



NOTE TO BIDDERS

For information regarding this project, you may contact the Director of Transportation and Utilities for the M.D. of Bonnyville, Mr. Darcy Zelisko at (780) 826-3951 or Manager of Transportation, Mr. Harpiar Gandhi at (780) 573-9719.

Tenders must be marked “**2016 Summer Gravel Haul Tender**” sealed in an envelope.

Tenders must be received no later than **11.30 a.m. local time, March 8, 2016** at the following address:

Municipal District of Bonnyville No. 87
Bag 11.3011.30 (61330 RR 455)
Bonnyville, Alberta
T9N 2J7

Tenders will be opened at **11.30 a.m. local time, March 8, 2016** at the aforementioned Address.

Facsimile changes to unit price schedule will be accepted. Facsimile (FAX) messages may be sent to (780) 826-4524, marked “ATTENTION: Mr. Harpiar Gandhi, CONTRACT OPENING” on a copy of the Tender Form Found in this tender package. To be acceptable, the change must be received no later than **30 minutes** prior to tender opening on the closing date for this contract.

The Municipality reserves the right to accept or reject any or all tenders and to waive irregularities and informalities at its discretion. The Municipality reserves the right to accept a tender other than the lowest tender without stating reasons. By the act of submitting its bid, the Bidder waives any right to contest in any legal proceeding or action the right of the Municipality to award the work to whomever it chooses, in its sole and unfettered discretion, and for whatever reasons the Municipality deems appropriate. Without limiting the generality of the foregoing, the Municipality may consider any other factor besides price and capability to perform the work that it deems in its sole discretion to be relevant to its decision.

M.D. OF BONNYVILLE NO. 87

2016 Summer Gravel Haul Tender

INSTRUCTIONS TO TENDERERS

These Instructions to Tenderers are contractual and they bind each Tenderer and govern the consideration of each Tender by the Owner.

IT1. DEFINITIONS

1.1 In the Contract:

- (a) "Addendum" means a document issued under IT 4;
- (b) "Closing Time" means the deadline specified for receipt of Tenders by the Owner;
- (c) "Certificate of Completion" means the certificate of completion issued under GC 14;
- (d) "Completion" means total and satisfactory completion of the Work in accordance with the Contract Documents, as determined by the Owner's Representative under these General Conditions;
- (e) "Completion Date" means the date for Completion of the Work set out in the Contract;
- (f) "Construction Schedule" means the schedule of performance of the Work submitted by the Tenderer as part of its Tender;
- (g) "Contract" means the contract for performance of the Work to Completion that is entered into between the Owner and the Contractor, which contract is on the terms and conditions contained in the Contract Documents;
- (h) "Contract Documents" means
 - (i) Invitation for Tenders
 - (ii) Note to Bidders;
 - (iii) Instructions to Tenderers;
 - (iv) Tender Form;

- (v) Form of Contract;
 - (vi) General Conditions; and
 - (vii) Specifications;
- (i) "Contractor" means the Tenderer to whom the Contract has been awarded in accordance with IT 11.30;
 - (j) "Director of Transportation and Utilities" means the Owner's Director of Transportation and Utilities;
 - (k) "Form of Contract" means the document with that name contained in the Contract Documents;
 - (l) "GC" is, when used in conjunction with a numeral, a reference to the section of the General Conditions with the same numeral;
 - (m) "General Conditions" means the Contract terms and conditions of that name that are contained in the Contract Documents;
 - (n) "Invitation to Tender" means the notice published or communicated by the Owner by which the Owner invited Tenders for the Contract;
 - (o) "Note to Bidders" means the notice of that name by which the Owner expands on Invitation to tender; but is not limited to for the Contract;:
 - (p) "IT" is, when used in conjunction with a numeral, a reference to the article or section of the Instructions to Tenderers with the same numeral;
 - (q) "Notice of Award" means the notice of award of the Contract given in accordance with IT 11.30;
 - (r) "Owner" means the Municipal District of Bonnyville;
 - (s) "Owner's Representative" means, subject to GC 1.2, the person designated by the Owner in the Notice of Award as the Owner's representative for the Contract, and includes any other person expressly authorized by that person to act on that person's behalf;
 - (t) "Special Conditions" means any Contract terms and conditions of that name that are contained in the Contract Documents;

- (u) "Specifications" means any plans, drawings or specifications, or all of them, for the Work contained in the Contract Documents;
- (v) "Tender" means a tender submitted to the Owner in accordance with the Instructions to Tenderers;
- (w) "Tender Documents" means the Instructions to Tenderers, Tender Form, General Conditions, Special Conditions and Specifications;
- (x) "Tender Form" means the tender form contained in the Contract Documents and any appendices to it that are expressly contemplated by the Contract Documents;
- (y) "Tenderer" means anyone who submits a Tender;
- (z) "Work" means the project of work described in the Contract Documents, including the Specifications; and
- (aa) "Work Change" means a change in the Work ordered by the Owner's Representative under the General Conditions, that is:
 - (i) a deletion from the Work; or
 - (ii) an addition to or revision of the Work which is within the general scope of the Contract

but does not, in either of the above cases, include a variation in quantity of unit price items.

- 1.2** Any word or expression that is not defined in these Instructions to Tenderers has the meaning given to it in the General Conditions.

IT2. SUBMISSION OF TENDERS

- 2.1** Tenders must be submitted on the Tender Form, every part of which must be completely filled out and must either be typewritten or printed legibly in ink.
- 2.2** Tenders must be submitted in a sealed envelope addressed to the Director of Transportation and Utilities at the address set out on page 1 of the Tender Form, marked clearly on the front "**2016 Summer Gravel Haul Tender**".
- 2.3** Faxed Tenders are not acceptable and must be rejected, but a Tender may be changed by a fax received by the Director of Transportation and Utilities no later than **10:30 a.m., March 8, 2016** at (780) 826-5064.

- (a) an incomplete or lost Tender,
- (b) a lack of confidentiality of the Tender;
- (c) a failure or breakdown, or inadequacy, of any telecommunications equipment or service, including of the Tenderer, Owner or any third party; and
- (d) the inability of the Tender to be received by the Closing Time because the Owner's facsimile equipment or telephone line is busy.

2.4 Tenders must be received by the Director of Transportation and Utilities no later than **11.30 am. March 8, 2016**. Tenders received after the Closing Time will not be opened and must be rejected.

2.5 The Owner may extend the Closing Time in its sole discretion by notice given to Tenderers.

2.6 The Tender is an offer by the Tenderer to enter into the contract with the Owner on the terms and conditions contained in the Contract Documents.

IT3. ENQUIRY AS TO WORK

3.1 The Tenderer must inform itself as to all aspects of the Work, including Work site conditions. The Tenderer agrees that it is the sole responsibility and risk of the Tenderer to examine the Work site and the actual Work site conditions, including soil conditions, before beginning performance of the Work. The Owner is not liable for any expense, damage or loss incurred as a result of any misunderstanding or error by the Tenderer regarding the Work or conditions affecting it, including Work site conditions. For clarity, the Tenderer agrees that GC 8.1 applies to the Tender.

IT4. ADDENDA AND COMMUNICATIONS

4.1 Any change to the Contract Documents must be issued by the Director of Transportation and Utilities as an Addendum and a copy of each Addendum must be given to Tenderers. The Contract Documents may be changed or added to only by issuance of an Addendum. Each Addendum becomes part of the Contract Documents.

4.2 The Tenderer must indicate that it has received copies of all Addenda, and that its Tender has been completed in accordance with all Addenda, by completing the relevant part of the Tender Form.

- 4.3** Only the Director of Transportation and Utilities is authorized to communicate with Tenderers and the Owner is not responsible for or bound by any clarification or information given by anyone other than the Director of Transportation and Utilities. The Director of Transportation and Utilities may communicate with Tenderers only in writing, by Addenda.

IT5. PRICES

- 5.1** Prices must be given as and where indicated in the Tender Form. Failure to give a price for any item makes the Tender incomplete and the Tender must be rejected.
- 5.2** If the Tender contains an error in extending unit prices or lump sums, or both, the total Tender price is the total resulting from correct extension by the Owner of the prices or addition of the lump sums, or both.
- 5.3** Any quantities of Work set out in the Contract Documents are only estimates of quantity and the Owner does not represent, warrant or guarantee to the Tenderer that actual quantities of Work will be as estimated.

