

## GENERAL CONDITION – SERVICE CONTRACTS

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**SECTION 101****INTERPRETATION**

In this contract the following definitions shall apply.

- 101-1 "CITY OF GREATER SUDBURY" or "CITY" – any reference in the contract documents to the City shall mean the City of Greater Sudbury.
- 101-2 "CONTRACT" – means the agreement covering the performance of the services including the supply of any and all Services, labour, equipment and materials that could reasonably be required to properly and satisfactorily complete the Services to be performed and includes the notice to tenderers, the Form of tender, the formally executed agreement, general conditions, City Supplemental Specifications, instructions to tenderers, Special Provisions, bonds, letters of credit, addenda, plans, change orders envisioned by the contract and any written supplementary agreements that may be made in order to ensure the completion of the Services.
- 101-3 "CONTRACT ADMINISTRATOR" – means any person that the General Manager may appoint for the purpose of administering the Contract to act in his behalf.
- 101-4 "CONTRACTOR" – means the partnership or corporation undertaking the execution of the Services under the terms of the Contract.
- 101-5 "EXTRA SERVICES" – means services which are required, but not described in the Contract documents or on the plans, if any.
- 101-6 "GENERAL MANAGER" – means the General Manager of Infrastructure and Emergency Services of the City of Greater Sudbury, or such person designated by the City of Greater Sudbury, or such person designated by the General Manager of Infrastructure and Emergency Services to act on his behalf.
- 101-7 "G.S.S.S." – means City of Greater Sudbury Supplemental Specification
- 101-8 "INSPECTOR" – means any person that the General Manager may appoint for the purpose of inspection of the Services and of the materials to be used in the Services.
- 101-9 "MAJOR ITEM" – means any individually bid Tender item that has an actual value, calculated on the basis of its actual or estimated tender unit price, equal to or greater than 5 percent of the total tender value, calculated on the basis of the total of all the estimated tender quantities and the tender unit prices.

- 101-10 "MATERIAL" – means material, machinery, equipment, and fixtures forming part of the Services.
- 101-11 "O.W.R. ACT" – shall refer to the Ontario Water Resources Act.
- 101-12 "PERSON" – includes an individual, corporation, partnership and the heirs, executors, administrators, or other legal representatives of whom the context can apply according to law.
- 101-13 "SERVICES" – includes all professional and consulting services, all services in relation to real property or personal property including without limiting the foregoing the delivery, installation, construction, maintenance, repair, restoration, demolition or removal of personal property and real property and all other services of any nature and kind save and except only services to be delivered by an officer or employee of the City in accordance with terms of employment.
- 101-14 "SPECIAL PROVISIONS" – means special directions containing requirements peculiar to the Services not adequately provided for by the standard or general conditions.
- 101-15 "SPECIFICATIONS" – means all written descriptions or instructions pertaining to the method and manner of performing the Services, or to the quantities of the materials to be furnished under the Contract, and includes the tender, general conditions and Special Provisions, together with all written agreements made or to be made pertaining to the method or manner of performing the Services, or to the quantities or qualities of materials to be furnished under the Contract.
- 101-16 "STANDARD SPECIFICATIONS" – means the requirements and stipulations of standard practice by the City for the control of Services.
- 101-17 "SUB-CONTRACTOR" – means a person performing a part of the Services or supplying goods, materials, or service by virtue of an agreement between himself and the contractor.
- 101-18 "UTILITIES" – means the underground buried or aerial plant of Hydro One Inc., Regional Cablesystems Inc., Bell Canada, Greater Sudbury Hydro Plus, Greater Sudbury Telecommunications Inc., City of Greater Sudbury, Union Gas Limited, C.N.R., C.P.R., C.N.C.P. Telecommunications, Sudbury District Energy Corporation (S.D.E.C.) or any other organization of a similar nature.
- 101-19 "WORKING DRAWINGS" – "Working drawings" or "Working plans" means any drawing or plans prepared by the Contractor for the execution of the Services and may, without limiting the generality thereof, include false work plans, roadway protection plans, shop drawings, shop plans or erection diagrams.

- 101-20 The words "APPROVAL", "DIRECTED", "REQUIRED", "CONSIDERED NECESSARY", "AUTHORIZED", "ACCEPTABLE", "SATISFACTORY", or words of like import, shall mean approval of, directed, required, considered necessary or authorized by and acceptable or satisfactory to the General Manager.

## **SECTION 102**

### CONTRACTOR'S INVESTIGATIONS, SURETY

#### 102-1 Conformity of Work with Plans and Specifications

The Contractor shall perform all Services and shall furnish all materials and complete the Services in strict conformance with the scope of Services.

#### 102-2 Contractor's Investigations

The Contractor declares that in tendering for the Services and in entering into the Contract, the Contractor has either investigated for itself the character of the Services to be performed which can be determined from the records or other information available at the offices of any person, partnership, corporation, Utility, including a municipal corporation and any board or commission, having jurisdiction or control over such Utility, that might affect its tender or its acceptance of the Services, or that, not having so investigated, and except as hereinafter provided, it is willing to assume and does assume all risks or conditions now existing or arising in the course of the Services which might or could make the Services, or any items thereof more expensive in character, or more onerous to fulfil, than was contemplated or known when the tender was made or the Contract signed.

