipment

Equipment to be used for the Work shall be subject to approval and shall be maintained in satisfactory working condition for the duration of the Work. The Engineer shall have access to the equipment at all times for purposes pertaining to the Work. The Contractor shall notify the Engineer prior to removing equipment from the project.

5.10 Roads

At the pre-construction meeting, the Contractor shall review its proposed work plan with the Department prior to commencing any roadwork. The Contractor must demonstrate to the Department that it can re-establish the condition or structure of the road to the satisfaction of the Department prior to seasonal shutdown. Minimum acceptable seasonal shutdown road surface conditions will be reviewed with the Contractor at the preconstruction meeting.

For any incomplete portions of the road, the Contractor will be responsible for damage and road surface maintenance over the seasonal shutdown period. Any direct costs incurred by Manitoba Infrastructure to maintain the road surface will be deducted from the Contractor's payments.

The Contractor shall, during the term of the Contract, maintain at his expense all haul roads except Provincial Trunk Highways and Provincial Roads between sources of material supply and the Site unless other arrangements have been made with the local authorities. Prior to the commencement of hauling the Contractor shall arrange for an inspection of the roads upon which hauling is to take place. The inspection shall be made by the Contractor, the Engineer and a responsible representative of the Municipality or Territory. During the inspection, notes shall be kept on the condition of each kilometre of haul road.

On completion of the hauling, the same persons, if possible, shall examine the haul roads and determine how much work, if any, the Contractor shall do in order to leave them in as good condition as when hauling commenced. Under no circumstances will the final contract payment be made to the Contractor until at least two of the above noted parties indicate that they are fully satisfied with the conditions of the haul roads.

If, in the opinion of the Engineer, damage is being done to public roads by the Contractor's equipment, the Contractor shall, at his own expense and on the direction of the Engineer, remove the cause of the damage.

5.11 Rejected Work and Materials

Faulty work discovered prior to acceptance of the Work shall be rectified by the Contractor. Rejected material shall be removed from the Site. Should the Contractor neglect or refuse to rectify faulty work, or remove the rejected material, the Engineer will cause the faulty work to be rectified and the rejected material removed. The cost will be deducted from the progressive payments.

SECTION 6 CONTROL OF MATERIALS

110. 6.1 Storage and Care of Materials

The Contractor shall, prior to receipt of material, provide adequate and proper storage facilities and, on receipt of material, promptly place it in storage, except when it is to be incorporated forthwith into the Work. The Contractor shall provide adequate protection for materials that are subject to deterioration during their transportation, handling, storage and use by him. Material supplied by the Department or otherwise, damaged while in the possession of, or under the control of the Contractor, shall be replaced by the Contractor at his own expense.

The Contractor shall give the Supplier and Engineer four days notice of his intention to require the Supplier to provide materials ordered by the Department for the Work. The notice shall state the applicable purchase order number or Contract number. If the Contractor requires the Supplier to provide more material than can be used and it becomes necessary to return it to the source of supply, the Contractor shall pay all delivery and return charges.

The Contractor shall give two days notice of his intention to remove materials supplied by the Department from its storage yard. The notice is to be given to the storekeeper of the storage yard.

Materials supplied to the Contractor by the Department shall not be used for any purpose other than that for which they were intended. The Contractor shall be liable for demurrage, rentals and other charges for handling, hauling or storing materials ordered for the Contract.

The Contractor shall, at the time materials are released to him, check and record the quantity of materials. Shortages, discrepancies, or material in bad condition, shall immediately be reported in writing to the Supplier and the Engineer.

The Contractor shall be held responsible for the acceptance, at the point of delivery, of any damaged material, unless, prior to acceptance, the Engineer gives the Contractor a release in writing, from all responsibility in accepting such material.

If a question should arise as to the suitability of any material supplied by the Department for use on the work, such material shall remain in the care of and at the risk of the Contractor until it can be examined and tested by the Engineer to determine its fitness for the purpose for which it was purchased.

Any theft of, loss of, or damage to material after delivery to the Contractor will be charged against him.