IT6. EXECUTION OF TENDER AND CAPACITY

- 6.1** If the Tenderer is an individual or partnership, the Tender Form must be executed by the individual or a partner, as the case may be, and must be witnessed in the case of an individual's signature. The individual signing must indicate the capacity in which he or she signs where indicated in the Tender Form.
- 6.2** If the Tenderer is a corporation, the Tender Form must be executed by the authorized signatories of the corporation. The full and correct legal name of the corporation, its incorporation number or extra-provincial registration number and business address must be given in the Tender Form.
- 6.3** If the Tenderer is a corporation incorporated outside Alberta, that corporation must be registered as an extra-provincial corporation under the *Companies Act* (Alberta). Proof of extra-provincial registration must be submitted with the Tender. A Tender submitted by a corporation that is not extra-provincially registered as required by this section must be rejected. Failure to submit proof of extra-provincial registration may be cause for rejection of the Tender. This section does not apply to a corporation incorporated under the *Canada Business Corporations Act* (Canada).

IT7. SECURITY

- 7.1 The Undersigned encloses herewith as a deposit, a bid bond or a certified cheque payable to the Municipal District of Bonnyville No. 87 of the Province of Alberta for ten percent (11.30%) of the Tender Bid Amount.
- 7.2 The successful bidder will be required to provide a Performance Bond for 50% of the Contract Value within 15 days of award of the tender. Failing to do so may result in tender being awarded to the next lower bidder and the bid bond deposit will be forfeited.
- 7.3 The Owner must return any security deposited under IT 7.1 as soon as is practicable after its receipt of any performance bond and labour and materials payment bond required by the Tender Form to be given by the Contractor.

IT8. REJECTION OF TENDERS

- 8.1 The Owner has the right, in its sole discretion, not to award a Contract and has the right to reject any or all Tenders (including the lowest Tender) without giving any reason for doing so.
- 8.2 The Owner has the right, in its sole discretion, to evaluate any or all Tenders on any basis it considers desirable, including the overall cost of the Tenders in relation to the Owner's budget for the Work, the ability of the Tenderer or Tenderers to perform the Work, the finances or credit-worthiness of the Tenderer or Tenderers, and any experience of the Tenderer or Tenderers in performing work of a kind comparable to the Work.
- 8.3 Unless otherwise expressly provided in these Instructions to Tenderers, the Owner is entitled, in its sole discretion, to waive any informality, incompleteness or error in any Tender.
- 8.4 Unless otherwise expressly provided in these Instructions to Tenderers, and without limiting the generality of IT 8.1, 8.2 or 8.3, the Owner may, but is not required to, in its sole discretion, reject any Tender which
 - (a) is conditional or obscure in any respect,
 - (b) does not conform strictly with the requirements of the Contract Documents, or
 - (c) is not accompanied by the Tender security required by IT 7.

IT9. LOCAL PREFERENCE

- 9.1 A policy for local preference does not exist within the M.D. of Bonnyville No. 87.

IT 11.30. CONTRACT AWARD

11.30.1 The Contract is awarded and entered into without further act of either the Owner or the Tenderer when the Owner delivers to the successful Tenderer a Notice of Award. Notice of Award must be given in writing in accordance with the notice requirements set out in the General Conditions and is not effective unless and until given that manner. Before the Contractor begins the Work, and as a condition precedent to the right of the Contractor to begin the Work, the Contractor must execute and deliver the Form of Contract to the Owner. If the Form of Contract is not executed and delivered within ten days after the Notice of Award has been given the Owner is entitled in his sole discretion to give notice to the Contractor terminating the Contract upon delivery of that Notice.

Further to section 9.1 should local haulers who wish to provide service to this contract may do so at the agreed upon contract price no exceptions.

IT 11. INSURANCE AND BONDING

11.1 Not less than two days before the Contractor begins the Work, the Contractor must deliver to the Owner each of the following:

- (a) any performance security required by the General Conditions,
- (b) certificates of the insurance required by the General Conditions,
- (c) proof, satisfactory to the Owner, that the Contractor is registered with the Worker's Compensation Board of Alberta and that all assessments and other amounts payable by the Contractor to that Board are fully paid up to the last required payment.

11.2 The Contractor agrees with the Owner that failure by the Contractor to perform its obligations under this IT 11, under IT 11.30, or under GC 2, regarding beginning the Work, is a repudiatory breach of the Contract that entitles, but does not oblige, the Owner to treat the Contract as terminated and, without affecting any other right or remedy the Owner may have against the Contractor, award the Contract to another Tenderer.

IT 12. NO PUBLIC LAW DUTY

12.1 The Tenderer agrees that in conducting this Tender process, including in relation to any decision or exercise of discretion or other action by the Owner (including the Director of Transportation and Utilities in respect of this Tender process, there is no public law duty of fairness or natural justice toward the Tenderers.

IT 13. EXCLUSION OF PROCEDURES AND GUIDELINES

- 13.1** In the tendering, award and performance of the Contract, the Owner does not adopt or agree to be bound by any procedure or guidelines recommended, adopted or produced by any government, or by any construction association or body.

IT 14. FREEDOM OF INFORMATION LEGISLATION

- 14.1** Each Tenderer acknowledges and agrees that part or all of their Tenders may be subject to disclosure under the *Freedom of Information and Protection of Privacy Act* (Alberta). A Tenderer that wishes to protect its Tender from disclosure should specifically identify information within the Tender that constitutes a trade secret, or business or commercial information, that it is explicitly supplied in confidence and the release of which could significantly harm the competitive position, or interfere with the negotiating position, of the Tenderer. The Tenderer acknowledges and agrees that the Owner cannot assure the Tenderer that information contained in a Tender will remain confidential and will not be disclosed, since the *Freedom of Information and Protection of Privacy Act* (Alberta) may require disclosure of that information. Each Tenderer acknowledges and agrees that it is solely responsible to determine whether that legislation will protect any information contained in the Tender from disclosure.

IT15. GENERAL PROVISIONS

- 15.1** The Tender constitutes a contract between the Tenderer and the Owner on the terms and conditions of these Instructions to Tenderers and of the Tender Form, which terminates on either the award of the Contract or the rejection of the Tender or all Tenders, as the case may be, but which does not merge with the Contract as against the Contractor. If there is any conflict or inconsistency between the terms of these Instructions to Tenderers and the terms of the Contract, the terms of the Contract prevail.
- 15.2** The obligations of the Contractor are joint and several obligations of each of the persons who have submitted the Tender as the Tenderer or as members of a joint venture or partnership comprising the Tenderer.
- 15.3** In the Contract, any act, decision, consent or exercise of discretion by a party must be performed, made or exercised acting reasonably unless the Contract expressly provides that the act, decision, consent or exercise of discretion is in the "sole discretion" of that party, in which case that party is under no duty to act fairly, reasonably or in good faith and may act unreasonably, in its absolute unfettered discretion.

END OF INSTRUCTIONS TO TENDERERS

M.D. OF BONNYVILLE NO. 87
2016 Summer Gravel Haul Tender
TENDER FORM

(Name of Tenderer)

(Address of registered office of Tenderer)

agrees with the Owner as follows:

1. CONTENTS OF TENDER DOCUMENTS

The Tender Documents for this Tender are this Tender Form, the Note to Bidders, the Invitation for Tenders, the Instructions to Tenderers, General Conditions, Insurance Conditions and Specifications. These documents will be the Contract Documents and will govern the parties' rights and obligations.

2. INTERPRETATION

Capitalized words and expressions used in this Tender Form have the meanings given in this Tender Form, in the Instructions to Tenderers or the General Conditions, as the case may be.

3. OFFER

In accordance with the Instructions to Tenderers, the Tenderer offers to the Owner, being the Municipal District of Bonnyville No.87,

- (a) to contract to perform and complete the Work, generally described above and particularly described in the Tender Documents, for the price set out below in this Tender Form and on the terms and conditions of the Contract Documents; and
- (b) perform the obligations, under section 3(a) ***commencing on April 15, 2016 or a date mutually agreed upon by the contractor and the MD of Bonnyville.*** The specific completion date for the aforementioned project is October 31, 2016.

4. AGREEMENT

The Tenderer agrees that:

- (a) the Tenderer must complete the Work on or before the Completion Date,
- (b) the Tenderer's offer to contract is made on the terms and conditions of the Contract Documents and, if the Tenderer is awarded the Contract, the Contract contains those terms and conditions,
- (c) the Tenderer must provide the following security, and as may otherwise be directed in the Specifications;

<u>Bid Bond, Certified Cheque or Cash Equivalent</u>	<u>Performance Bond, Certified Cheque or Cash</u>	<u>Labour and Material Payment Bond, Certified Cheque or Cash</u>
\$20, 000	\$11.30,000	\$11.30,000

- (d) this Tender supersedes and cancels all communications, negotiations and agreements relating to the Work other than contained in this Tender and the Contract, if awarded to the Tenderer,
- (e) this Tender is irrevocable and may not be withdrawn for a period of 30 days following the Closing Time, but that 30 day period may be extended to 60 days by the Owner, in its sole discretion, if the Tenderer is so notified within 15 days after the Closing Time,
- (f) if a Tender security deposit is provided with this Tender and the Contract is awarded to the Tenderer, the security may, in the Owner's sole discretion, be forfeited if the Tenderer refuses or fails to substantially begin the Work, as determined by the Owner's Representative in his or her sole discretion within 11.30 days after Notice of Award is given to the Tenderer, or within such greater period as the Owner's Representative may allow in his or her sole discretion,
- (g) if a Notice of Award is given to the Tenderer by the Owner, a binding Contract between the Tenderer and the Owner is created on the terms and conditions of the Contract Documents (see section 1 of this Tender Form),
- (h) any lump sum price tendered in section 5 is in Canadian funds and includes Canadian customs duties, taxes, royalties, handling, transportation, overhead,

profit, and all other costs and charges without limitation, **except federal goods and services tax, which is extra,**

- (i) any unit prices tendered in section 6 are in Canadian funds and include Canadian customs duties, taxes, royalties, handling, transportation, overhead, profit, and all other costs and charges without limitation, **but not including federal goods and services tax, which is extra,** and
- (j) this Tender is made on the terms and conditions of the Tender Documents.