The Contractor also declares that in tendering for the Services and in entering into the Contract it did not and does not rely upon information furnished by the City or any of its servants or agents respecting the character of the equipment or facilities needed to perform the Services, and all other matters which could in any way affect the performance of the Services under the Contract other than information furnished in writing for or in connection with the tender or the Contract by the General Manager.

The Contractor waives any claim for extra expense or delay caused by any condition which could have been made known to the Contractor by reasonable enquiries or tests prior to tendering for Services.

**102-3**     Surety and Deposit

As covered in the Instruction to Tenderers, the performance and payment bonds or the cash or letter of credit deposited with the City in connection herewith shall be held by the City to secure the due performance and observation of the Contract.

**SECTION 103****CONTROL OF THE WORK****103-1**     General Manager's Authority

The General Manager may direct the performance of all Services to the extent of ensuring the fulfilment of the Contract and the completion of the Services in accordance with its terms. The General Manager shall in all cases decide every question which may arise relative to the performance of the Contract, and the General Manager's estimate and findings shall be final. The General Manager shall, within a reasonable time, render a decision on all claims by the Contractor and all questions which may arise relative to the performance of the Services, or the interpretation of the Contract.

The Contractor shall at all times and at its own expense, furnish all reasonable aid and assistance required by the General Manager or any Inspector for the proper inspection and examination of the Services or any part thereof.

The Contractor shall, at his own expense, furnish samples for testing when required. The Contractor shall obey the directions and instructions of any Inspector so appointed and these instructions shall be made in writing if necessary.

In case the Contractor shall fail in the due performance of any part of its undertaking or shall become bankrupt or insolvent or if a receiver be appointed or proceedings to wind up be commenced, or the Contractor shall make a proposal to creditors, formal or informal, it shall be lawful for the City in any such case to terminate the Contract without limiting the City's rights contained in Section 105-3, or any part thereof, and upon such conditions as it may think fit, or from time to time to engage workmen and to provide all material, implements, and apparatus, or to obtain and use machinery, tools and apparatus of the Contractor in completing the Services and employ the same in such manner as the City may think necessary and proper for completing the Services or any part of them, and any loss, damage or deficiency or other failure or event specified in this clause on the part of the Contractor shall be paid and deducted out of any monies retained by the City, out of any Services previously performed for the City, and should said monies

so retained not be sufficient to indemnify and cover such losses, the deficiency then due shall be paid from the monies provided by financial guarantees provided under this Contract.

#### 103-2 Claims

When a Contractor considers that it has a claim for compensation for costs it has incurred or for losses it has suffered during the performance of the Contract because duties of the Contract in the actual circumstances encountered were at variance with those set out in the Contract, then it will follow the procedure set out below.

The Contractor's failure to follow the procedure set out below will be considered to be a waiver for any claim for costs or loss suffered.

Notwithstanding any negotiations or discussions between the parties, unless this clause is waived in writing by the General Manager, there shall be no waiver of the provisions of this clause by any conduct of the City, its agents, or servants.

#### PROCEDURE

1. The Contractor shall immediately advise the inspector on the occurrence of a fact which may lead to a claim, of the intent to claim specifying the basis on which the claim will be made.
2. The inspector shall keep detailed "daily work records" of all aspects of the claim.
3. The Contractor and the Inspector shall use their best effort to reconcile these "daily work records" daily.
4. In addition to Step 1, the Contractor shall within seven (7) Working days of the occurrence, deliver to the General Manager notice in writing of the intent to claim anything that would give rise to a claim.
5. The Contractor shall submit monthly the details of any claims within the proceeding 30 days as herein before set out. The failure to submit a claim as aforesaid will conclusively be deemed to be an abandonment of the particular claim hereinbefore set out.
6. The keeping of daily work records by the Inspector or the reconciling of daily work records by the inspector of the Contractor's Services shall not be construed to be acceptance of the claim, but only a reconciliation of costs.

### 103-3 Conflicts and Omissions

The Contractor shall perform all Services and furnish all materials in accordance with the best practice, and in the event of any inconsistency or conflict in the provisions of the scope of Services, such provisions shall take precedence and govern in the following order:

- (i) Special Provisions
- (ii) Instructions to Tenderers
- (iii) Schedule of Items and Prices
- (iv) Tender Meeting Minutes
- (v) General Conditions (Current)

### 103-4 Changes and Alterations

The City may, by order in writing, at any time before or after the commencement of the Services, delete, extend, increase, decrease, vary, or otherwise alter the Services to be performed or any part thereof. If the character of the Services to be performed actually changed from that on which the Contractor based its bid, by reason of such written order of the General Manager or by reason of incorrect written information supplied by the City, and if the change increases or decreases the cost of the Services to be performed, the Contractor shall proceed with the Services to be done and upon the written request of either party to the Contract, negotiations shall, as soon as reasonably possible, be carried out to determine the amount of compensation to be paid.

### 103-5 Extra Services

Where the General Manager directs or otherwise authorizes the Contractor in writing to undertake the Services in addition to that provided for in the Contract and for which the General Manager and the Contractor agree that there is no applicable tender item, the Contractor shall proceed with the Services and such Services shall be considered Extra Services and shall be paid for as negotiated. Where Extra Services are required that is covered in the Schedule of Unit Prices, if any, the Services shall be paid for under the Unit Price quoted in the Contract documents.

### 103-6 Change Orders

Any addition to or reduction of Services relative to this Contract shall be authorized only with the use of a "Change Order Form".