6.2 Material from Pits, Quarries, and Other Deposits

Permission in writing shall be obtained by the Contractor prior to removing sand, gravel and quarried material from deposits located on Crown Lands, from

- (i) The Department Responsible for Dispositions Under the Mines and Minerals Act, for Crown Lands not controlled by the Department;
- (ii) The Engineer, for gravel pits owned or controlled by the Department;

The Contractor shall provide the Engineer with a copy of all permits, related to the project prior to material being produced, stockpiled or hauled in the pit. The Department recommends all permits should be applied for early as some removal permits are subject to waiting periods.

Sand, gravel and quarried materials removed from Crown Lands and used on Department projects is not subject to payment of Royalty. Subject to the approval of the Engineer, the Contractor may use materials from such lands for building and maintaining production facilities and haul roads, necessary for the performance of work, but no payment will be made to the Contractor for such materials or for any work done in connection therewith.

Prior to excavating sand, gravel or quarried materials from crown or privately owned lands the Contractor shall report to the Department Responsible for Dispositions Under the Mines and Minerals Act, the location of the pits or quarries and the proposed date of commencement of operations and shall, immediately after removing sand or gravel, submit a report showing the quantity of each material removed from each pit.

Permission to remove sand, gravel and quarried materials does not guarantee the quality or quantity of the materials.

Surplus aggregate from Crown Lands, produced by the Contractor's plant, not required or beyond that quantity required for the Contract, shall be neatly piled by the Contractor.

In Department owned pits, the Department will purchase up to a maximum of 10% above the quantity that the Contractor was instructed to crush, at the rates specified in the Provisions for Interim Payment excluding the rate for the supply of raw aggregate. Any quantity over 10% will become the Department's aggregate.

Surplus aggregate remained in the Department Responsible for Dispositions Under the Mines and Minerals Act controlled pits may be purchased by the Department at the rates specified in the provisions for interim payments, excluding the rate for the supply of raw aggregate or the Contractor may apply for a Stockpile Protection Permit in accordance with the Department procedures.

If the Contractor elects to use a Department owned pit, an Aggregate Resource Management meeting shall be required before the Contractor will be allowed to operate in the pit. It is the Department's intent to effectively manage the pit resources by matching the raw pit material available with the type of aggregate being produced.

The Contractor shall be required to develop a Pit Usage Plan indicating the area of pit face excavation, location of the crushing machinery, aggregate stockpile sites within the pit and overburden and waste placement location.

The Pit Usage Plan shall be to the satisfaction of the Engineer prior to the Contractor being allowed to operate in the pit.

The Department owned pit located at SE¼ 20-9-17W (locally known as Harris Pit) shall only be utilized for top lift aggregate for bituminous pavement for use on Department projects. The Contractor shall be required to use both the coarse and fine aggregates produced in the bituminous mix design. Excluding the fine aggregates produced in Harris Pit from the mix design will not be permitted.

The Contractor shall obtain permission in writing from the Engineer to produce, remove or stockpile any aggregate from Department owned pits, prior to submitting a tender bid.

If the Contractor elects to produce aggregate by blending material hauled from various sources, the Contractor shall scale, record, and supply to the Engineer in tonnes, any and all materials other than VMA and Binder Material supplied. The Department will supply a scale person for any materials hauled from a Department owned pit.

Upon completing his operations on any lands, the Contractor shall, at his expense, cleanup and vacate such lands and leave them in a condition satisfactory to the Department Responsible for Dispositions Under the Mines and Minerals Act.

6.3 Surplus Material

Surplus materials supplied by the Department, which are not required in construction or permanently incorporated in the work.

The Contractor shall, if required, haul surplus materials to a location designated by the Engineer.

Payment for loading and hauling surplus materials to a designated location will be paid for on the basis of Extra Work.

6.4 Salvaged Materials

When the removal of material to be salvaged is necessary for the satisfactory completion of the Work, the material shall be carefully salvaged, sorted and stored at the Site or at the location specified in the Special Provisions.

SECTION 7 LEGAL RELATIONS AND RESPONSIBILITIES

110. 7.1 Legal Responsibilities and Permits

Entry into this Contract shall not relieve the Contractor of his responsibility to comply with all Acts, statutes, bylaws, regulations or ordinances of the Local, Provincial or Federal Authorities pertaining to the Work.