5. LUMP SUM PRICE

If the Invitation to Tender requires submission of a lump sum price, the Tenderer agrees that the lump sum price for the Work is that set out in Appendix A to this Tender Form.

6. UNIT PRICES

If the Invitation to Tender requires submission of unit prices, the Tenderer agrees that the unit prices for the Work are those set out in Appendix A to this Tender Form.

7. LIST OF SUBCONTRACTORS AND SUPPLIERS

The Tenderer must list in Appendix B to this Tender Form all sub-contractors and material suppliers the Tenderer will use for the Contract.

8. CONSTRUCTION SCHEDULE

As required by the M.D. Road Works – Schedule is based on weather conditions – to be coordinated with the requirements of the Transportation and Utilities department.

9. ADDENDA

The Tenderer acknowledges receipt of the following Addenda and agrees that this Tender has been completed in accordance with them:

Addenda Nos.

11.30. BID PROCESS

For the purposes of awarding the contract, the contractor shall provide total costs in the appropriate column on the Tender Form, and totaled accordingly. This is due to the fact that the M.D. recognizes that the unit weights vary between the Coldmix product and the crushed gravel material. The actual haul amounts, as recorded by the M.D. of Bonnyville,

shall be paid at the unit bid price, as listed in the Tender Form. The M.D. of Bonnyville makes no representation that the estimated bid quantities, as shown in the Tender Form, will be equal to or greater than the final quantities as measured at the completion of the contract.

The sole purpose for the inclusion of the estimated quantities and the total values **are for comparative purposes only in the awarding of the contract, and shall not be represented or mean to represent the total value of the contract.** Refer to Special Provisions for measurement and payment instruction.

11. EXECUTION BY TENDERER

TENDERER'S FULL AND CORRECT LEGAL BUSINESS NAME, TELEPHONE NUMBER AND ADDRESS
(Print or type)

Telephone Number: _____

[EACH TENDERER THAT IS A CORPORATION MUST SIGN USING THE FOLLOWING FORM AND ITS CORPORATE SEAL MUST BE AFFIXED]

THE COMMON SEAL OF _____)
_____)
WAS AFFIXED TO THIS DOCUMENT IN)
THE PRESENCE OF ITS)
AUTHORIZED SIGNATORIES:)
Name: _____) (C/S)
Title: _____)
Name: _____)
Title: _____)
Date executed: _____)

[EACH TENDERER WHO IS AN INDIVIDUAL MUST SIGN USING THE FOLLOWING FORM AND HIS OR HER SIGNATURE MUST BE WITNESSED]

SIGNED, SEALED AND DELIVERED BY _____)
_____)
(Name of Tenderer))
IN THE PRESENCE OF THE FOLLOWING)
WITNESS:)
_____)
Signature of Witness) Signature of Tenderer
_____)
Name of Witness (please print))
_____)
Address of Witness (please print)
Date executed: _____)

**APPENDIX A
SCHEDULE OF UNIT PRICES**

Description	<i>Bid Total (\$/Tonne/mile)</i>
Hauling and Placement of Cold mix, Hot Mix and gravel material from various locations, to various sites utilizing maximum 30 tonne hauling units as directed by the M.D. of Bonnyville. Quantities for the 2016 season are estimated at 150,000 tonnes.	

- a) Hauling of hot mix from the plant location to the project specific location will be paid - tonne/mile.
- b) In case, the truck driver did not show up at the hot mix plant for a load pickup, the cost of product wasted will billed to the contractor.

Please note these examples:

- 1. 15.0 cents/tonne/mile should be presented as **\$.15/tonne/mile**
- 2. 15.1 cents/tonne/mile should be presented as **\$.151/tonne/mile**

The aforementioned is only presented as a guiding principle and does not reflect an expected/actual value.

APPENDIX B

LIST OF SUPPLIERS AND SUBCONTRACTORS

Unit # of Truck (Lic. Plate Number)	NAME OF SUBCONTRACTOR OR SUPPLIER	ADDRESS OF SUBCONTRACTOR OR SUPPLIER

APPENDIX C

[Insert Construction Schedule]
END OF TENDER FORM

Municipal District of Bonnyville No. 87- 2016 Summer Gravel Haul

FORM OF CONTRACT

This Agreement dated for reference _____, 2016 is

BETWEEN:

Municipal District of Bonnyville No.87, a municipality,
4905 – 50 Ave. Bonnyville, Alberta T9N 2J7

(the "Owner")

AND:

("Contractor")

This Agreement is evidence that in consideration of the promises exchanged below, the Owner and the Contractor agree with each other as follows:

1. In this Agreement, any word or expression with a capitalized first letter that is not defined in this Agreement has the meaning given to it in the General Conditions appended to this Agreement.
2. Subject to the terms and conditions of the Contract, the Contractor agrees to perform the Work in accordance with the Contract in consideration of the payments to be made by the Owner to the Contractor.
3. The Owner agrees to pay the Contractor for performance of the Work, subject to the terms and conditions of the Contract, in the amounts and in the manner specified by the Contract.

As evidence of their agreement to be bound by the above terms and conditions, the parties have executed and delivered this Agreement on the dates set out below:

MUNICIPAL DISTRICT OF BONNYVILLE #87 by its)
authorized signatories:)

Reeve)

C/S

Municipal Manager)

_____ by its)
authorized signatories:)

Name:)

C/S

Name:)



GENERAL CONDITIONS

Municipal District of Bonnyville # 87
4905 – 50 Avenue, Bag 11.3011.30
Bonnyville, Alberta
T9N 2J7

GENERAL CONDITIONS
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GC1. DEFINITION OF TERMS, DOCUMENT PRECEDENCE AND DISCRETION

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 - (ii) an addition to or revision of the Work which is within the general scope of the Contract

but does not, in either of the above cases, include a variation in quantity of unit price items.

1.2 If the Owner does not designate anyone in the Notice of Award as the Owner's Representative for the Contract, the Director of Transportation and Utilities of the Owner is the Owner's Representative.

1.3 If there is any conflict or inconsistency within or between any of the Contract Documents, the following order of priority among documents, proceeding from highest to lowest priority, applies, and a Contract Document with higher priority prevails over a Contract Document with lower priority to the extent of any conflict or inconsistency:

- (a) any Special Conditions
- (b) General Conditions;
- (c) specifications included within the Specifications;
- (d) drawings included within the Specifications;

- (e) drawings of larger scale prevail over drawings of smaller scale of the same date;
- (f) dimensions shown on drawings prevail over dimensions scaled from drawings;
- (g) later dated documents prevail over earlier documents of the same kind;
- (h) Tender Form; and
- (i) Instructions to Tenderers.

1.4 In respect of the Contract, any act, decision, consent or exercise of discretion by a party must be performed, made or exercised acting reasonably unless the Contract expressly provides that the act, decision, consent or exercise of discretion is in the "sole discretion" of that party, in which case that party is under no duty to act fairly, reasonably or in good faith and may act unreasonably, in its absolute and unfettered discretion.

1.5 For clarity, the Contractor and the Owner agree that the terms and conditions of the Contract are as set out in these General Conditions and in the other Contract Documents.

GC2. CONTRACTOR'S GENERAL OBLIGATION

The Contractor at its risk and expense must perform the Work to Completion, including by doing everything, and supplying all personal property, necessary to do so, in accordance with the Contract Documents and on or before the Completion Date. Without limiting the generality of the foregoing, the Contractor must use only new materials in performance of the Work and must perform the Work applying generally accepted best standards and practices in the Alberta construction industry for work such as the Work.

GC3. ASSIGNMENT AND SUBCONTRACTING

The Contract may not be assigned without the prior written consent of the Owner's Representative, and none of the Work may be sub-contracted by the Contractor without the prior written consent of the Owner's Representative, except to the extent, if any, the Contractor listed sub-contractors or suppliers in the Contractor's Tender and uses those sub-contractors or suppliers. Every sub-contract must incorporate all the terms and conditions of this Contract as far as reasonably

applicable and with the necessary changes. Without limiting the generality of GC 11.30, if the Contractor uses a sub-contractor or supplier not listed in the Contractor's Tender, the Owner's Representative may in his or her sole discretion terminate the Contract in accordance with GC 10.