The Change Order shall be written on a standard form as supplied by the City, and shall include a complete but concise description of the changes and modifications if so required, after which it is to be signed by both the Contractor and the General Manager prior to any said Services commencing.



**103-7 Contractor's Responsibility**

The Contractor shall be responsible for and shall give adequate attention to the prosecution and completion of the Services in accordance with the terms of the Contract.

**SECTION 104****LEGAL RELATIONS AND RESPONSIBILITY****104-1 Contractor's Responsibility for Damages**

The Contractor, itsent, and all workmen and persons employed by it, or under its control, including subcontractors, shall use due care that no person or property is injured and that no rights are infringed upon in the performance of the Services, and the Contractor shall be solely responsible for all damages by whomsoever claimable in respect of any injury to persons or to lands, building, structures, fences, livestock, trees, crops, roads, ways, ditches, drains, and watercourses, whether natural or artificial, or property of whatever description, and in respect of infringement of any right, privilege or easement whatever occasioned in the carrying on of the Services or any part hereof, or by any neglect, misfeasance or nonfeasance on the Contractor's part or on the part of any of its agents, workmen or persons employed by it or under its control including subcontractors, and shall bear the full cost thereof and shall at its own expense make such temporary provisions as may be necessary to ensure the avoidance of any such damage, injury or infringement and the Contractor shall indemnify and save harmless the City from and against all claims, demands, loss, costs, damages, actions, suits and without limiting the foregoing all legal expenses and costs incurred by the City in defending any legal action or other proceedings by whomsoever made, brought or prosecuted in any manner based upon, occasioned by, or attributed to any such damage, injury, or infringement.

Notwithstanding the indemnity provisions contained in this section, where in the opinion of the General Manager the Contractor has failed to rectify any damage, injury or infringement or has failed to adequately compensate any person for any damage, injury or infringement for which the Contractor is responsible under the Contract, the General Manager, following notice in writing to the Contractor of his intention to do so, may withhold payment of any monies due to the Contractor under this or any other contract until the Contractor has rectified such damage, injury or infringement, provided, however, that the City will not withhold such monies where in opinion of the General Manager there are reasonable grounds upon which the Contractor denies liability for such damage, injury or infringement and the Contractor has given the Claimant a reasonable time in which to establish the validity of its claim, and provided further that the amount withheld under this section shall not exceed the amount of such claims against the Contractor

104-2 Insurance

The Contractor shall provide, maintain, and pay for the insurance coverages specified hereunder. Unless otherwise stipulated, the duration of each insurance policy shall be from the date of commencement of the Services until the date of the final certificate. Prior to commencement of the Services, and upon the placement, renewal, amendment or extension of all (or) any part of the insurance, the Contractor shall promptly provide the City with confirmation of coverage and, if required, a certified true copy of the policies certified by an authorized representative of the insurer together with copies of any amending endorsements.

(a) General Liability Insurance

Commercial General Liability Insurance with respect to contracting operations shall be subject to limits of not less than **\$3,000,000** inclusive for any one occurrence and shall include the following:

- property damage deductible of not more than \$2,500
- occurrence form
- occurrence property damage
- personal injury
- employees as additional insureds
- broad form equipment
- blanket contractual liability
- protective liability for all contracted/subcontracted operations
- contingent employers' liability (for employees covered by WSIB)
- employers liability (for employees not covered by WSIB)
- medical payments
- broad form property damage
- broad form completed operations
- incidental medical malpractice
- intentional acts to protect persons and property
- non-owned automobile
- deletion of exclusions related to use of explosives, pile driving or caissons, collapse of buildings, underpinning, or underground Services (where the project involves such risks)
- forest and prairie protection acts liability (where the project involves such risks)
- City, its agents, servants, employees and volunteers added as additional insureds with respect to the operations of the Contractor.

(b) Automobile Liability Insurance

Automobile liability insurance in respect of licensed vehicles shall be subject to limits of not less than **\$3,000,000** inclusive per occurrence for bodily injury, death, and damage to property, covering all licensed

vehicles owned or leased by the Contractor and endorsed to provide the City with not less than 30 days notice in writing, in advance, of any cancellation, change or amendment restricting coverage.

(c) Aircraft and Water Craft Liability Insurance

Aircraft and water craft liability insurance with respect to owned or non-owned aircraft and water craft is used directly or indirectly in the performance of the Contract, including the use of additional premises, shall be subject to limits of not less than **\$3,000,000** inclusive per occurrence for bodily injury, death, and damage to property including loss of use thereof and limits of not less that (than) **\$3,000,000** for aircraft passenger hazard. Such insurance shall be in a form acceptable to the City. The policies shall be endorsed to provide the City with not less than 30 days notice in writing in advance of any cancellation, change or amendment restricting coverage.

(d) General

Liability policies may consist of one policy or a combination of primary and excess or umbrella liability policies.

The Contractor shall be responsible for deductible amounts under the policies.

All required insurance policies shall be placed with insurers licensed to underwrite insurance in the jurisdiction of the Services.

“Claims made” insurance policies will not be permitted.

All insurance policies shall provide that the Contractor’s insurance is the primary insurance.

The City has the right to approve the form of certificate(s) of insurance.

Failure to provide and maintain insurance and proof of same in a satisfactory form to the City prior to the commencement of the Services or as may be required from time to time thereafter shall entitle the City to terminate the Contract or obtain the required insurance and charge the Contractor the cost.