7.2 Public Convenience and Safety

The Contractor shall take every measure to provide for the safety and convenience of the highway users and residents along the highway and provide and maintain at his own expense access to driveways, houses, buildings or other property contiguous to the highway under construction.

7.3 Care of Various Services

The Contractor shall provide access to and take precautions to prevent damage to services such as railroad facilities, oil pipe lines, gas pipe lines, water & sewage pipes, electrical and telephone lines and cables, fire hydrants, manholes and catchbasins. The Contractor shall determine the exact location of such services and conduct his operations so as to avoid the possibility of damaging them. The Contractor shall pay just claims arising directly or indirectly from damage caused by his construction operations and shall save harmless the Department from and against all claims arising there from.

7.4 Workplace Safety and Risk Management

The Contractor shall develop operational safety policies, procedures and plans to prevent loss or injury to any person or property on or travelling through the site. The Contractor shall familiarize himself, his staff and his subcontractors with the terms of the Manitoba Workplace Safety and Health Act W210 and Regulations to ensure complete understanding respecting the responsibilities given and compliance required. The Workplace Safety and Health Act W210, Regulations and other related safety information can be obtained from Manitoba Labour, Workplace Safety and Health Branch.

7.4. 01 Contractor Responsibility of Employer Duties

By entering into this (Agreement/Contract), the Contractor acknowledges its responsibility to fulfill the duties of the employer under section 4 and section 7.4, if applicable, of *The Workplace Safety and Health Act* (the "Act") and to ensure that the Services are carried out in accordance with the Act and all applicable regulations.

Without limiting the generality of subsection 7.4.01 the Contractor represents and warrants that:

- a) it shall ensure, as far as reasonably practicable, that it will meet the requirements for the protection of workers set out in the Act and the regulations made there under;**
- b) it has a workplace safety and health system or program (the "Program") applicable to the work being performed and shall carry out the services in accordance with the Program;**
- c) its employees, agents and subcontractors are properly qualified and trained to perform the Services.**
- d) Mobile equipment operators shall possess a valid drivers license, as required by the Highway Traffic Act and may be subject to evaluation by the Department;**
- e) it shall ensure that an adequate number of competent supervisors are provided as prescribed in the Act;**
- f) it has disclosed all "required information" as required under the Act to all employees and workers that will be providing the Services on behalf of the Contractor under this Agreement to ensure they are trained and informed of the hazards inherent to the work and understand the procedures for minimizing the risk of injury or illness.**
- g) As prescribed in the current Manitoba Regulation, it shall immediately notify Manitoba Labour, Workplace Safety & Health Division & the Department of any accident of a fatal or serious nature to any of the Contractor's officers, employees or agents and within five (5) days of the accident provide the Department with a written report detailing the accident and incorporating information requested by the Department;**
- h) it shall immediately notify and provide the Department with copies of any notices, orders or charges issued to the Contractor under the Act;**
- i) it shall comply with all reasonable requests and directions made by the Department including, without limitation, any requests or directions made by the Department's project managers.**

The Contractor shall indemnify and save harmless the Department from and against all claims for damages arising from any lack of precaution or acts of negligence on the part of the Contractor, Sub-Contractor or their employees.

The Department and the Contractor acknowledge and agree that the Contractor is a "Prime Contractor" as that term is defined in The *Workplace Safety and Health Act (Manitoba)* for all purposes of that Act and without limiting the generality of the foregoing, it is further acknowledged and agreed that as the Prime Contractor, the Contractor is solely and completely responsible and liable for and in respect of all obligations, requirements and duties imposed on the Prime Contractor in the Act.

The Department and the Contractor further acknowledge and agree that all rights of the Department set out in the Contract allowing the Department to monitor the construction is for the sole purpose of determining the progress and status of the work for payment purposes and to ensure all conditions of the contract are being met.

