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**.01 DEFINITIONS AND INTERPRETATION**

The following definitions shall apply:

- .01.01** **"Approved Product List"** means the list of acceptable products and/or material approved for use within the City of Hamilton. Lists are issued on an ongoing basis and all references to approved products and materials lists shall be deemed to be to the most recent version.
- .01.02** **"Contract"** means the agreement covering the performance of Work, including the supply of all Work, labour, services, materials, implements and equipment reasonably necessary for the proper and satisfactory execution and completion of the Work, and includes the Form of Tender, Plans, drawings, Specifications, bonds and any written supplementary agreements or written change orders issued by the General Manager.
- .01.03** **"Contract Documents"** means all Tenders, Specifications, performance security, insurance, instructions to bidders, construction requirements, Contract For Works, special provisions, drawings and any and all Addenda and amendments related thereto and connected with the Work or project to be performed under the Contract.
- .01.04** **"Contractor"** means the person, firm or company undertaking the execution of the Work under the terms of the Contract. Contractor shall be synonymous with Successful Bidder.
- .01.05** **"City"** means the City of Hamilton, and where an authority or discretion is conferred upon the City under the Request for Tenders, means the appropriate official of the City as designated or appointed under its governing by-laws, resolutions or policies from time to time.
- .01.06** **"General Manager"** means the General Manager of Public Works for the City of Hamilton or approved designate.
- .01.07** **"Inspector"** means any person, partnership or corporation that the City or Project Manager may appoint for the purpose of assisting in the supervision and inspection of the Work and the materials to be used in the Work.
- .01.08** **"Major Item"** means any individually bid item that has an actual cost, calculated on the basis of its actual or estimated tender quantity, whichever is the larger, and the unit price bid, equal to or greater than 5% of the total tender cost, calculated on the basis of the total of all the estimated quantities and the unit prices bid.
- .01.09** **"Plans"** means any drawings or reproduction of drawings pertaining the Work.
- .01.10** **"Project Manager"** means the person designated by the City to administer and oversee the Work.
- .01.11** **"Site"** means the area at which the Work is to be carried out.

- .01.12**      **"Specification"** means all written or printed descriptions or instructions pertaining to the method and manner of performing the Work or to the quantities and qualities of the materials to be furnished under the Contract, and includes the Special Provisions, Supplemental Specifications, Standard Specifications, Approved Products, Form of Tender and General Conditions together with all written agreements, made or to be made pertaining to the method or manner of performing the Work, or to the quantities or qualities of materials to be furnished under the Contract. Ontario Provincial Standard Specifications and Ontario Provincial Standard Drawings in effect on the date that the Request For Tenders is issued.
- .01.13**      **"Sub-Contractor"** means a person, partnership, firm, syndicate, joint venture, or corporation undertaking the execution of a part of the Work by virtue of an agreement between himself and the Contractor, and who has independent control over the Work to be done under such agreement.
- .01.14**      **"Successful Bidder"** "Successful Bidder" means the bidder to whom the City has awarded the Contract.
- .01.15**      **"Tender"** means the Request For Tenders (RFT) for which these general conditions relate.
- .01.16**      **"Work"** means (unless the context requires a different meaning), the whole of the Work, materials, matters and things, required to be done or supplied, mentioned or referred to in the Contract Documents and Plans, or including all extra or additional requirements which may be ordered by the Project Manager.
- Any Work or materials not herein specified, but which may be fairly implied as included in this Contract, and of which the Project Manager shall be the sole judge, shall be done or furnished by the Contractor as if such Work or material has been specified.
- .01.17**      **Clarifications**
- 01.17.01**      In the Contract Documents, a word importing the masculine, feminine or neuter gender only includes members of the other genders;
- a)      a word defined in or importing the singular number has the same meaning when used in the plural number, and vice versa;
  - b)      the provisions shall be read with such changes of number or corporate status as the context may require;
  - c)      a reference to any Act, by-law, rule or regulation or to a provision thereof shall be deemed to include a reference to any Act, by-law, rule or regulation or provision enacted in substitution therefore or amendment thereof;
  - d)      the headings to each section are inserted for convenience of reference only and do not form part of the Contract;

- e) any reference to time shall be deemed to be a reference to Hamilton time;
- f) all technical terms having a recognized meaning as a term of art in a relevant industry or trade shall be deemed to have that meaning in this Contract; and
- g) all accounting terms have the same meaning as are applied to those terms by the Canadian Institute of Chartered Accountants;
- h) any reference to an officer of the City shall be construed to mean the person holding that office from time to time, and also the designate or deputy of that person, and shall be deemed to include a reference to any person holding a successor office or the designate or deputy of that person.