104-3 Protection Against Royalties or Patented Inventions

The Contractor shall indemnify and save harmless the City from all and every claim for damages, royalties, or fees for the infringement of any patented invention or copyright occasioned by it in connection with Services to be performed under the Contract.

104-4 Observance of Laws and Regulations

The Contractor shall obtain, at its own expense, all licenses or permits required by by-law or statutes, and regulations made thereunder.

The Contractor must perform all Services in conformance with the Occupational Health and Safety Act, and Regulations. Without limiting the generality of the foregoing, the Contractor:

- a) Acknowledges that it has read and understood the Occupational Health and Safety Act, R.S.O. 1990, Chapter 0.1 and, in particular, Sections 23, 24, 25, 30, and 66 thereof.
- b) Agrees to utilize an Occupational Health and Safety policy as required pursuant to Section 25 of the said Act.
- c) Agrees to indemnify and save the City harmless for damages or fines arising from any breach or breaches of the said Occupational Health and Safety Act.
- d) Agrees to assume full responsibility for the enforcement of the Occupational Health and Safety Act to ensure compliance therewith.
- e) Further acknowledges and agrees that any breach or breaches of the Occupational Health and Safety Act whether by the Contractor or any of its sub-contractors may result in:
  - i. the immediate termination of this Contract herein and the forfeiture of all sums owing to the Contractor by the City.
  - ii. the initiation against the Contractor of quasi-criminal proceedings under the Occupational Health and Safety Act which may result in a finding of guilt on summary conviction.
- f) Agrees that any damages or fines that may be assessed against the City by reason of a breach or breaches of the Occupational Health and Safety Act by the Contractor or any of its sub-contractors will entitle the City to set-off the damages so assessed against any monies that the City may from time to time owe the Contractor under this Contract or under any other contract whatsoever.
- g) Agrees that in cases where designated substances are present at the project site, the City will compile a list of such substances and include this list in the Special Provisions of the Contract document. The Contractor is required to ensure that each sub-contractor on the project has received a copy of the designated substances list prior to execution of the Contract.

104-5 Notice to the Contractor

Any notice in writing to be given to the Contractor in relation to any matter arising under the Contract or in respect of the Services to be performed hereunder may be given by delivering same to the Contractor, or to the Contractor's representative for the time being, or by mailing the same addressed to the Contractor at such address as it may have specified in its tender. In default of any such address being so specified by sending the notice by prepaid registered mail to the last address known personally to the General Manager. Any such notice shall be conclusively deemed to have been received 72 hours after sending by prepaid registered mail.

In the event that the General Manager in his sole discretion determines that an emergency condition exists, such notice shall be deemed to be given two hours after notice by telegram having been sent to the last address personally known to the General Manager.

104-6 Notice to the City

Any notice to the City shall be in writing and hand delivered personally to the General Manager, or his representative, or may be sent by prepaid registered mail to:

City Engineering Services Division  
City of Greater Sudbury  
PO Box 5000, Station 'A'  
200 Brady Street  
Sudbury, Ontario P3A 5P3

104-7 Warranty

The Contractor warrants to the City that all of the Services will be in conformance with the Contract documents.

The City shall promptly give the Contractor written notice in accordance with Section 104-5 of observed defects and deficiencies. The City may specify a time within which the corrections are to be completed in which case the Contractor shall complete the corrections within the period of time set out.

The Contractor acknowledges and agrees that it shall be responsible to correct or pay for any damage to other Services resulting from any correction required under the conditions of this clause.

Nothing in these general conditions is intended to, or shall restrict or modify any liability of the Contractor for damages arising out of any law in force in the Province and in particular any liability for damages arising from defects or deficiencies in the Services which were not apparent prior to the expiration of the maintenance period.

104-8 Discharge of Liabilities

It is agreed that the said Contractor shall indemnify and save the City harmless from and against all claims against said City for Services performed, labour done, materials, machinery and plant, if any, furnished under this Contract. The Contractor shall furnish said City with satisfactory evidence when called upon that all persons who have performed Services or furnished materials, machinery and plant, for the execution of this Contract, have been fully paid or satisfactorily secured, and in case such evidence is not furnished, an amount necessary and sufficient to meet the claims of persons aforesaid shall be retained from money due the said Contractor under this Contract until the liabilities aforesaid shall be fully discharged or satisfactorily secured.

104-9 Claims and Lawsuits

For the purposes of this section, a "claim" shall be deemed to include any notice, demand, claim for lien, action, notice of action or proceeding given to, made or brought against the City or any of its officers, servants, or agents.

In the event of a claim being made in respect of any defects or any loss, damage, or injury caused or arising or in any manner associated with the pursuit of this Contract, the Contractor shall indemnify the City and its officers, servants, or agents and save them harmless. This obligation to indemnify the City, its officers, servants and agents shall also apply to claims from workers, sub-contractors, suppliers or anyone claiming not to have been paid for services, labour, or materials supplied in the performance of the Services.

For greater clarity, this entitlement to indemnification shall include, and the Contractor shall pay forthwith upon request, all costs, charges, damages and expenses incurred by the City, its officers, servants or agents as a result of a claim including, without limiting the generality of the foregoing, solicitor's fees on a substantial indemnity basis, adjuster's fees and the costs of the City's personnel associated with dealing with the claim. The City and its officers, servants or agents may require the Contractor to defend in their name and on their behalf any claim which is in any manner associated with the pursuit of this Contract, all at the Contractor's expense.