7.5 Insurance

1. The Contractor shall, at its own expense, provide for and maintain the following insurance:

A. General Liability Insurance:

- (i) The Contractor shall maintain throughout the term of the Contract, public liability and property damage insurance against claims for personal and bodily injury, death or damage to property arising out of any of the operations, acts or omissions of the Contractor or any of its officers, employees or agents under the Contract, including contingent coverage for all subcontractors; such insurance shall provide, at minimum \$2 million (\$2,000,000) per occurrence limits of liability, in a form satisfactory to the Government of Manitoba;
- (ii) Such insurance shall include coverage for premises and operations, completed operations, blanket contractual, extended bodily injury, broad form automobile, broad form property damage, non-owned automobile liability, and where applicable, damage to underground property and damage to property, building or land caused by:
 - (a) the use of explosives or blasting;
 - (b) vibration from pile driving or caisson work; or
 - (c) removal or weakening of support of such property, building or land whether such support be natural or otherwise; and
- (iii) Such insurance shall include cross-liability and name the Government of Manitoba, its officers, employees and agents as Additional Insured with respect to operations performed under the Contract. Completed operations coverage shall be maintained for 24 months following completion of the work;

B. Automobile Liability Insurance

The Contractor shall obtain and maintain throughout the term of the Contract automobile public liability and property damage liability insurance on all licensed vehicles owned or operated by the Contractor and used on the project, with minimum limits of liability of \$2 million (\$2,000,000) per vehicle; and

C. Workers Compensation Insurance

The Contractor shall obtain and maintain Workers Compensation insurance as required by The Workers Compensation Act. The Contractor shall be registered and be in good standing with the Workers Compensation Board.

2. Notice of Cancellation or Alteration

Where provided, such general liability, professional liability and/or automobile public liability and property damage insurance shall contain a clause which states that the insurers will not cancel, materially alter or cause the policy (ies) to lapse without giving 30 days prior notice in writing to the Province.

3. Certificates of Insurance

When requested by the Department, the Contractor shall submit a certified copy of the general liability policy or certificate in lieu thereof evidencing said insurance. The insurance policy or certificate shall be submitted prior to the date in the Contract where the assessment of working days will commence and/or the date of commencement of Work. As well, when requested by the Department, the Contractor shall submit certified copies of professional liability, automobile public liability and property damage liability and Workers Compensation, policies or certificates in lieu thereof evidencing said insurance.

4. Contractor Shall Not Impair or Invalidate Policies

The Contractor shall not do or omit to do or suffer anything to be done or omitted to be done on the Contract or in performance of the Work which will in any way impair or invalidate such policy or policies.

5. Each Party to Insure Own Property

Each party is responsible for insuring its own property directly or indirectly connected with the Contract and the Work except for materials supplied by the Department as referred to in Section 110.6.1.

6. Course of Construction Insurance for Bridges

Where applicable, structures such as bridges shall be insured by the Contractor against all risks of physical damage or loss, on a full replacement cost basis, through the Course of Construction or Builders' Risk Policy.

7. Professional Liability Insurance

When applicable, the Contractor shall provide for and maintain Professional Liability Insurance.

The Contractor shall ensure that all Consultants engaged or employed by the Contractor or subcontractor maintain Professional Liability Insurance throughout the term of the Contract. "Claims Made Insurance" shall be provided for a minimum of five years following completion of all work and/or services under the contract, insurance against claims arising out of faulty design, maps, plans and specifications or any other error, omission, mistake of a professional or technical nature committed or alleged to have been committed by or on behalf of the Consultant, and provide, at minimum, \$2 million (\$2,000,000) limits of liability, in a form satisfactory to the Government of Manitoba.

The Contractor shall provide satisfactory written evidence of this insurance as required by the Department.

SECTION 8 PROSECUTION AND PROGRESS OF WORK

110. 8.1 Assigning or Sub-Contracting

The Contractor shall ensure that all Sub-Contractors working on the project have adequate insurance and comply with the Acts and Regulations. The Department may require a list of Sub-Contractors prior to the award of Contract. Requests for information on a Contract by Sub-Contractors and/or suppliers shall be directed to the Contractor, unless otherwise authorized by the Contractor.

8.2 Contract Completion

The time for the completion of the Work contemplated in the Contract will be specified either as a calendar date or as a number of working days. The completion of the Work within the time as specified is an essential part of the Contract.

Should the Contractor fail to complete the Work within the time allotted, or within such extra time as may have been allowed by extensions, the sum set forth as "Liquidated Damages" will be deducted for each and every day that Liquidated Damages may be charged in accordance with the terms of the Contract.