GC4. CONTROL OF WORK AND SUPERVISION

- 4.1** The Contractor is solely responsible for proper performance of the Work to Completion in accordance with GC 2 and the rest of the Contract Documents and must effectively direct and supervise the Work so as to ensure Completion. Without limiting the generality of the foregoing, the Contractor is solely responsible for construction means, methods, techniques, sequences, and procedures and for coordinating the various parts of the Work during its performance. The Contractor must keep a qualified competent and experienced superintendent on the site of the Work at all times during the performance of the Work, unless otherwise authorized in writing by the Owner's Representative. The superintendent must supervise and direct performance of the Work in accordance with the Contract Documents. The superintendent must be qualified, competent and experienced and be acceptable to the Owner's Representative and must have the authority to receive on behalf of the Contractor any communication in respect of the Contract. Any superintendent or worker not acceptable to the Owner's Representative because of incompetence, improper conduct or security risk must be removed from the site of the Work and replaced at once if the Owner's Representative so requires.
- 4.2** The Contractor must at all times monitor the progress of the Work in relation to the Construction Schedule and must update the Construction Schedule whenever required by the Owner's Representative in order to ensure that Completion will be reached on or before the Completion Date. The Contractor must at all times keep the Owner's Representative informed as to the progress of the Work, including in relation to the Construction Schedule, and must provide the Owner's Representative with all records and documentation the Owner's Representative from time to time requires be provided in relation to performance of the Work and the Construction Schedule.
- 4.3** The Contractor must at all times keep the Work site neat and clean and, without limiting the generality of the foregoing, must daily remove all waste material that originates from the Work and dispose of it in accordance with all applicable enactments. After Completion, the Contractor must promptly remove from and around the Work site any waste materials, personal property and equipment and must leave the Work site neat, clean and in a safe condition.

GC5. COOPERATION WITH OTHER CONTRACTORS

The Contractor must cooperate fully with other contractors or workers sent onto the site of the Work by the Owner's Representative. If presence on the Work site of other Contractors and works could not have been reasonably foreseen by the Contractor when entering into the Contract, and if, in the opinion of the Owner's Representative, the Contractor has incurred additional expense by such action, and the Contractor has given written notice of claim within 30 days of such action, the Owner must pay the additional expense to the Contractor calculated in accordance with GC 20.

GC6. OWNER'S REPRESENTATIVE

The Owner's Representative has the Owner's authority to act on the Owner's behalf with respect to the Contract and, without limiting the generality of the foregoing, the Owner's Representative is entitled:

- (a) to have access to and inspect the site of the Work, and the Work, at all times and the Contractor must provide the Owner's Representative with full information and assistance so the Owner's Representative may ensure that the Work is performed in accordance with the Contract,
- (b) to decide whether anything has been done as required by the Contract or to decide what the Contractor is required by the Contract to do, including questions as to the acceptability of the quality and quantity of any labour, equipment or material used in the Work and the timing and scheduling of the Work,
- (c) in the Owner's Representative's sole discretion, to order additional Work or dispense with or change all or any part of the Work,
- (d) for the purposes of progress payments and final payment, to determine the actual quantities of the Work, where the Contract is a unit price contract, and certify the amounts payable to the Contractor, and
- (e) if the Owner's Representative determines that the Contractor is not performing the Work in accordance with the Construction Schedule, or is otherwise not performing the Work in a manner that will permit Completion on or before the Completion Date, to give notice to the Contractor directing the Contractor to do everything necessary, including as may be specified in

that notice, to expedite performance of the Work in order to reach Completion on or before the Completion Date.

The Contractor must comply with any determination, decision or direction of the Owner's Representative given under this section.

GC7. DELAY, NON-COMPLIANCE OR BREACH BY THE CONTRACTOR

- 7.1** If the Contractor delays in the commencement, performance or completion of the Work, fails to comply with a direction or decision of the Owner's Representative, or is otherwise in breach of the Contract, then, subject to GC 8.2, the Owner's Representative may, at the Contractor's expense, do such things as the Owner's Representative deems necessary to correct the Contractor's breach, including by causing the Work to be performed by the Owner's forces or by another party. The Contractor must reimburse the Owner for all costs, expenses and damage incurred or sustained by the Owner by reason of the Contractor's breach or in correcting the breach.
- 7.2** If the Contractor's delay, failure or Contract breach continues for 5 days after notice of it has been given to the Contractor by the Owner's Representative and the Contractor is not, in the sole opinion of the Owner's Representative, diligently proceeding with a cure of the breach to the Owner's Representative's satisfaction, the Owner's Representative may, without it constituting termination of the Contract, take all or any part of the Work out of the Contractor's hands and may employ such means as the Owner's Representative considers desirable to perform the Work or part of it. The Owner's Representative must consult with the Owner before taking the Work out of the Contractor's hands. The cost of performing the Work, or part of it, taken out of the Contractor's hands must be deducted from any balance of the Contract Price not yet payable to the Contractor. If the cost of performing the Work, or part of it, taken out of the Contractor's hands exceeds any balance of the Contract Price not yet paid, the excess is a debt due and owing by the Contractor to the Owner.
- 7.3** Without limiting the generality of GC 8.1, if the Owner's Representative at any time determines that the Contractor is not performing the Work in accordance with the Construction Schedule, so that Completion will not be reached on or before the Completion Date, GC 8.1 applies.

GC8. CHANGES IN SOIL CONDITIONS AND DELAY BY THE OWNER

8.1 Subject to GC 8.2(a)(i), the Contractor agrees that it is the sole responsibility and risk of the Contractor to examine the Work site and the actual Work site conditions, including soil conditions, before beginning performance of the Work and the Contractor represents and warrants to, and agrees with, the Owner that the Contractor is for all purposes conclusively to be considered to have conducted an examination of the Work site and to have informed itself as to the risks and contingencies, and all other data, matters and things, respecting the Work site and any other aspects of the Work necessary to properly perform the Work to Completion. Any failure by the Contractor to do any of the matters just described does not relieve the Contractor of the obligation to properly perform the Work to Completion.

8.2 No payment is to be made to the Contractor for any expense, loss or damage incurred for any reason unless

- (a) the Owner's Representative certifies, in the Owner's Representative's sole discretion, that the expense, loss or damage is caused by
 - (i) a substantial difference between the actual Work site conditions, including soil conditions, and the Work site conditions indicated by the Specifications, and the Owner's Representative certifies that the difference could not, in light of GC 8.1, reasonably have been identified or anticipated by the Contractor; or
 - (ii) neglect or delay by the Owner, occurring after the date of delivery of the Notice of Award, in providing any information or doing any act which is required expressly by the Contract; and
- (b) the Contractor has, within 5 days after that discovery or event, given written notice to the Owner's Representative of a claim for the expense, loss or damage.

The amount of any payment to be made under this GC is to be calculated in accordance with GC 19.

8.3 If in the opinion of the Owner's Representative any difference in Work site conditions referred to in GC 8.1(a)(i) results in a saving of expense to the Contractor, the Contract price is to be decreased commensurately and the amount of that saving is a debt due and owing by the Contractor to the Owner.

GC9. INSPECTION AND REPLACEMENT

- 9.1** The Owner's Representative may inspect or test the Work performed under the Contract at any time. The Contractor must give the Owner's Representative sufficient notice of any approaching stage of the Work that could prevent the Owner's Representative from inspecting or testing the Work, in order to enable the Owner's Representative to properly inspect or test the Work. Whenever required by the Owner's Representative, the Contractor must open up and expose any part of the Work for inspection or testing.
- 9.2** The Owner's Representative may require the Contractor to submit clearly marked samples and test specimens of equipment or materials intended to be incorporated, or incorporated in the Work in the quantity and size necessary to allow proper inspection and testing of the samples and specimens. The Contractor must whenever required by the Owner's Representative deliver the manufacturer's specifications and any other information respecting the equipment or materials the Contractor intends to incorporate in the Work.
- 9.3** The obligations of the Contractor under the Contract are not affected by any inspection, testing or acceptance of equipment or materials by the Owner's Representative or by the failure of the Owner's Representative to inspect or test equipment or materials.
- 9.4** Without affecting GC 16, the Contractor must promptly, on the direction of the Owner's Representative:
- (a) remove and replace, or remove and modify, any part of the Work that the Owner's Representative determines is not in accordance with the Contract, in order to make it in accordance with the Contract;
 - (b) restore all Work, and the work of others, that is disturbed or damaged in the course of removal, replacement or modification of unsatisfactory Work; and
 - (c) bear all risks and expenses connected with performance by the Contractor of any acts under GC 9.4(a) or (b), or both.
- 9.5** If the Owner's Representative determines that the Contractor has not performed its obligations under GC 9.4 promptly, the Owner may perform those obligations at the expense of the Contractor.