The City may, if it sees fit to do so, retain separate representation for itself or its officers, servants or agents independently of the Contractor, in which case it shall be entitled to defend, compromise, or settle the claim on such terms as it deems fit. The Contractor shall forthwith reimburse the City for the sum or sums paid by it together with all related expenses forthwith on demand. In addition to any other remedies the City may have, the City may deduct the amounts of any payments or expenses made or incurred in dealing with a claim from any sums due or to become due to the Contractor on this or any other contract between the City and the Contractor.

The Contractor agrees to vacate or discharge promptly at its own expense any claim for lien for services, labour or materials supplied by any person during the course of the Services. In addition to the rights and entitlements accruing in favour of the City in this section, the City shall be entitled to set-off or recover from the Contractor any and all costs incurred by the City to maintain the project in a lien free condition including vacating and defending any claim for lien or action commenced to enforce a claim for lien.

#### 104-10 Environmental Considerations

##### a) Hazardous Wastes and Designated Substances (Occupational Health and Safety Act)

In the process of performing the Services required under this Contract, the Contractor or its employees may encounter hazardous wastes as defined by Ontario Regulation 347 or designated substances as identified by the Environmental Protection Act.

The Contractor is required to make itself familiar with all designated substances and/or hazardous wastes which may be encountered in the process of performing the Services required under this Contract. The Contractor shall make employees and sub-contractor(s) aware of what designated substances and hazardous wastes may be encountered in performing this Contract and the procedures to be followed if encountered.

##### b) Environmental Remediation

The Contractor shall perform, at his own expense, any measure required by the General Manager to protect the environment or to remediate an environmental contamination or spill. In the event that the Contractor fails to perform the requested remedial work immediately, the City may proceed to complete such remedial work either with its own forces or others and recover the full cost of same from the Contractor and in so doing the City shall be entitled to set these costs off against any amounts otherwise due to the Contractor.

**SECTION 105**105-1 Extension of Time

An extension of time may be granted in writing by the General Manager in the event of the Services being delayed beyond the prescribed time for completion as a result of causes beyond the Contractor's control. Such extensions shall be for such time as the General Manager may prescribe, and the General Manager shall fix the terms on which the said extension may be granted. An application by the Contractor for an extension of time as herein provided shall be made to the General Manager in writing, on the form prescribed, at least fifteen (15) calendar days prior to the date of completion fixed by the Contract.

All bonds or other surety furnished to the City by the Contractor shall be amended where necessary at the expense of the Contractor to provide coverage beyond the date of any extension of time granted, and the Contractor shall furnish the General Manager with evidence of such amendment of the bonds or other surety. Any extension of time that may be granted to the Contractor shall be so granted and accepted without prejudice to any rights of the City whatsoever under the Contract, and all of such rights shall continue in full force and effect after the time limited in the Contract for the completion of the Services, and whenever in the Contract, power and authority is given to the City or the General Manager or any person to take any action consequent upon the act, default, breach, neglect, delay, non-observance or non-performance by the Contractor in respect of the Services or Contract, or any portion thereof, such powers or authorities may be exercised from time to time and not only in the event of the happening of such contingencies before the time limited in the Contract for the completion of the Services but also in the event of the same happening after the time so limited in the case of the Contractor being permitted to proceed with the execution of the Services under an extension of time granted by the General Manager. In the event of the General Manager granting an extension of time, time shall continue to be deemed of the essence of the Contract.

The parties hereto agree that any extension to the working days as hereinbefore provided, shall not result in any claim for additional payment under the Contract and it will be conclusively deemed by all parties that the unit price tender adequately compensates the Contractor for the extension of time.

105-2 Assignment, Subletting and Renting

The Contractor shall not assign, transfer or sublet the whole or any portion of the Contract, or the whole or any portion of the Services to be performed under the Contract, without the consent in writing of the General Manager, and the Contractor shall not transfer or assign any monies which may be due



or which may become payable under the Contract without the consent in writing of the General Manager, provided that any consent so given shall not under any circumstances relieve the Contractor of liabilities and obligations assumed by it under the Contract.

Where a bidder has withdrawn his bid on the Contract after the closing of tenders or, having been offered the Contract by the City has for any reason failed to enter into it, the Contractor shall not assign, transfer or sublet any part of the Contract nor shall it rent any equipment required for the Contract if such assignment, transfer, subletting or rental will result in such bidder or any person, firm or City having an interest in such bidder, directly or indirectly receiving any benefit. The Contractor shall not purchase from such bidder or from any firm or City having an interest in such bidder, material required for the Contract, without the consent of the General Manager in writing.

Except as provided in this subsection, the Contractor in renting equipment for the Contract shall give preference to competent, qualified and available resident dealers and operators in the general area of the Contract.

#### 105-3 City's Right to Terminate the Contract

If the Contractor should fail to perform the Services or otherwise fails to comply with any provisions of the Contract, the City, subject to any written statement by the General Manager that sufficient cause exists, may notify the Contractor in writing that it is in default in its contractual obligations and instruct it to correct the default in the five (5) working days immediately following the receipt of such notice.