When the Contract has not been completed within the required time, the Contractor shall continue to perform the Work diligently and expeditiously. Permission to continue and finish the Work or any part of it after the time fixed for its completion, shall in no way be considered as a waiver on the part of the Department of any of its rights under the Contract, and time shall continue to be an essential part of the Contract.

8.3 Temporary Suspension of Work

The Engineer may suspend the Work wholly or in part by written order for such period as he may deem necessary due to conditions considered unfavourable for the suitable prosecution of the Work, unsuitable weather, failure on the part of the Contractor to correct unsafe conditions, failure to carry out orders given or failure to perform any provisions of the Contract.

8.4 Extensions of Time

The time set forth in the Contract for its completion may be extended free of liquidated damages;

- When the Contract is not completed within the required time because the Contractor was ordered to perform unspecified Extra Work, the Engineer will extend the number of days allowed for completion by the number of days required to perform the Extra Work.
- When the Contract is not completed within the required time because of increases to the original quantities, the Engineer will extend the number of days allowed for completion based on the following formula:

$$E = \frac{F \times D}{O} - D$$

E = Extension of time in Days

F = Finished Contract Value

D = Number of specified days allowed in Contract, or, in a Calendar Completion Contract, the number of days between the date of the award letter and the specified completion date.

O = Original Contract Value

- By the Director, in the form of a written approval, when:
 - (i) The Contractor is able to prove conclusively that conditions encountered during the work were much more difficult than could reasonably have been anticipated and,
 - (ii) The Contractor submits a request for an extension of time accompanied by evidence of the difficult conditions and forwards it to the Director prior to completion of the Contract.

No claims for damages shall be made against the Department on account of delays on the part of the Department in the delivery of materials or in the performance of work; but should there be unduly prolonged delays upon the part of the Department in the delivery of any materials required for the Work or in the performance of the Work, the Contractor shall be entitled to a corresponding extension of time to complete the Work.

8.5 Termination of Contract

Notwithstanding any extension of time, if at any time prior to the completion of the Contract, for any cause whatsoever, whether or not due to the fault of the Contractor, Sub-Contractor, or the employees of either of them, or otherwise, the Work, in the opinion of the Director, is not being performed in accordance with the terms of the Specifications and the Contract, or is not progressing satisfactorily, or is not likely to be completed within the time specified, the Department, after forty-eight hours notice given to the Contractor or his agent, may re-let the Work and enter into a new Contract for the whole or any part of the uncompleted work, or otherwise cause said work or any part thereof to be completed, and pay for same out of any monies of the Contractor which may be due or accruing due him from the Department, and may further charge the Contractor with the amount of any money which the Department may have spent in connection with such work over and above the monies aforesaid of the Contractor, and may collect the same as a debt due from the Contractor to the Department. The Department reserves the right to take over and use any plant and materials being used in the Work. The Contractor hereby agrees that he will not remove, dispose of, nor transfer his rights in any of the plants or materials after he has received the above-mentioned forty-eight hours notice, and any assignment or transfer made in contravention of this provision is invalid.

The normal penalty for non-performance will be removal from the bidders list for two years. Reinstatement after two years will be on approval of the Department.

8.6 Opening to Traffic

The Work shall not be open to traffic until authorized by the Engineer. When, in the opinion of the Engineer, the Work or any portion thereof, is in an acceptable condition for travel, it shall be opened to traffic as may be directed by the Engineer, but such opening shall not be construed as an acceptance of the roadway, or any part of it, or as a waiver of any of the provisions of the Contract or of the Specifications.

Necessary repairs or renewals made on any section of the roadway due to its being open to travel, under instructions from the Engineer, and to ordinary wear and tear, or otherwise, prior to the completion and acceptance of the roadway, shall be performed at the expense of the Contractor.

If the Contractor is dilatory in completing certain phases of the Work, the engineer may order the road open to traffic. In such an event, the Contractor, prior to final acceptance, shall not be relieved of his liability and responsibility during the period the road is so opened.

Where the Work is divided into sections, upon application by the Contractor, the Department may take over for maintenance any section which may be found to be completed in a satisfactory manner. No such section will be taken over unless it connects with a completed section or road; said taking over shall not be deemed to be final acceptance of the Work or in any way prejudice the rights of the Department under the Contract or otherwise.