GC10. SUSPENSION OR TERMINATION OF CONTRACT

- 10.1** The Owner's Representative may give notice to the Contractor suspending the Contract at any time for convenience and the Contractor must comply with that notice immediately by ceasing performance of the Work. Upon ceasing performance of the Work, the Contractor must take all steps reasonably necessary to protect all portions of the Work from damage or destruction by natural or human causes. If the Owner's Representative suspends the Work for 30 days or less, the Contractor must complete the Work when called upon to do so. If the Owner's Representative suspends the Work for a period in excess of 30 days, the Contractor may request the Owner's Representative to terminate the Contract and GC 11.30.2 applies.
- 10.2** Despite the rest of the Contract, the Owner's Representative may terminate the Contract for convenience, in the Owner's Representative's sole discretion, or the Owner's Representative may terminate the Contract for cause, because of any breach of the Contract by the Contractor, the insolvency of the Contractor, or the commission of an act of bankruptcy by the Contractor. If the Owner terminates the Contract for cause, the obligation of the Owner to make payments to the Contractor ceases and no further payment is due to the Contractor unless the Owner's Representative certifies that the payment is a progress payment due and owing to the Contractor in accordance with GC 21, in which case that GC applies, but the Owner is still entitled to deduct from any such payment any damages or loss caused to the Owner by the Contractor's breach of the Contract, insolvency or bankruptcy. Termination under this GC does not relieve the Contractor of any Contract obligations other than the Contractor's obligation to complete the Work. If the Owner terminates the Contract for cause, the Owner may complete the Work as the Owner's Representative considers desirable and all costs and damages incurred by the Owner to complete the Work must be paid by the Contractor to the Owner at once on demand.

GC11. BOND NOTICE

If a labour and material payment bond is required under the Contract, the Contractor must post on the site of the Work a notice of the bond's existence, which must include the name and address of the surety, a definition of the persons protected by the bond and an outline of the procedure for submitting a claim.

GC12. RECORDS TO BE KEPT

The Contractor must throughout performance of the Work, and for a period of two years from the Completion Date, maintain and keep full documentation (including accounts) and information in respect of the performance of, and the Contractor's estimates of actual costs of, the Work and make them available for copy, audit or inspection by any persons acting on behalf of the Owner.

GC13. EXTENSION OF TIME

The Owner's Representative may, in the Owner's Representative's sole discretion, at the request of the Contractor before the Completion Date extend the time for Completion. Whether or not the Owner's Representative grants an extension, the Contractor must, except to the extent that the Owner's Representative determines that the need for an extension was due to causes beyond the reasonable control of the Contractor, pay to the Owner:

- (a) an amount equal to inspection costs relating to the Work incurred by the Owner after the original Completion Date; and
- (b) compensation for any cost, loss or damage to the Owner caused by failure of the Contractor to complete the Work by the original Completion Date.

GC14. OWNER'S REPRESENTATIVE'S CERTIFICATES

On the day that the Work has reached Completion, and the Contractor has complied with the Contract, to the satisfaction of the Owner's Representative, the Owner's Representative must issue to the Contractor a Certificate of Completion. If the Owner's Representative determines that the Work is incomplete, or that there are defects in the Work, the Owner's Representative may give notice to the Contractor requiring the Contractor to complete the Work or correct the defects, at the Contractor's expense, and the Contractor must do so at once. The Owner's Representative is not obliged to issue the Certificate of Completion until the Work has reached Completion and all defects have been rectified to the satisfaction of the Owner's Representative and in accordance with the Contract Documents. If the Contract is a unit price contract, the Owner's Representative must at the same time as the Certificate of Completion is issued issue a certificate of measurement setting out the final quantities of Work items actually performed in the Work in respect of the classes of units set out in the Tender Form, and any amendments to the Tender Form that may have been agreed to by the Owner, in its sole

discretion, and the Contractor, and that certificate is binding upon the Contractor and the Owner.

GC15. CLEANING OF WORK

At its expense, the Contractor must, upon Completion of the Work, clear and clean the Work and the Work site to the satisfaction of, and in accordance with any directions of, the Owner's Representative.

GC16. WARRANTY AND RECTIFICATION OF DEFECTS

The Contractor warrants and guarantees to the Owner that the Work is free from all defects arising from faulty construction, manufacturing, installation, materials or workmanship which appear within 12 months after the date on which the Certificate of Completion is issued or such longer period, but not shorter, as may be specified in the Contract Documents. The Contractor must, promptly after notice from the Owner's Representative, and within such time as is specified in that notice, rectify at the Contractor's risk and expense any defects or faults which appear in the Work within 12 months after the date on which the Certificate of Completion is issued or such longer period, but not shorter, as may be specified in the Contract Documents. The Contractor warrants and guarantees that any remedial work performed under this section is free from all defects arising from faulty construction, manufacturing, installation, materials or workmanship and the rest of this GC applies, with the necessary changes, to remedial work.

GC17. WORK CHANGES

- 17.1** At any time after the Notice of Award, but before issuance of the Certificate of Completion, the Owner's Representative may give notice to the Contractor ordering the Contractor to perform a Work Change and the Contractor must promptly after the notice is given begin performance of that Work Change and prosecute it to Completion in accordance with the notice.
- 17.2** Any Work Change is, for all purposes of the Contract, considered to be part of the Work and all of the provisions of the Contract apply to that Work Change.
- 17.3** The Contractor is entitled to be paid for any Work Change that is an addition to or revision of the Work, but not any Work Change which is a deletion from the Work. The Contractor is entitled to be paid for any Work Change in accordance with the GC 18.2(b).

GC18.PRICE CALCULATION AND ADJUSTMENTS

18.1 The Contractor acknowledges and agrees that quantities of the Work set out in the Contract Documents are estimates only and that the Owner has made no representation, and gives no warranty or covenant, that the actual quantities of Work performed by the Contractor will be the same as those estimated.

18.2 If the Contract is a unit price contract:

- (a) the amount payable to the Contractor for the Work is to be calculated by multiplying the unit prices set out in the Tender Form by the actual quantities of Work of such units as certified by the Owner's Representative in the certificate of measurement,
- (b) the Owner and the Contractor may, by agreement in writing,
 - (i) add to the unit price items in the Tender Form other items of Work, classes of labour, units of measure, estimated quantities or prices per unit, and
 - (ii) if the actual quantities certified by the Owner's Representative exceed or are less than the estimated quantities in respect of any unit price item shown in the Tender Form by more than 20%, amend the unit prices for such items, but if the actual quantities exceed or are less than the estimated quantities by more than 20%, any amendment to the unit prices applies only to the actual quantities in excess of or less than 120% of the estimated quantities,
- (c) where the Owner's Representative and the Contractor fail to agree on the amount of any adjustment as contemplated by this GC, the revised or new prices per unit must be determined in accordance with GC 19,
- (d) the Contractor is entitled to be paid for any Work Change in accordance with unit prices set out in the Tender Form for the items of Work within the Work Change, with the Owner's Representative being responsible for certification of actual quantities of those unit prices performed in the Work Change as provided in GC 14. If the unit price items in the Tender Form do not contain items of Work, classes of labour, or units of measure, contained in the Work Change, GC 18.2(b) applies; and

- (e) the Contractor is entitled to be paid for excavation of any material only to neat lines of excavation as stipulated in the Specifications.

18.3 If the Contract is a lump sum contract:

- (a) the amount payable to the Contractor for the Work is the lump sum set out in the Tender Form, and
- (b) if the Contractor is ordered to perform a Work Change, the amount payable to the Contractor for performance of the Work Change is to be the amount agreed upon by the Owner and the Contractor, but if the Owner and the Contractor cannot agree on that amount, the amount payable is to be the total of the reasonable and proper costs incurred, or legally payable, by the Contractor directly attributable to Completion of the Work Change, as certified by the Owner's Representative, plus 11.30% of those costs to cover profit and overhead, including finance and interest charges.

GC19. DETERMINATION OF ADDITIONAL PAYMENT

No amount in addition to the Contract price determined under GC 18 is payable to the Contractor in respect of performance of the Work and the Contract unless these General Conditions expressly provide otherwise. If these General Conditions expressly provide otherwise, any such amount must, if the Contract is a unit price contract, be based on the unit prices set out in the Tender Form, with the amount not to exceed that calculated by multiplying the relevant unit prices by actual quantities of Work, as certified by the Owner's Representative. Where the amount is in respect of delay caused to the Contractor, the Owner's Representative and the Contractor may agree on the amount payable. Failing such agreement, the amount payable is to be the total reasonable and proper costs incurred, or legally payable, by the Contractor directly attributable to the matter in question, as certified by the Owner's Representative, plus 11.30% of those costs to cover profit and overhead, including finance and interest charges.