**01.17.02** The words 'approval', 'directed', 'required', 'considered necessary', 'authorized', 'acceptable', or 'satisfactory' or words of like import, means approval or directed, required, considered necessary, or authorized by and acceptable or satisfactory to the City or its consultant.

**01.17.03** Except where otherwise defined, all terms that are defined in the Construction Act shall have the same meaning in the Contract Documents as in that Act.

**01.17.04** Except where to do so would lead to an absurdity or a manifestly unfair result, the Contract Documents shall be deemed to be intended to be complementary, so that

- (a) effect shall be given to each of them (i.e. provisions shall be considered to be repugnant only to the extent that they are inconsistent with each other); and
- (b) what is required by any one shall be as binding as if required by all,

but in the event of inconsistency or conflict between two or more Contract Documents, they shall each have the priority as specified in 200.04.10.

**.02 SCOPE OF THE WORK**

**.02.01 Notice to Proceed**

The City may issue a written notice to proceed to the Successful Bidder prior to the execution of the Contract for Works.

Work under the Contract shall commence on the commencement date specified in the notice to proceed, unless otherwise agreed.

**.02.02 Successful Bidder Responsibilities**

It shall be the Successful Bidder's responsibility to co-ordinate, control and check work of its own forces and of all its Subcontractors and to ascertain that all work is done in accordance with all Contract Documents, governing regulations and good construction practice, is of first class workmanship, and that only proper materials and methods are suitable for the function or performance intended have been used.

The Successful Bidder shall be responsible for faithful and proper performance of all aspects of the Contract.

Without limiting the generality of any other provision of these conditions, unless otherwise provided in the Specifications or the special provisions, the Contractor shall be required to provide and pay for:

- (a) all material, labour and service costs, charges for use of tools and equipment whether owned or rented, and where any work is to be carried out or services are to be rendered on property owned or occupied by the City, all protective and safety provisions, site signs and site conveniences, together with all cranes, scaffolding and shoring, freight costs, and material-handling and storing, and all services and incidentals whether shown or specified or required by good practice;
- (b) all bonds or other accepted forms of bid, performance, and labour and material payment security, insurance, permits and inspections; all applicable taxes, worker's compensation and all other applicable labour-compensation charges necessary to carry out the project, make the supply and complete all Work in accordance with the Contract Documents;
- (c) all services and materials required to carry out the Project, do all of the work and make all necessary or incidental supplies of goods, services, fixtures, construction components, landscaping and other finishing items, in each case fully in accordance with all Contract Documents and all instructions given by the City thereunder, and also in accordance with governing regulations and codes and in compliance with good industrial and commercial practice for first class workmanship, which in all instances, unless otherwise stipulated, shall be deemed to require work that has a finished appearance, is ready for use or occupancy and use for the purpose intended and is fully functional.

**.02.03 Conformity of Work with Plans and Specifications**

The Contractor shall perform all Work and shall supply all materials save and except those specified in the Contract Documents to be otherwise supplied and shall complete the whole of the Work all in strict conformance with the Plans and Specifications. Dimensions shall not be scaled from the Plans.

**02.04 Supply of Materials**

The Contractor shall supply all materials for this Contract unless specifically noted otherwise in the Contract Documents. All materials shall meet the Specifications as laid out in the Contract Documents and the appropriate Approved Product List, latest edition.

**.02.05 Contractor's Investigations**

The Contractor declares and represents that in tendering for the Work, and in entering into this Contract, they have either investigated for themselves the character of the Work to be done and all local conditions, including the location of any Public Utility which can be determined from the records or other information available at the offices of any person, partnership, corporation, including a municipal corporation and any board or commission thereof having jurisdiction or control over such Utility, that might affect their Bid or acceptance of the Work, or that, not having so investigated, they are willing to assume and does hereby assume, all risk of conditions now existing or arising in the course of the Work which might or could make the Work, or any items thereof more expensive in character, or more onerous to fulfil, than was contemplated or known when the Bid was made.