8.7 Maintenance

The Contractor shall satisfactorily maintain the Work described in the Contract until the final acceptance of the Work.

8.8 Cleaning Up

The Contractor shall conduct all his day to day operations in such a manner as to avoid creating any unpleasant appearances or any conditions that will be detrimental to or mar the surrounding area or waterways. Waste materials and refuse shall be promptly disposed of in a manner that will not contaminate or mar the surrounding area or waterways.

Upon completion and before final acceptance of the Work, the Site occupied by the Contractor in connection with the Work shall be cleaned of rubbish, excess materials, temporary structures, and equipment; and all parts of the Work shall be left in an acceptable condition.

8.9 Final Acceptance of Work

Until final completion and final acceptance of the Work, the Work shall be under the charge and care of the Contractor, and he shall take every necessary care against damage to the roadway or any part of the Work by the action of the elements, or from any other cause whatsoever arising from the execution of the Work or from the non-execution of the Work. The Contractor shall rebuild, repair, restore and make good, at his own expense, all damages to any portion of the roadway or any part of the Work, occasioned by any of the above mentioned causes, before final completion and acceptance.

When work has been completed according to the plans and specifications and upon certification of the Engineer, final acceptance of the Work will be made by the Department.

SECTION 9 CLAIMS AND PAYMENTS

110. 9.1 Claims for Adjustments

As time is of the essence, every effort must be made to resolve disputes at the field level as they occur. Resolution on claims against the Department should be achieved in one or two days at the maximum. Should it not be possible to resolve the dispute in this manner, then the Contractor shall submit the claim in writing to the Section Head. The claim must show justification and background calculations.

- (i) The Section Head will investigate and respond to the claim in writing within 7 days of receipt, with copies to the Director responsible for the project and the Executive Director of Construction and Maintenance.

If the claim is considered invalid the response should include why the Department does not feel the claim is valid.

If the claim is deemed valid but the Department does not agree on the compensation requested, the Contractor should be contacted and a meeting set up to determine fair compensation.

Quality Assurance will participate in the meeting in an advisory capacity, when requested.

- (ii) The Contractor may appeal the decision of the Section Head to the Director responsible for the project. The Director shall respond within 7 days.
- (iii) The Contractor may request that the Executive Director of Construction and Maintenance review the decision made by the Director responsible for the project.
- (iv) In the event that the dispute or claim cannot be resolved by the Executive Director of Construction and Maintenance, the dispute or claim may, with the consent of both the Department and Contractor, be forwarded to binding arbitration in accordance with the provisions of The Arbitration Act, except that any decision of the arbitrator will be final and binding and not subject to appeal.

9.2 Changes in Quantity

Unless the contract provides otherwise, adjustments in contract unit prices for increased or decreased quantities shall be governed by the following provisions:

1. Major Contract Item means a contract item representing at least 7% of the Total Price of the Contract, excluding Contingency.
2. If the final quantity of a Major Contract Item is within 20% of the estimated quantity, there will be no adjustment to the contract unit price.
3. If the final quantity of a Major Contract Item is less than 80% of the estimated quantity and the Total Price, excluding Contingency is under by a minimum of 15%, the Contractor may submit a written request for an adjustment of the contract unit price. The Department will consider the request subject to the following limitations:
 - a) an adjustment will be considered only to the extent that the decrease in the quantity justifies an increase in the pro-rata share of fixed expenses chargeable to that Major Contract Item.
 - b) Fixed expenses will be deemed to be 20% of the bid price.
 - c) no allowance will be made for anticipated profits on any work not performed.
 - d) the total adjusted payment shall not exceed 80% of the payment which would be made for the estimated quantity at the contract unit price.