GC20. NO ADDITIONAL PAYMENTS

The amount payable to the Contractor under the Contract must not be increased or decreased because of any increase or decrease in the cost of the Work brought about by an increase or decrease in the cost of equipment, services, labour or materials, except if any tax or levy that affects the cost of any materials incorporated in or to be incorporated in the Work imposed under the *Excise Act* (Canada), the *Excise Tax Act* (Canada), the *Old Age Security Act* (Canada), the

Customs Act (Canada) Tariff is made public after the Closing Time an appropriate adjustment may be made in the Owner's sole discretion.

GC21. PAYMENTS

- 21.1** If the Contract price is \$5,000.00 or less, the Contractor is entitled to payment only after the Certificate of Completion has been issued.
- 21.2** If the Contract price exceeds \$5,000.00, the Contractor is entitled to receive progress payments by submitting progress claims at monthly intervals, which must be approved by progress payment certificates issued by the Owner's Representative at monthly intervals. The Owner's Representative must not issue a progress payment certificate unless the Contractor's progress claim is accompanied by a statutory declaration sworn by a knowledgeable person on behalf of the Contractor, and by any further proof the Owner's Representative may require in the Owner's Representative's sole discretion, that all financial obligations, debts and payments payable by the Contractor in respect of the part of the Work that has been performed to the date of the Contractor's progress claim have been fully paid and that the Contractor is not aware of any actual or possible claims of builder's lien or other claims in respect of that part of the Work. The Contractor's progress claim must also be accompanied by proof satisfactory to the Owner's Representative, in the Owner's Representative's sole discretion, that all assessments payable by the Contractor to the Workers' Compensation Board of Alberta are fully paid up to the last required payment and that all remittances due to the Government of Canada under the *Income Tax Act (Canada)* are current up to the last required payment. The statutory declaration must be in the form set out in Appendix A to these GCs. If the statutory declaration is not provided, and in that form, the Contractor is not entitled to any payment.
- 21.3** The amount to be paid to the Contractor for a progress payment is not to exceed 85% of the value of the Work certified by the Owner's Representative in the progress payment certificate as having been completed since the date of the immediately preceding progress payment certificate, if any. If a labour and material payment bond has been provided by the Contractor under the Contract, a progress payment is not to exceed 90% of the value of the Work certified by the Owner's Representative in the progress payment certificate.
- 21.4** The amount of a progress claim becomes due and payable to the Contractor 40 days after receipt by the Owner's Representative of the progress claim, but only if the Contractor has complied with GC 21.2

- 21.5** Despite the rest of the Contract, the holdback amounts under GC 21.3, and the balance of the Contract Price remaining after any progress payments under GC 21.2, become due and payable to the Contractor 45 days after the date of the Certificate of Completion, but only if the Contractor has submitted to the Owner's Representative a statutory declaration sworn by a knowledgeable person on behalf of the Contractor, and by any further proof the Owner's Representative may require in the Owner's Representative's sole discretion, that all financial obligations, debts and payments payable by the Contractor in respect of the part of the Work that has been performed to the date of the Contractor's claim have been fully paid and that the Contractor is not aware of any actual or possible claims of builder's lien or other claims in respect of that part of the Work. The Contractor's claim must also be accompanied by proof satisfactory to the Owner's Representative, in the Owner's Representative's sole discretion, that all assessments payable by the Contractor to the Workers' Compensation Board of Alberta are fully paid up to the last required payment and that all remittances due to the Government of Canada under the *Income Tax Act* (Canada) are current up to the last required payment. The statutory declaration must be in the form set out in Appendix B to these GCs. If the statutory declaration is not provided, and in that form, the Contractor is not entitled to any payment.
- 21.6** No payment is payable to the Contractor under GC 21 if a claim of builder's lien has been made, or is in reasonable prospect, before expiry of the 41 days, in which case the Contractor must do everything necessary, at the Contractor's expense, including by institution and prosecution of legal proceedings, to obtain the discharge of any claim of builder's lien, or other encumbrance from title to any land upon which the Work is located and the provisions of the *Builder's Lien Act* (Alberta), and any successor legislation, apply with respect to the holdback.
- 21.7** Delay by the Owner in making a payment is not a breach of the Contract, but, subject to the rest of GC 21, if payment of any progress payment under GC 21 is not made when due, the Contractor is entitled to interest on the amount overdue and the Owner must, when making payment of the amount overdue, pay to the Contractor interest on the amount overdue, calculated for the period of the delay at the Royal Bank of Canada's prime commercial rate of interest then in effect.
- 21.8** Without affecting any other right or remedy the Owner may have against the Contractor, the Owner may set off and deduct from amounts payable or accruing due to the Contractor, including any holdback, an amount equivalent to:
- (a) any expense, loss or damage caused to the Owner by any breach of the Contract by the Contractor;

- (b) any expense, loss or damage caused to the Owner by any breach by the Contractor of another contract with the Owner or by any legal wrong of the Contractor;
- (c) any debt owed to the Owner by the Contractor, and the Contractor agrees that if, in accordance with the Contract, the Owner performs an obligation of the Contractor under the Contract, the expense to the Owner of doing so is considered for all purposes, including this GC, to be a debt owed to the Owner by the Contractor.

GC22. INDEMNIFICATION

The Contractor must indemnify and hold harmless the Owner, its elected officials, officers, agents and employees (including the Owner's Representative and the Director of Operations), from and against all liabilities, losses, damages, personal injury, death, property loss or damage, actions, causes of action, costs (including legal fees and costs) or expenses in connection with loss of, or damage or injury (including death) to, any person or property or any other loss or damage that occurs in the course of the performance of the Contract, whether suffered, incurred or made by the Contractor or an employee of the Contractor or by a third person and whether or not caused through or resulting from a wilful or negligent act or omission or breach or default or other actionable wrong of the Contractor, its officers, agents, employees, or subcontractors, or any of their officers, agents or employees, and at its expense the Contractor must defend any and all actions and pay all damages and legal costs and other costs arising therefrom.

GC23. PROPERTY OF THE OWNER

The Contractor is responsible for any loss of or damage to, excluding reasonable wear and tear, any property of the Owner arising out of the performance of the Contract.

GC24. BYLAWS AND PERMITS

The Contractor must comply with all statutes, laws and regulations relating to, and obtain all permits and licenses required for, the Work, whether federal, provincial or municipal.

GC25. WORKPLACE SAFETY AND ENVIRONMENTAL MATTERS

Without limiting the Contractor's obligations under GC 24, the Contractor must:

- (a) comply with all applicable enactments respecting workplace health and safety, including the *Workers Compensation Act* (Alberta) and regulations, policies and orders under it, and the Workplace Hazardous Materials Information System; and
- (b) perform the Work in accordance with all applicable enactments respecting environmental protection, including soils contamination and, without limiting the generality of the foregoing, the Contractor must do everything reasonably necessary to ensure that the Work is performed in such a way as to avoid and prevent any disturbance or damage to the environment.

GC26. CANADIAN LABOUR AND MATERIALS

As far as is practicable, the Contractor must employ and use only Canadian labour and materials in the execution of the Work and must employ local labour as far as is practicable.

GC27. INSURANCE

Without in any way limiting the obligations or liabilities of the Contractor under the Contract, the Contractor must maintain and keep in force throughout the Contract until the date of final payment, with an insurance company or companies and under policies of insurance acceptable to the Owner, the following insurance:

- (a) The Contractor must maintain and keep in force throughout the Contract until the date of final payment, liability insurance on all motor vehicles and motorized equipment used in connection with the Work under this Contract, whether owned by the Contractor or subcontractor or not in an amount of not less than \$3,000,000.00. The per claim deductible under any insurance required under this section must not exceed \$5,000.00. The insurance must include any liability assumed under the Contract.
- (b) The Contractor must maintain and keep in force until the date of final payment public liability and property damage insurance, in an amount of not less than \$3,000,000.00 per claim, against liabilities or damages in respect of injuries to persons (including injuries resulting in death), and in respect of property loss or damage, arising out of the performance of the Work. The

per claim deductible under any insurance required under this section must not exceed \$5,000.00. The insurance must include any liability assumed under the Contract.