The Contractor also declares that in tendering for the Work and in entering into this Contract they did not and do not rely upon information furnished by the City or any of its servants or agents respecting the nature or conformation of the ground at the site of the Work, or the location, character, quality or quantity of the materials to be removed, or to be employed in the construction of the Work, or the character of the equipment or facilities needed to perform the Work, or the general and local performance of the Work, under the Contract.

**.02.06 Estimated Quantities**

The estimated quantities set forth in the Tender documents are approximate only, and the basis of payment under this Contract, will be the actual amount of the Work done and material furnished, provided, that if the quantities of the Work to be done or material to be furnished under any item vary from such estimated quantities, the Contractor shall proceed with the Work but if such variation for a Major Item exceeds plus or minus 20% of the estimated quantity and if such variation materially increases or decreases the cost of the Work or material than either party to the Contract, upon the written request of the other shall as soon as reasonably possible, negotiate upward or downwards the compensation for the portion of the Work to be done or material to be furnished which is in excess of or less than such estimated quantity plus or minus the 20% variation as the case may be.

The Contractor's written request that the City negotiate the compensation shall be made as prescribed by Section 200.02.08, for a notice of claim.

**.02.07 Changes and Alterations**

The Project Manager shall have the right, at any time before or during the prosecution of the Work, or before or after the execution of the Contract, to make or order in writing, any alterations or changes deleting, extending, increasing, decreasing, varying or otherwise altering any lines, grades, forms, dimensions, methods, Plans, materials, or the omission of any portion or portions of the Work, variations in any other way the Works Contracted for, or to order any additional or extra Work to be done or extra material to be furnished and the Contractor shall proceed with and carry out the Work as directed and shall supply such materials as directed, and shall do so without being entitled to any additional payment on account of any changes in Work or materials except as otherwise provided. The Contractor shall proceed with Work without delay and if they are of the opinion that they are entitled to additional compensation, they shall make a written claim for additional compensation as prescribed by Section 200.02.08 herein. If, in the sole opinion of the Project Manager, such order or change materially increases or decreases the cost of the Work or materials from that on which the Contractor based their bid, other than estimated quantities, the Project Manager in his/her sole discretion may increase or decrease the Contract price by an amount or amounts they consider appropriate, and his/her decision shall be final. Nothing herein contained shall preclude City or the Project Manager from having extra, additional, or other Work done by the City Workers or other parties in the event of satisfactory arrangement therefore not having been concluded between the Project Manager and the Contractor or for any other sufficient reason in the sole opinion of the Project Manager.

**.02.08 Extra Work**

No Work or materials shall be regarded as extra to the Contract Work or materials unless approved in writing as an extra to the Contractor by the Project Manager with the method of payment for it by means of a mutually agreed unit price or a specified in "Section 300.39 Method of Payment of Extra Works by Force Account", provided that the price for the said extra to the Contract is not specified in the Contract.

Where the Contractor considers Work to be extra Work, they shall so notify the Project Manager in writing before proceeding with the Work. However, they shall proceed with the Work without delay on the direction of the Project Manager.

The Project Manager shall be the sole judge of whether any Work or materials are extra Work or materials, and his/her decision shall be final.

Should circumstances arise at any time which, in the Contractor's opinion, would entitle it to additional compensation, and which are not fully provided for herein, the Contractor shall at once, on discovery of such circumstances, notify the Project Manager in writing and shall state clearly and fully what the circumstances are. The claim for the additional sum or compensation shall be submitted within 30 days of completing the Work related to the claim.

**.02.09 Claims**

In case of the Contractor's neglect or failure to observe fully the conditions set out in this paragraph, they shall forfeit all right to payment therefore which it otherwise would have been entitled to and shall not make any claim in respect thereof, and if made, the Project Manager may reject the same as invalid, and the Contractor shall not have any right to recovery in respect thereof, at law or otherwise and such decision of the Project Manager shall be final.

**.02.10 Cleaning Up Before Acceptance**

Before any Work will be finally accepted by the City, the Contractor shall do such trimming and disposal of rubbish and surplus materials as to leave the Work neat and presentable throughout, in the opinion of the Project Manager.