If the correction of the default cannot be completed in the five (5) working days specified, the Contractor shall be in compliance with the City's instructions if it:

- (a) commences the correction of the default within the specified time, and
- (b) provides the City with a schedule, acceptable to the City for such correction, and
- (c) completes the correction in accordance with such schedule

If the Contractor fails to correct the default in the time specified or subsequently agreed upon, the City may, without prejudice to any other right or remedy it may have,

- (i) correct such default and deduct the cost thereof from the payment then or thereafter due the Contractor, or
- (ii) stop the Services and terminate the Contract

If the Contractor should be adjudged bankrupt, or makes a general assignment to the benefit of creditors or if a receiver is appointed, or if winding up proceedings are instituted, the City may, without prejudice to any other right or remedy it may have, by giving the Contractor written notice, terminate the contract.

If the City terminates the Contract under the conditions of this clause, it shall:

- (1) be entitled to finish the Services by whatever method the City may consider expedient but without undue delay or expense;
- (2) withhold any further payments to the Contractor until the Services are finished;
- (3) upon the total performance of the Services, charge the Contractor the amount by which the full cost of finishing the Services as certified by the General Manager, including compensation to the General Manager for his additional time to a reasonable allowance as determined by the General Manager, exceeds the unpaid balance of the Contract price; or if such costs and allowance of finishing the Services is less than the unpaid balance of the Contract price, pay the Contractor the difference.
- (4) on expiry of the warranty period, charge the Contractor the amount by which the cost of corrections exceed the allowance provided for such corrections, or if the cost of such correction is less than the allowance, pay the Contractor the difference.

The Contractor's obligation as to quality, correction and warranty of the Services performed by it up to the time of termination shall continue in force after such termination.

The Contractor shall not have any claim for any loss, damage or expense against the City caused by or resulting from the Services being taken out of the control of the Contractor, or any other Contractor of the City by provision of this Contract.

#### 105-4 City's Right to Suspend the Services

Should the funds provided for this Contract by the City be at any time expended previous to the completion of the Services, the Contractor may or may not, on receiving a notice from the City to the above effect, stop the Services; but in any case the Contractor shall not be entitled to any further payment for the Services performed after the service of the notice referred to until the necessary funds shall have been provided by the City. If the Contractor carries on with the Services with the permission of the City after such notice and without being entitled to payment for such Services, it may, when the necessary funds shall have been provided by the City, be paid interest at the current rate paid by the City and calculated on the value of the Services so done.

The Contractor shall, upon written notice from the General Manager, discontinue or delay any or all of the Services when, in the opinion of the General Manager, it is unwise to proceed for any reason whatsoever, and the Services shall not be resumed until the General Manager shall in writing so direct.

105-5 Losses and Damages

Except as otherwise provided for in the Contract all loss or damage arising out of the nature of the Services to be done, or from any reasonable foreseeable circumstance in the prosecution of the same, or from any normal difficulties which may be encountered in the performance of the Services, having regard to the nature thereof, shall be sustained and borne by the Contractor at its own expense and all material required to replace any defective or rejected Services, or to restore any failure shall be at the expense of the Contractor.

105-6 Labour Disputes

Except to the extent that relief is granted under subsection 105-1, the Contractor shall bear the risk and responsibility of any loss, damage or expense to the Services or to itself of any nature and kind whatsoever arising from strikes or labour disputes other than such loss, damage or expense caused by the failure of the City to meet its obligations under the Contract.

105-7 Notice to Contractors Regarding Employment, Equipment, and Materials

The Contractor and any Subcontractor of the Contractor shall,

- (a) employ only orderly, competent and skilful personnel to perform the Services.

Whenever the General Manager informs the Contractor that any person involved in the performance of Services is, in the opinion of the General Manager, incompetent, unfaithful or disorderly, such personnel shall be discharged from the location of the performance of the Services and shall not again be employed by the Contractor in respect of the Services without the consent in writing of the General Manager.

105-8 Notices by the Contractor

Before Services are carried out which may effect any department or agency of government or any person, partnership or city including a municipal city or any board or commission thereof, and in addition to such notices of commencement of specific operations as the prescribed elsewhere in the Contract, the Contractor shall give at least 48 hours advance notice of the date of commencement of such Services, to the person, partnership, corporation, board, or commission so affected.

In the case of damage to, or interference with any Utilities, pole lines, pipe lines, or other public or other privately owned Services, the Contractor shall immediately notify the owner of such Utility and the General Manager of the location and details of such damage or interference.

The Contractor shall post prominently and maintain on the site of the Services and wherever else the General Manager may require, legible copies of any notice, schedule or other information that he is required to post under this Contract or under any statute, regulation, by-law or agreement.

105-9 Commencement and Completion(a) TIME

Time shall be of the essence in this Contract.

(b) PROGRESS OF THE SERVICES AND TIME FOR COMPLETION

The Contractor shall begin performance of Services within one week of written instructions to do so and shall diligently perform the Services on this Contract to completion.

If the time limit specified elsewhere in this Contract is not sufficient to permit completion of the Services by the Contractor, working a normal number of hours each day or week on a single shift basis, it is expected that additional shifts will be required throughout the life of the Contract to the extent deemed necessary by the Contractor to ensure that the Services will be completed within the time limit specified. Any additional costs occasioned by compliance with these provisions will be considered to be included in the prices bid for the various items of the Services and no additional compensation will be allowed therefor.