- (c) The Contractor must maintain and keep in force until the date of final payment builder's risk insurance, including for loss of use, in addition to such insurance as the Contractor elects to carry for the Contractor's own protection against physical loss or damage to the Work in an amount of not less than \$5,000.00. The per claim deductible under any insurance required under this section must not exceed \$5,000.00. The insurance must include any liability assumed under the Contract.
- (d) If the Contractor proposes to use waterborne equipment to carry out the Work, the following insurance is also required:
 - (i) direct damage insurance on hulls and machinery for full value, subject to Canadian Hulls Pacific Clauses 1974, or equivalent, and
 - (ii) broad form protective and indemnity insurance (SP23 or equivalent) including full towers liability, pollution liability and collision liability in an amount of not less than \$5,000,000.00 any one accident or occurrence.
- (e) The Owner and its officials and employees must be named insured under all insurance policies. The insurance must preclude subrogation claims by the insurer against anyone insured under it. In addition, all insurance policies must include a waiver of cross liability as follows:

"The insurance afforded by this insurance shall apply in the same manner, as though separate policies were issues, to any action brought against any of the named insured by or on behalf o the any other named insured".
- (f) All insurance policies must contain an endorsement to provide all named insureds with prior notice of changes and cancellations. Such endorsement must be in the following form:

"It is understood and agreed that the coverage provided by this insurance will not be changed or amended in any way or cancelled until thirty (30) days after written notice of such change or

cancellation shall have been given or sent by registered mail to all named insureds".

- (g) The Contractor must, before beginning the Work, submit to the Owner certificates of the insurance required under this GC and must also provide to the Owner, from time to time if and when required by the Owner, satisfactory proof that all such insurance is still in full force and effect and that all premiums have been paid.
- (h) The Contractor must not do or permit anything to be done which would render any insurance void or voidable or which would cause an increase in the insurance premiums.
- (i) If the Contractor fails to keep and maintain insurance required by this GC, the Owner may, in its sole discretion, either terminate the Contract by notice to the Contractor or may perform the Contractor's obligation to keep and maintain that insurance, and the cost to the Owner of doing so is a debt due and owing by the Contractor to the Owner. The Owner may terminate the Contract by notice given to the Contractor if the Contractor fails to deliver any certificate of insurance, or any proof that insurance is still in full force and effect.

GC28. NOTICE

- 28.1** Any notice, direction, demand, approval, certificate or waiver which may be or is required to be given under the Contract must be in writing and be delivered or sent by facsimile transmission either to the address or facsimile number given for each party in the Tender Form or to the Contractor's superintendent of the Work.
- 28.2** Any notice, direction, demand, approval, certificate or waiver that is delivered is to be considered to have been given on the next business day after it is dispatched for delivery. Any notice, direction, demand, approval, certificate or waiver that is sent by fax transmission is to be considered to have been given on the day it is sent. If a party changes its address or facsimile number, or both, it must promptly give notice of its new address or facsimile number, or both, to the other party as provided in this GC.

GC29. DISPUTE RESOLUTION

Any dispute between the Owner and the Contractor regarding the Contract which cannot be resolved by their representatives within 15 days after notice of dispute

is given by one party to the other may be referred for decision by a single arbitrator acting under the *Arbitration Act* (Alberta) and appointed within 11.30 days after expiry of that 15 day period, but nothing in this GC affects a party's right to institute legal proceedings in the appropriate Alberta court.

GC30. TIME

Time is of the essence of the Contract. In calculating time for the purposes of the Contract, the first day is to be excluded and the last day included.

GC31. DELAY

If, after performance of the Work has begun, war, insurrection, riot or other civil disturbance, act of God or force of nature, but no other event or circumstance, prevents the Contractor from performing the Contract, the Contractor may give notice to the Owner's Representative seeking an extension of the Completion Date. The Owner's Representative may, in the Owner's Representative's sole discretion, extend the Completion Date in response to that notice.

GC32. WAIVER

An alleged waiver of any breach of the Contract is effective only if it is an express waiver in writing of the breach. A waiver of a breach of the Contract does not operate as a waiver of any other breach of the Contract.

GC33. SUCCESSORS

The Contract binds the parties to it and their respective successors, heirs, executors, administrators and permitted assigns.

GC34. JOINT AND SEVERAL OBLIGATIONS

The obligations of the Contractor under the Contract are the joint and several obligations of each of the persons who have submitted the Tender as the Tenderer or as members of a joint venture or partnership comprising the Tenderer.

GC35. APPLICABLE LAW

The Owner and the Contractor agree that the Contract is to be interpreted in accordance with, and governed by, the law in force in Alberta and the Contractor irrevocably submits to the jurisdiction of the courts of Alberta.

GC36. MAINTAINING OF RECORDS

For at least 12 months after the Certificate of Completion is issued the Contractor must keep all records, accounts and other documents relating to performance of the Contract and must permit representatives of the Owner to inspect and audit those documents at all reasonable times.

GC37. APPROPRIATIONS

Payment under the Contract is subject to there being an appropriation in the Municipal District of Bonnyville No. 87 budget for the Contract for the fiscal year in which any commitment under the Contract would come due in the ordinary course of performance of the Contract.

GC38. MEMBERS OF THE MUNICIPAL DISTRICT OF BONNYVILLE NO. 87 COUNCIL

No member of the Municipal District of Bonnyville No. 87 Council may be given or receive any share or part of this Contract or any benefit arising from it.

GC39. FREEDOM OF INFORMATION LEGISLATION

- 39.1** The Contractor acknowledges and agrees that part of all of their Tender may be subject to disclosure under the *Freedom of Information and Protection of Privacy Act* (Alberta). A Contractor that wishes to protect its Tender from disclosure should specifically identify information within the Tender that constitutes a trade secret, or business or commercial information, that it is explicitly supplied in confidence and the release of which could significantly harm the competitive position, or interfere with the negotiating position, of the Contractor. The Contractor acknowledges and agrees that the Owner cannot assure the Contractor that information contained in a Tender will remain confidential and will not be disclosed, since the *Freedom of Information and Protection of Privacy Act* (Alberta) may require disclosure of that information. Each Contractor acknowledges and agrees that it is solely responsible to determine whether that legislation will protect any information contained in the Tender from disclosure.

APPENDIX A
Progress Payment Statutory Declaration

CANADA	)	IN THE MATTER OF the <i>BUILDER'S LIEN ACT</i> and
	)	IN THE MATTER OF A CONTRACT BETWEEN THE
ALBERTA	)	MUNICIPAL DISTRICT OF BONNYVILLE NO.87 AND
)	_____
)	
	)	TO: MUNICIPAL DISTRICT OF BONNYVILLE
	)	NO. 87
	)	IN THE MATTER OF: _____

I, _____, of _____, Alberta,
DO SOLEMNLY DECLARE THAT:

1. I am the _____ of _____, the contractor with respect to construction of _____ at _____.
2. All claims and obligations for wages, services, materials, and otherwise, with respect to the above contract to date have been fully paid and satisfied.
3. All assessments, penalties and any other amounts payable by the above contractor to the Worker's Compensation Board of Alberta are fully paid up to the last required payment, all remittances due to the Government of Canada under the *Income Tax Act* (Canada) with respect to the withholding of income tax at source from employees of the above contractor are current up to the last required payment and all other statutory remittances to any government or government agency are current up to the last required payment.
4. There are no persons entitled at this time to file a claim of builder's lien in respect of the above contract or entitled to any such lien.
5. This declaration is made for the purpose of inducing the Municipal District of Bonnyville No. 87 to pay funds and I am aware that in making such payment the Municipal District of Bonnyville No. 87 will be relying on the statements herein contained.
6. I am authorized to, and do, make this declaration on behalf of the contractor named above.
7. By delivering this declaration to the Municipal District of Bonnyville No. 87, the above contractor irrevocably and absolutely waives and releases any further remuneration, consideration, damages, losses or other payment by or from the Municipal District of Bonnyville No. 87 to the above contractor with respect to the Work under the above contract to the date hereof, unless otherwise expressly claimed in writing in an appendix hereto.

AND I make this solemn declaration, conscientiously believing it to be true and knowing that it is of the same force and effect as if made under oath and by virtue of the *Canada Evidence Act* .

DECLARED BEFORE ME AT _____ in the Province)	
of Alberta this ___ day of _____, 2016.)	
)	
_____)	_____
A Commissioner for taking Affidavits in Alberta)	
)	
)	

APPENDIX B
Final Payment Statutory Declaration

CANADA	)	IN THE MATTER OF the <i>BUILDER'S LIEN ACT</i> and
	)	IN THE MATTER OF A CONTRACT BETWEEN THE
ALBERTA	)	MUNICIPAL DISTRICT OF BONNYVILLE AND
)	—
	)	TO: MUNICIPAL DISTRICT OF BONNYVILLE
	)	IN THE MATTER OF: _____
)	_____
)	_____

I, _____, of _____, Alberta, DO SOLEMNLY DECLARE THAT:

1. I am the _____ of _____, the contractor with respect to construction of _____ at _____.
2. All claims and obligations for wages, services, materials, and otherwise, with respect to the above contract to date have been fully paid and satisfied.
3. All assessments, penalties and any other amounts payable by the above contractor to the Worker's Compensation Board of Alberta are fully paid up to the last required payment, all remittances due to the Government of Canada under the *Income Tax Act* (Canada) with respect to the withholding of income tax at source from employees of the above contractor are current up to the last required payment and all other statutory remittances to any government or government agency are current up to the last required payment.
4. There are no persons entitled at this time to file a claim of builder's lien in respect of the above contract or entitled to any such lien.
5. The construction of improvements under the above contract reached substantial completion, determined for the purposes of the *Builder's Lien Act* (Alberta), on _____, 2016.
6. By delivering this declaration to the Municipal District of Bonnyville No. 87, the above contractor irrevocably and absolutely waives and releases any further remuneration, consideration, damages, losses or other payment by or from the Municipal District of Bonnyville No. 87 to the above contractor with respect to the Work under the above contract.
7. This declaration is made for the purpose of inducing the Municipal District of Bonnyville No. 87 to pay funds and I am aware that in making such payment the Municipal District of Bonnyville No. 87 will be relying on the statements herein contained.
8. I am authorized to, and do, make this declaration on behalf of the contractor named above.