**.02.11 Acceptance of the Work**

The Contractor shall notify the Project Manager in writing when, in the opinion of the Contractor, the Work has been satisfactorily completed in accordance with the Contract, and the Project Manager will then cause the Work to be inspected. When it is found by the Project Manager to be completed to their satisfaction, they will give Notice of Completion in writing to the Contractor and until then no partial or entire use or occupancy of the Work by the City shall be construed as acceptance of any or all of the Work.

**.02.12 Scheduled Items of Work**

Quantities quoted for the items in the "Schedule of Prices" are estimates only, and are for the purpose of indicating to Bidder's the magnitude of the Work. For Work done on a unit price basis, the Contractor will be paid for the actual measured quantities at the respective unit prices bid.

Description of the items of the Work to be performed under the Contract, as set out in the "Schedule of Prices", are general in nature for the sake of brevity. It shall be the Contractor's understanding that all required Work shall be undertaken and performed by the Contractor as fully detailed in the Contract Documents.

**.03 CONTRACTOR'S RESPONSIBILITY TO THIRD PARTIES**

**.03.01 Performance and Other Security**

The Successful Bidder shall furnish a performance security and labour and material payment security to the City in the prescribed forms set out in the Construction Act, prior to the execution of the Contract for Work and within 10 Business Days of being notified that its Bid has been accepted in accordance with the following:

- (a) the performance of the contract (a performance bond), **in an amount equal to 50% of the Base Bid Price excluding any contingency amount and all Value Added Taxes;** and
- (b) the payment of all necessary services and materials required to complete the Contract in a satisfactory manner (a labour and material payment bond), **in an amount equal to 50% of the Base Bid Price excluding any contingency amount and all Value Added Taxes.**

A failure to provide any security described in subsection .03.01 shall:

- (c) constitute a breach of the requirements of the Tender; and
- (d) entitle the City to claim under any bid security described in the Instructions to Bidders Section 5; and
- (e) allow Procurement to present a report to the Administration and Audit Committee recommending Council not accept any further bids from the Bidder for a specified period of time.

**.03.02 Security and Deposit**

The performance bond, maintenance bond, payment bond, or other bonds or cash or securities, deposited with the City, shall be held by the City to secure the due performance of all provisions of the Contract, including, without limiting the generality of the foregoing, the payment of all Sub-Contractors and materials suppliers with respect to this Contract.

**.03.03 Insurance Requirements**

At the time of execution of a Contract for the work, the Successful Bidder will be required to deposit with the City certificates of insurance or certified copies of policies of Commercial General Liability Insurance, Automobile Insurance and Property Insurance, together with such other coverages as may be applicable to the contract for the work. Such insurance coverages shall be obtained, maintained throughout the term of the contract (including any renewal thereof) and paid for by the Successful Bidder, including all costs for any applicable deductible. Coverages shall be in the amounts specified and otherwise in accordance with all other requirements set out in these General Conditions of the Contract and be in a form approved by the City.

**.03.04 Commercial General Liability Insurance**

Commercial General Liability Insurance, written on IBC Form 2100 or its equivalent, including but not limited to bodily and personal injury liability, property damage, products liability, completed operations liability, owners & contractors protective liability, blanket contractual liability, premises liability, and contingent employer's liability coverage, having an inclusive limit of not less than \$2,000,000 per occurrence and in the aggregate and subject to the following;

- (i) Where the work provides for or contemplates the handling of asbestos, coverage shall not contain an asbestos exclusion and same shall be noted on the certificate of insurance.
- (ii) Where the Description of the Project, Supply or Work provides for or contemplates:
  - (I) the use of explosives for blasting or;
  - (II) vibration from pile driving or caisson work or
  - (III) the removal or weakening of support of any property, building or land whether such support be natural or otherwise.

Explosion, Collapse and Underground (XCU) coverages shall be added by endorsement and same shall be noted on the certificate of insurance.

- (iii) Coverage shall be included for pollution from "hostile fires".