The method used to adjust the unit price will be as follows:

- Determine the Fixed Cost = 20% x Unit Price
 - Determine the balance of Unit Price = Unit Price - Fixed Cost
 - Calculate Adjusted Fixed Cost rounded to nearest cent (4)

$$= \text{Fixed Cost} \times \frac{\text{Estimated Quantity}}{\text{Actual Quantity}}$$
 - Calculate the Adjusted Unit Price

$$= \text{Balance of Unit Price} + \text{Adjusted Fixed Cost}$$
- 4) If the final quantity of a Major Contract Item is more than 120% of the estimated quantity, either party may submit a written request to the other for an adjustment of the contract unit price. The request will be considered by the party receiving it subject to the following limitations:
 - a) the contract unit price shall apply to all quantities up to and including 120% of the estimated quantity.
 - b) if adjusted, the adjusted unit price shall apply only to the quantities in excess of 120% of the estimated quantity.
 - 5) Any request for an adjustment of the contract unit price shall be:
 - a) in writing.
 - b) received no later than 30 days after the Department has notified the Contractor of the final quantities, and
 - c) accompanied by supporting evidence.
 - 6) Nothing in this section shall excuse the Contractor from proceeding with the Work.

9.3 Financial Obligations of Contractor

The Contractor shall pay every just claim for the cost of work, service or material made by a person who performs any work or service, or places or furnishes material to be used in the performance of the Contract. The payment of every such claim by the Contractor shall be an obligation under the

Contract. So long as any such claim remains unsatisfied the Contract shall be deemed to be uncompleted.

Where a written claim for the cost of work, service or material is placed by a third party, the Department will retain from any funds still owing to the Contractor an amount equal to the claim as the minimum holdback until the claim is satisfied.

When requested, the Contractor shall supply a statement showing all obligations incurred by the Contractor in connection with the Work and remaining unpaid at the date of submission of the statement. Supplying such a statement shall be a condition precedent to the payment of any money due the Contractor under the Contract.

9.4 Sales Tax

The Manitoba Government is not subject to payment of the Goods and Services Tax (GST), therefore all prices shall exclude Goods and Services Tax. The Department will issue a statement certifying the goods and services provided under this contract are for the sole use of the Manitoba Government.

All other applicable Provincial and Federal Sales Taxes will not be reimbursed to the Contractor or paid on behalf of the Contractor but are considered included in the applicable unit or lump sum prices. Sales Tax will not be paid as a separate item.

9.5 Workers Compensation Payments

The Contractor shall be registered and be in good standing with the Workers Compensation Board.

Should the Contractor fail to pay to the Workers Compensation Board, premiums on the wages of his employees, or compensation awarded by the Workers Compensation Board in respect to the Work, the Department may deduct from any money due the Contractor under the Contract a sum sufficient to pay all of such amounts to the Workers Compensation Board.

9.6 Payments to Contractor

Progress payments will be based on estimates prepared and certified by the Engineer.

The total amount paid to the Contractor will be determined by multiplying the actual quantities of work, which have been certified by the Engineer, by the applicable unit prices, plus payments for work actually performed for which the basis of payment is a lump sum amount, plus payments for extra work actually performed.

When, in the opinion of the Engineer, lump sum prices are unbalanced, the payments for the applicable lump sum item may be made on a pro-rata basis over the life of the Contract.

On payments made prior to completion of the Contract, 15% of the amount of each payment will be retained as holdback.

Where a Contract is estimated to be 75% complete in terms of dollars and work is stopped for a seasonal shutdown, the Contractor may request a reduction in holdback to the Department. If approved, the Department may reduce the holdback to 7.5% or \$1,000.00, whichever is the greater, providing the Contractor submits a written request certifying that all just claims against the Contractor in connection with the Contract have been paid.

Payment for any reduction in holdback will be held for 40 days after the date the Contractor last worked.

The Department will release the final payment providing;

- i. The Engineer has accepted the completed work.
- ii. There are no outstanding claims of which the Department has been notified.

If, four months after the completion of the Work on a Contract the Department is unable to finalize the Contract due to outstanding claims, the Department shall proceed in accordance with the procedures outlined in the Highways and Transportation Construction Contracts Disbursement Act or The Builder's Liens Act.

Neither the final inspection and acceptance, nor the final payment, nor any provision in the Contract shall relieve the Contractor of his responsibility for complying fully with all the terms and conditions of the Contract, and he shall remedy any defects or omissions arising out of non-compliance therewith that appear within one year after the date on which the final estimate, issued in accordance with the terms of the Contract, has been approved and paid, and he shall save harmless the Department from and against all claims for damages to persons or property arising out of any such defects or omissions, or the remedying thereof.

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