Working time shall be charged until the date of acceptance of the Services by the City, at which time all Services required in the Contract.

c) WORKING DAY

The General Manager will furnish the Contractor with a weekly statement showing the number of working days charged to the Contract for the proceeding week, the number of working days specified for completion of the Contract, and the number of working days remaining to complete the Contract. The Contractor will be allowed one week in which to file a written protest setting forth in what respects the said weekly statement is incorrect, failing which, the statement shall be deemed to have been accepted by the Contractor as correct.

An extension of time may be granted in writing by the General Manager in the event of the Services being delayed beyond the prescribed time for completion. Such extensions shall be for such time as the General Manager may prescribe, and the General Manager shall fix the terms on which the said extension may be granted. An application for an extension of time shall be made in writing by the Contractor to the City at least fifteen (15) days prior to the date of completion fixed by the Contract. The date of expiry of all bonds or other surety furnished to the City by the Contractor shall be extended at the expense of the Contractor, to at least two (2) months beyond the extended date of completion, and the Contractor shall furnish the City with evidence of such extension of the bond or other surety.

Any extension of time that may be granted to the Contractor shall be so granted and accepted without prejudice to any rights of the City whatsoever under this Contract, and all such right shall continue in full force and effect after the time limit in this Contract for the completion of the Services whenever in this Contract power or authority is given to the City or to the General Manager or any person to take any action consequent upon the act, default, neglect, delay, breach, non-observance or non-performance by the Contractor, in respect of the Services or Contract, or any portion thereof, such powers or authorities may be exercised from time to time, and not only in the event of the happening of such contingencies before the time limited in this Contract for the completion of the Services but also in the event of the same happening after the time so limited in the case of the Contractor being permitted to proceed with the execution of the Services under an extension of time granted by the City. In the event of the City granting an extension of time, time shall continue to be deemed of the essence of this Contract.

(d) LIQUIDATED DAMAGES

It is agreed by the parties to the Contract that in case the Services called for under the Contract are not completed within the number of working days as set forth in the Special Provisions, damage will be sustained by

the City, and that it is and will be impracticable and extremely difficult to ascertain and determine the actual damage which the City will sustain in the event of and by any reason of such delay and the parties hereto agree that the Contractor will pay to the City the liquidated damages as specified in the Special Provisions for each and every calendar day's delay in completing the Services in excess of the number of working days prescribed and it is agreed that this amount is an estimate of the actual damage to the City which will accrue during the period in excess of the prescribed number of working days.

The City may deduct any amount due under this paragraph from any monies that may be due or payable to the Contractor on any account whatsoever the liquidated damages payable under this paragraph are in addition to and without prejudice to any other remedy, action or other alternative that may be available to the City.

The Contractor shall not be assessed with liquidated damages for any delay caused by acts of God, or of the public enemy, acts of the Province or of any foreign state, or by fire, flood, epidemics, quarantining restrictions, embargoes or delays of sub-contractors due to such causes.

## **SECTION 106**

### **PAYMENT**

#### 106-1 **Price for Services**

The Contractor shall accept the compensation as herein provided in full payment for furnishing all necessary materials, labour, tools, equipment, supplies and other incidentals and for performing all Services under the Contract.

#### 106-2 **Prices and Payments**

##### (a) **Monthly Progress Payment Certificate**

An estimate in writing will be made by the General Manager once a month of the amount of Services completed by the Contractor and under the terms of the Contract.

These payments will be made on Progress Certificates, which shall be approximate estimates only and must not be taken or construed as an acceptance of the Services so estimated or as an admission that the City is in any way liable to the Contractor in respect thereof.

The first estimate will be of the amount or quantity and value of the Services performed since the Contractor commenced the performance of the Contract, and every subsequent estimate, except the final one, will be the amount or quantity of Services performed since the last estimate was made. Three copies of each estimate will be delivered to the Contractor by the General Manager. The Contractor shall present to the City three copies of the estimate certified by him to be correct in the manner prescribed by the City. Upon receipt of three copies of the estimate, certified as aforesaid, the City shall pay to the Contractor on the stipulated date an amount determined in accordance with the terms of the Contract.

In addition, the City shall be entitled to retain from the amounts otherwise due to the Contractor such amounts as it sees fit to retain for deficiencies in the Services (the "deficiency holdback"). The City shall retain the deficiency holdback until the deficiencies have been corrected to its satisfaction.

(b) Prices and Payments

Delay by the City in making any payment due to the Contractor following the acceptance of the Services by the General Manager for Services performed under the Contract and listed on the final detailed statement, shall be deemed not to be a breach of the Contract by the City but the City shall, in respect of any such payment made more than seven months after the date of completion of the Services, pay the Contractor interest at the rate of eight percent (8%) per annum for the period from the day following the expiration of the said seven month period to the date of payment.

Except as provided in this section, the City shall not pay interest on any amount which may at any time become payable to the Contractor under this Contract.

106-3 Payment for Extra Services on a Time and Material Basis

Where it is impractical to negotiate a price or where agreement cannot be reached on a price for approved Extra Services, payment for such Services may be made as provided herein.

Daily work records prepared by the General Manager and reporting the labour and equipment, if any, employed and the material used on each Extra Service, shall be reconciled and signed by the Contractor's representative each day.

The City will pay the Contractor for labour and supervision employed on each Extra Services project, at the rate of one hundred and fifteen percent (115%) of the cost of labour.