**.03.05 Standard Form Automobile Liability Insurance**

Standard Form Automobile Liability Insurance that complies with all requirements of the current legislation of the Province of Ontario, having an inclusive limit of not less than:

- (i) Subject to paragraph (ii), \$2,000,000 per occurrence;
- (ii) where the Contract relates to the transportation of an explosive substance, snow removal or road construction, or will involve the use of one or more automobiles or any combination of automobiles and towed vehicles having in any case a combined aggregate weight of 10 tonnes or more before loading, \$5,000,000 per occurrence,

for Third Party Liability, in respect of the use or operation of vehicles owned, operated or leased by the Contractor for the provision of services;

**.03.06 Non-Owned Automobile Liability Insurance**

Non-Owned Automobile Liability Insurance in standard form having an inclusive limit of not less than \$1,000,000 per occurrence, in respect of vehicles not owned by the Contractor, that are used or operated on its behalf for the provision of services under the Contract;

**.03.07 Builders Risk**

Where the Description of Project, Work or Supply provides for or contemplates the construction of a building or structure, Contractor will provide Builders Risk insurance to cover the subject property;

- (i) coverage shall be for the full amount of the Total Contract Price plus the full value of any optional features or other options that the City elects to order (but the City may require insurance up to the amount of the replacement cost of any building in structure in, on, or upon which any Work is to be done under the Contract, where in the reasonable opinion of the City's Manager of Risk Management there is a sufficient risk of damage to the same),
- (ii) coverage shall;
  - (I) apply to all risks of direct loss or damage (including theft and sinkhole) but subject to any exclusions and limitations in the Special Conditions and the actual policy form;
  - (II) apply to all products, labour, equipment and supplies of every nature, the property of the City or Contractor or for which the City or Contractor may have assumed responsibility (whether on site or in transit), that is to be used in or pertaining to site preparation, and the erection, fabrication, construction, reconstruction, re-modelling or repair of any building, structure, other fixture or thing;
  - (III) include the installation, testing and any subsequent use of machinery and equipment, including boilers, pressure vessels or vessels under vacuum;
  - (IV) include damage to the Work caused by an accident to or the explosion of any boiler or other pressure vessel or equipment forming part of the Work;
  - (V) include off-site storage, transit and installation risks as indicated in the Installation Floater and Motor Truck Cargo insurance described hereafter, if such coverages are not separately provided
  - (VI) include flood and earthquake insurance if such risks exist.

include coverage for loss of income, extra expense and/or expediting expense is such exposures exist

- (VII) be subject to a waiver of coinsurance
- (VIII) be endorsed to grant permission to occupy.
- (IX) be endorsed to cover the interests of all parties, including the City and all contractors and subcontractors

**.03.08 Wrap Up Liability Insurance**

If applicable, and where required by the City, the Contractor will provide Wrap-up Liability Insurance acceptable to the City for limits as may be determined by the City for Third Party Bodily Injury, Personal Injury and Property Damage. Such insurance shall be in the name of the Contractor and shall name the Contractor's subcontractors, agent, architects, landscape architects, engineers, consultants, planners, project managers and the City of Hamilton as additional insureds thereunder and also include other persons which the City may reasonably require to be added as additional insured parties. This policy may be required to be Project Specific.

The Policy must include the following as and when required by the City:

- (i) personal injury liability, bodily injury and property damage
- (ii) premises and operations liability;
- (iii) owner's and contractor's protective liability;
- (iv) broad form products and completed operations liability;
- (v) cross liability;
- (vi) severability of interest
- (vii) contingent employers' liability
- (viii) blanket written and oral contractual liability;
- (ix) all risks tenant's legal liability;
- (x) hoist and crane liability;
- (xi) fire fighting and forest fire fighting expense liability;
- (xii) employers liability and voluntary compensation;
- (xiii) non-owned automobile liability;
- (xiv) directors, officers, employees, shareholders, legislators, and officials involved in the project added as insureds and/or additional insureds;
- (xv) shoring, blasting, excavating, under-pinning, demolition, pile driving and caisson work, work below and above ground surface, work below and above water, tunnelling and grading, and similar operations associated with the construction work, as applicable;
- (xvi) sudden and accidental pollution liability with a discovery provision of not less than one hundred and twenty (120) hours and a subsequent reporting provision of not less than one hundred and twenty (120) hours; and
- (xvii) 30 day written notice of cancellation.
- (xviii) include coverage as unnamed insured for all contractors, subcontractors, consultants and employees of the Successful Proponents provided that the City reserves the right to require the Successful Proponent to add further parties as additional unnamed insured persons.