AND I make this solemn declaration, conscientiously believing it to be true and knowing that it is of the same force and effect as if made under oath and by virtue of the *Canada Evidence Act* .

DECLARED BEFORE ME AT _____, Alberta, this ___ day)	
of _____, 2016.)	
)	
_____)	_____
A Commissioner for taking Affidavits in Alberta)	
)	

END OF GENERAL CONDITIONS

Special Conditions

SC1 These Special Conditions shall take precedence and supersede the relevant and applicable sections in the Contract documents.

SC2 Measurement and Payment

2.1 The load of the weight will be calculated through the following process:

- a. Empty truck will be weigh at the scale using the card swipe prior to loading the material.
- b. Once they are loaded, prior to leaving the yard the trucks will be weigh(ing) again, using the card swipe.
- c. The difference between the loaded and empty truck will be considered as (t) the load amount for (the) payment (and) calculation.
- d. All the haul cards must be handed by the driver or by any designated person of the contractor to the checker designated by the MD of Bonnyville at the end of every Friday for the week. Failing to do so will result in non-payment for that week and a penalty of \$300 which will be deducted from the progress billing.

Automated weighing scale will (should) be functional at the MD yard during the haul. Should the MD scale not be functioning the MD may also use the loadrite scale on the loader for calculating the weight.

The selection of the form of weighing (scales) is at the discretion of MD of Bonnyville.

2.2 Clauses GC21.2 and 21.3 shall be generally amended and understood to reflect the payment procedure as described in the following clauses. Clauses concerning statutory requirements or concerning matters other than payment issues in these two referred sections shall be reasonably deemed to remain applicable.

2.3 The Contract is a unit price contract and payment shall be made based upon the unit prices listed in the completed Tender Form, the length of haul and the total weight of the material hauled during the period, as measured by the M.D. scale, as calibrated from time to time. The MD shall make an effort to prepare Progress payments by the second and fourth Friday of each month after the commencement of work, however should unforeseeable delays arise, the payment clauses as read in GC21 shall be implemented at the sole discretion of the MD.

2.4 Payment shall constitute full compensation for the work described in the Tender Form, including furnishing all equipment, fuel, insurance

costs, labour, tools, and all work incidental thereto as well as any and all expenses incurred by reason of any cause whatever, except as provided herein.

- 2.5** The amount of the progress payment shall not exceed 90% of the total value of the work for that period. From time to time, the Contractor may make a written application to the Director of Transportation and Utilities to pay a portion of the holdback. Payment of the holdback shall be paid in accordance with GC 21.5.
- 2.6** Should a dispute arise as to the accuracy of the scale, the scale shall be recalibrated in the presence of the M.D. and the contractor. Should the scale vary in accuracy by less than 2% of the calibrated value, the M.D. shall compensate the contractor the difference from the mid period (date) of the previous calibration date. Should the scale vary in accuracy by greater than 2% of the calibrated value, the contractor shall credit the M.D. the difference from the mid period (date) of the previous calibration date. The M.D. scale reading shall be final.

SC3

Safety and General Courtesy

- 3.1** All trucks employed by the Contractor will strictly adhere to the speed limit and will drive with courtesy to other drivers on the highway and with due care and attention at all times during the gravel haul.
- 3.2** The Contractor will take special note of speed limits within urban municipalities. Should the Municipal District be forced to route the haul around an urban municipality, due to the contractor or his Subcontractors failure to observe posted speed limits or any reason whatsoever, as identified by the respective jurisdiction, including the M.D., then the Contractor shall be responsible for any additional haul costs. Payment shall be calculated on the basis that the municipal haul route was approved, rather than the detour route.
- 3.3** In addition to GC 26, the Contractor shall strictly adhere to the Occupational Health and Safety regulations as well as the M.D.'s safety policies at all times. From time to time, the M.D. shall enforce spot checks to ensure conformance to the regulations and policies. Failure to adhere to the said regulations and policies shall constitute a breach of contract and the violating operator/personnel shall be suspended from performing further work, under the said terms of the contract, for the remaining period of work as defined in the Contract.
- 3.4** The Contractor shall at all times ensure all subcontractors to be experienced, competent and familiar with the Work contemplated

under this contract. Failure to provide this shall constitute a breach of contract and the violating operator/personnel shall be suspended from performing further work, under the said terms of the contract, for the remaining period of work as defined in the Contract.

- 3.5** The contractor will at its own expense, obtain a Worker's Compensation Account for the "Trucking Service-General" and provide the M.D. with copies of valid WCB coverage and Certification for Alberta Truckers for all workers and Owner/operators.
- 3.6** The Contractor will take special note when entering and moving in and around the loading area/pit. Consequently, the contractor **must** give right of way to the MD loader and/or unit completing the operation on behalf of the MD.

SC4 **Penalty & Suspension**

- 4.1** The Public Works Superintendent may suspend any operator/personnel that do not perform to acceptable standards of any section in the Contract. Any suspension may be appealed to the Director of Transportation and Utilities who shall hear the arguments of the Superintendent and the Contractor (acting on behalf of the owner or person to whom the suspension applies) and shall render a decision which shall be final and binding.
- 4.2** The tender clearly specifies that the Contractor shall provide a minimum of Eight (8) trucks per haul day. On any day, if the contractor is not able to provide the minimum number in the first 2 hours of the time specified by the MD of Bonnyville representative, a penalty of \$ 300 / missing truck will be imposed. The penalty will be deducted from the progress billing.
- 4.3** All the loaded trucks leaving the MD yard shall be tarped properly. Any truck caught without a tarped load by an MD employee will be charged a penalty of \$ 150 per offence and will be sent home (back) for the whole day.

SC5 **General Requirements**

- 5.1** The Tender form shall be based upon the strict requirement that all trucks contracted by the Contractor will strictly adhere to hauling up to thirty (30) tonnes per load with either an end dumps, or "belly dump" style, truck and

pup or a truck with clams. The contract shall be evaluated and awarded upon the unit price submitted in the tender Form.

- 5.2** That the Contractor shall provide a minimum of Eight (8) trucks to haul. From time to time situations may arise where 8 trucks are not practical. In those specific instances, the Contractor may request a variance by the M.D. to waive this requirement. The M.D. at its sole discretion shall render a decision which shall be final and binding. For penalty for not having a minimum of 8 trucks on any day, please refer to SC4 - Penalty & Suspension clause. MD had the right to reduce the number of trucks on any given day.
- 5.3** MD of Bonnyville reserves the right to hire any additional truck if deemed necessary at its own discretion and will be outside of this contract. The price paid to that contractor will not have any effect on this contract.
- 5.4** Working hours will be from 7.00 am to 7.00 pm from Monday to Friday and Saturday and Sunday as required.
- 5.5** The truck rotation shall be at the sole discretion of the Contractor. Disputes between the Contractor and Subcontractors shall be settled without any intervention of the M.D. whatsoever.
- 5.6** The Contractor shall evenly spread on the road way to the satisfaction of the Public Works Superintendent or his designate.
- 5.7** The Contractor, in addition to providing the list of Subcontractors in the Tender Form, shall also provide a list of equipment intended for use in the performance of the Work.
- 5.8** No person shall drive or pull upon a roadway a vehicle containing a load (gravel, coldmix, etc) unless such a load is completely covered by a tarpaulin or other device secured in such a manner that no portion of the said load can escape, blow, drop, spill or fall onto a roadway or land adjacent thereto.

SC6

Non-Exclusivity

- 6.1** Nothing in this Contract shall be construed or represented to infer that all hauling requirements within the M.D. be exclusive to this contract. The M.D., in it's sole discretion may choose to utilize it's fleet, personnel or other contractors on any worksite for any reason whatsoever.
- 6.2** The M.D. may, without prejudice to any other right or remedy it may have, engage others outside this contract to haul gravel , Hot Mix or cold mix when it deems it necessary or appropriate.
- 6.3** The Contractor shall have no claim whatsoever of loss for any reason or any kind as a result of the Municipal District invoking this section.