Where the Contractor arranges for the Extra Services to be carried out by others, the City will pay the Contractor one hundred and five percent (105%) of the compensation as hereinbefore provided. However, such percentage allowance over the prescribed compensation shall apply only once, regardless of the number of times the Services have been assigned or sublet and no percentage allowance over the prescribed compensation will be paid to any associate or affiliate as defined by the Business Corporations Act, R.S.O. 1990, c. B.16.

Except where there is agreement to the contrary, the compensation as herein provided shall be accepted by the Contractor as compensation in full for all costs and expenses arising out of the Extra Services and no other payment or allowance will be made in respect of such Services.

The final invoice shall be submitted by the Contractor within 30 days after the completion of the Extra Services.

#### 106-4 Contractor's Discharge of Liabilities

The Contractor shall discharge and cause each subcontractor to discharge all liabilities incurred, for labour, materials or services, used or reasonably required for use in the performance of this Contract on the date upon which each becomes due. At the request of the City, the Contractor shall furnish the City with evidence satisfactory to it that its liabilities and those of the Subcontractors, as aforesaid, have been discharged and this shall include a certificate or certificates from the Worker's Safety and Insurance Board that they have complied with the requirements of the Workers' Safety and Insurance Board and are in good standing on the books of the Worker's Safety and Insurance Board.

No payment to which the Contractor is otherwise entitled under this Contract shall, at the discretion of the City, be due and payable to it so long as it or any Subcontractor is in default under this section, and upon such default occurring, the City may in respect of claims submitted by creditors, having a contractual relationship with the Contractor, after notice in writing to the Contractor and its surety, withhold payment on the whole or any part of any such liability of the Contractor. Interest will not be paid on any such funds withheld.

In addition to the rights hereinbefore set out, the City may, if a letter of credit has been provided, call upon such letter of credit and pay any such liability of the Contractor and of the Subcontractor and deduct the amount so paid from any monies due or that may become due to the Contractor on any account or



from the monies provided by the letter of credit or if there are insufficient monies due or to become due or available under the letter of credit, the Contractor shall pay to the City upon demand an amount sufficient to make up the deficiency.

The City may in respect of claims submitted by creditors after notice in writing to the Contractor and its surety or sureties, if any, pay the whole or any part of any such liability and deduct the amount so paid from any monies due or that may become due to the Contractor in any account or under a letter of credit. In making payments under this section, the City may act upon any evidence that it deems sufficient and may compromise any dispute on liabilities and such payments shall not be open to dispute or questioned by the Contractor or the surety or sureties, if any, but are final and binding upon them.

#### 106-5 Books, Payrolls, Accounts and Records

The Contractor shall maintain and keep sufficiently complete and accurate books, payrolls, accounts and records relating to the Services or any extensions or additions thereto or claims arising therefrom, to permit the verification and audit thereof and it shall have no claim for repayment of any nature and kind whatsoever therefore, unless such books, payrolls, accounts and records have been so maintained and kept.

Daily work records prepared by the General Manager and reporting the labour employed on any specific portion of the Contract, shall be reconciled with and signed by the Contractor's representative each day, whenever in the opinion of the General Manager such records are required.

The City may inspect and audit the books, payrolls, accounts and records of the Contractor at any time during the period of the Contract and at any time thereafter as deemed necessary, and the Contractor shall supply certified copies of payrolls and any other records required whenever requested by the City.

The Contractor shall preserve all original records pertaining in any way to the Services of the Contract or any extensions or additions thereto or claims arising therefrom, for a period of 12 months after the date of mailing by the City of the final detailed statement to the Contractor or the final settlement of all claims and negotiations whichever is the longer and the Contractor shall require that all Subcontractors employed by him preserve all original records pertaining in any way to the Services of the Contract or any extensions or additions thereto or claims arising therefrom for a similar period of time.

The Contractor shall file with the City forthwith upon the appointment of each Subcontractor a consent and covenant of each Subcontractor under seal by which Subcontractor agrees to the provisions of this subsection the same way as if the subsection substituted "Subcontractor" for "Contractor".

106-6 Government Taxesb) Ontario Provincial Sales Tax

Ontario Provincial Sales Tax shall be included in the tendered sums that enter into and form part of the Services.

c) Federal Goods & Services Tax

Applicable Federal Goods and Services Tax shall **not** be included in the unit prices tendered. GST shall be added at the end of the Schedule of Unit Prices to arrive at the Total Contract Price.

The successful tenderer shall provide their GST Registration Number, which will be indicated on each Payment Certificate along with the applicable GST.

d) Changes to Government Taxes

Where a change in Canadian Federal or Provincial taxes occurs after the Tender Closing Date for this Contract, and this change could not have been anticipated at the time of bidding, the municipality will increase or decrease contract payments to account for the exact amount of tax change involved.

Claims for compensation for additional tax cost shall be submitted by the Contractor to the General Manager. Such claims for additional tax costs shall be submitted not later than 30 days after the date of acceptance of the Services.

Where the Contractor benefits from a change in Canadian Federal or Provincial Government taxes, the Contractor shall submit to the General Manager, a statement of such benefits. This statement shall be submitted not later than 30 days after the date of acceptance of the Services.

The General Manager reserves the right to make deductions from regular progress payments to compensate for the estimated benefit from decreased tax costs. Such deductions will be set-off from contract payments pending receipt of the statement itemizing the benefits which have resulted from a decrease in tax costs at which time the final payment adjustment will be determined.