Wrap Up Liability Insurance may replace coverage requirements for .03.04 Commercial General Liability Insurance and .03.06 Non-Owned Automobile Liability Insurance.

**.03.09 Property Installation Floater All Risks Insurance.**

Where the Description of Project, Work or Supply provides for or contemplates the supply and installation of fixtures, equipment, machinery, apparatus, etc., or other work such as minor renovations amounting to an improvement within the meaning of the *Construction Act* only, the Contractor shall provide a Property Installation

Floater All Risks Insurance. The amount of coverage should be adequate to provide full replacement value of the property, repairs, additions or equipment being installed, otherwise being handled or stored on or off premises.

**.03.10 Motor Truck Cargo or Transportation Insurance**

If the Installation Floater insurance does not provide transportation coverage, separate Motor Truck Cargo or Transportation insurance All Risks is to be provided for materials or equipment transported in the Contractor's vehicles from place of receipt to building sites or other storage sites.

**.03.11 Pollution Liability Insurance**

Where requested by the City, Contractor to provide Contractors Pollution Liability Insurance covering the contractor's liability for bodily injury, property damage and environmental damage resulting from pollution and related cleanup costs incurred, all arising out of the work or services to be performed under this contract by or on behalf of the Contractor in an amount of not less than \$2,000,000 per claim or per occurrence, which coverage shall be maintained in force for 12 months following the termination of this contract. Coverage shall be provided for both work performed on site, as well as during the transport of any hazardous materials if applicable. City of Hamilton shall be named as an additional insured.

**.03.12 Property Insurance**

The Contractor shall maintain Property Insurance, as may be applicable, with respect to loss or damage (including fire, theft, burglary, etc.) of its own property and property in its care, custody and control, including its equipment, tools, stock, used in connection with the Contract.

All policies of insurance policies shall:

- (a) be recorded as being a primary policy and shall be in a form and issued by an insurance company satisfactory to the City, that is licensed to carry on business in Ontario;
- (b) be maintained continuously during the course of carrying out the Project, Work or Supply; or for such period of time as may be required after completion of the Project, Work or Supply, as deemed necessary by the City,
- (c) provide for a deductible amount of no greater than \$10,000; or such other amount as the City, at its sole discretion, may deem appropriate.
- (d) (except in the case of automobile liability insurance, non-owned automobile liability insurance, professional errors & omissions liability insurance, and medical malpractice liability insurance) include the City named as an additional insured, to the extent of the Contractor's obligations to the City under the Contract Documents;
- (e) contain cross liability and severability of interest provisions, as may be applicable;

- (f) preclude subrogation claims against the City and any other person insured under the policy; and
- (g) provide that at least 30 days prior written notice (15 days, in the case of automobile liability insurance, and 10 days in the event of non-payment of premiums) shall be given to the City by the Insurer before the Insurer or Contractor takes any steps to cancel, terminate, fail to renew, amend or otherwise change or modify the insurance or any part thereof.

The City reserves the right to require the Contractor to purchase such additional insurance coverage as the City's Risk Management Services Office may reasonably require. The City reserves the right to request such higher limits of insurance or otherwise alter the types of coverage requirements (taking into consideration such matters as the nature of the work, contract value, industry standards, and availability of insurance) as the City may reasonably require from time to time.

Any insurance coverage acquired under the Contract shall in no manner discharge, restrict or limit the liabilities assumed by the Contractor under the Contract. The dollar limit of insurance coverage shall not be limited by the dollar amount of the Contract.

The Contractor shall pay all premiums on the policies as they become due provided that the City may pay premiums as they become due and deduct the amount thereof from moneys due from the City to the Contractor should the Contractor fail to do so.

**.03.13 Proof of Insurance and Claims Protocol**

The Contractor shall deposit with the City such evidence of its insurance as provided in or required under the provisions of these Instructions, an Addendum or the Special Provisions,

- a) at the time of execution of the Contract for Work (if any), or
- b) in any event prior to commencing the Project, Work or Supply; and

and thereafter during the term of the Contract, no later than 20 Business Days prior to the renewal date of each applicable policy, the Contractor shall deposit with the City's Procurement Manager an original Certificate of Insurance originally signed by an authorized insurance representative, confirming thereon relevant coverage information including but not limited to name/description of City contract, name of Insurer, name of Broker, name of Insured, name of Additional Insureds as may be applicable, commencement and expiry dates of coverage, dollar limits of coverage, deductible levels as may be applicable, cancellation/termination provisions; or (at the City's election) a certified copy of the insurance policy or policies required under section .03.23. Certificate Holder will be addressed as the City Of Hamilton, City Hall, 71 Main Street West, Hamilton, Ontario L8P 4Y5. All certificates, cancellation, nonrenewal or adverse change notices should be mailed to this address.

The Contractor shall not do or omit to do anything that would impair or invalidate the insurance policies. Delivery to and examination or approval by the City of any certificates of insurance or policies of insurance or other evidence of insurance shall not relieve the Contractor of any of its indemnification or insurance obligations under

the Contract. The City shall be under no duty either to ascertain the existence of or to examine such certificates of insurance or policies of insurance or to advise the Contractor in the event such insurance coverage is not in compliance with the requirements set out in the Contract.

Claims reported to the Contractor by a third party or by the City shall be promptly investigated by the Contractor. The Contractor shall make contact with the Claimant within 48 hours of receipt of notice of a claim. The Contractor shall initiate an investigation of the claim immediately upon notice, and advise the Claimant by letter of its position regarding resolution of the claim within 20 Business Days of the notice. The Contractor shall include in its letter of resolution the reasons for its position. Failing acceptance of the resolution by the Claimant of the proposed resolution, the Contractor agrees to report the claim to its Insurer for further review and response to the Claimant. Failure to follow this procedure shall permit the City to investigate and resolve any claims and offset the resultant costs against any monies due, from time to time, under the Contract.

Upon the receipt of a third party claim notice from the City's Risk Management Services Section, the Contractor shall:

- a) Acknowledge receipt of the notice by way of a facsimile or e-mail back to Risk Management Services within 5 business days. The acknowledgment will indicate that the Contractor has received the claim and will include all pertinent contact information for the company individual responsible for the claim.
- b) Provide Risk Management Services with an initial status update within the first 30 days of receipt of the claim notice.
- c) Provide Risk Management Services with a status update upon request at any time as Risk Management Services deems necessary. This update should be provided within 10 business days of receipt of the request.
- d) Provide a closing report to Risk Management Services promptly at the conclusion of a claim

### **.03.14 Indemnification**

**.03.14.01** The Contractor shall indemnify, defend, and hold the City, including its elected officials, officers, employees, agents, affiliates and representatives (collectively referred to as the "Indemnified Party") harmless against any and all claims, demands, costs (including legal costs on a substantial indemnity basis), penalties, fines, fees, royalties, damages (including indirect, special, remote, and/or consequential damages) and causes of action, including, without limitation, proprietary or personal injury (including death) that arise from, either directly or indirectly, or relate to,

- (a) the Contractor, its officials, directors, officers, employees, agents, affiliates, partners (general or limited), joint venturers, contractors, Subcontractors, and other representatives (collectively referred to as the "Indemnifying Party"), under this Contract,

- (i) negligently carrying out any obligation to which it is subject,
- (ii) failing to carry out any obligation to which it is subject,
- (iii) negligently exercising any right to which it is entitled, or,
- (iv) exercising any right to which it is entitled in a manner which is inconsistent with the terms and conditions of this Contract,

or any combination thereof, except to the extent that the same are caused by the negligence or deliberate wrong-doing of the Indemnified Party, or

- (b) any patent, trademark, copyright infringement or other breach of any intellectual property right of any person, for which the Indemnifying Party is responsible.

**.03.14.02** The City shall notify the Contractor upon receipt of any such claim or demand that it receives. No settlement shall be made nor consent to judgment given without prior written approval of Contractor and its insurers, which approval shall not be unreasonably withheld.

**.03.14.03** The rights to indemnity contained herein shall survive the early termination or expiry of this Contract.

**.03.14.04** The City may enforce the rights of indemnity conferred on any Indemnified Party under section 03.14.01 on their behalf and to the same extent as if they were parties to this Contract.

**.03.14.05** The rights to indemnity provided for in this section shall be deemed to be in addition to any rights with respect to insurance in favour of the Indemnified Party provided in this Contract.

**.03.15 Notices by the Contractor and Observance of Laws, Statutes and Regulations**

The Contractor shall give notice of the date of commencement of the Work to any department or Agency of the Provincial or Federal government and to any person, partnership or corporation, including a municipal corporation and any board or commission thereof who may be affected by the Work at least two (2) weeks in advance of such date. The Contractor shall obtain their own expense, all licenses or permits required by all by-laws or Statutes, and Regulations made thereunder.

The Contractor shall give reasonable notice to any department or agency of the Provincial or Federal government and to any person, partnership or corporation, including a municipal corporation and any board or commission thereof, who may be affected by the Work, before any blasting operations are carried out.

In the event of accidental damage to, or interference with any utilities, pole lines, pipe lines, farm tile or other public or other privately owned Works, the Contractor shall immediately notify the owner of the location and details of such damage or interference.

The Contractor shall post prominently and maintain on the site of the Work and wherever else the Project Manager may require, legible copies of any notice

schedule or other information that it is required to post under this Contract or any Statute, Regulation, by-law or agreement.

**.03.16 Assignment and Sub-Letting**

The Contractor shall not assign, transfer or sub-let the whole or any portion of this Contract, or the whole or any portion of the Work to be performed under this Contract, without the consent in writing of the Project Manager and the Contractor shall not transfer or assign any monies which may be due or which may become payable under this Contract without the consent in writing of the Project Manager, provided that any consent so given, shall not under any circumstances, relieve the Contractor of any of the liabilities or obligations assumed by them under this Contract.

**.03.17 Patents and Copyrights**

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 the Contractor in connection with Work done or material furnished by the Contractor under this Contract.

**.03.18 Contractor's Responsibility for Losses and Damages**

The Contractor, it's agents and all Workers and persons employed by it, or under it's control, or employed by or under the control of Sub-Contractors, shall use due care that no person or property is injured, and the Contractor shall be solely responsible for all damages by whomsoever claimed in respect of any such injury. The Contractor shall at it's own expense make such temporary arrangements as may be necessary to ensure the avoidance of any such damages or injury and to prevent the interruption of or danger to vehicular or pedestrian traffic on any railway or any public or private road allowance.

The Contractor will indemnify and save harmless the City from and against all actions, suits, claims and demands whatsoever of all persons whomsoever, which may be brought against or made upon the City, and for all loss, expense, costs, charges, damages, indemnities and/or liability which may be sustained, paid or incurred by the City by reason of or in consequence of this Contract, however caused.

All loss or damage occasioned to the Work or arising out of the nature of the Work to be done, or from the normal action of the elements or from any reasonably foreseeable circumstance in the prosecution of the same, or from any normal obstruction or difficulties which may be encountered in the prosecution of the Work, having regard to the nature thereof, shall be sustained and borne by the Contractor at their own expense, and all material required to replace any defective or rejected Work, or to restore any failure shall be at the expense of the Contractor.

Notwithstanding the indemnity provision contained in this section, where in the opinion of the Project Manager, the Contractor has failed to rectify any damage, or injury or infringement or has failed to adequately compensate any person for any damage, injury or infringement for which the Contractor is responsible to the Contractor of its intention so to do, may withhold payment of monies due to the Contractor under this or any other Contract with the Contractor until the Contractor

has rectified such damage, injury or infringement or has paid satisfactory compensation for such damage, injury or infringement.

**.03.19 Obstructions and Utilities**

Except as otherwise provided in this section, the Contractor assumes all the risks and responsibilities arising out of any obstruction on or under the road allowance and any traffic conditions caused by such obstruction including traffic conditions on any highway or road giving access to the Contract area and they shall not make any claim against the City for any loss, damage or expense occasioned thereby.

Before commencing Work the Contractor shall notify all owners of utilities, pipes, structures or other obstructions, sewers and watermains excepted, either under, on or above the surface within or adjacent to the Work area and request their accurate field location.

It is the Contractor's responsibility to co-ordinate it's proposed Works with any Work required by utilities. The Contractor shall make all reasonable efforts to schedule and co-ordinate it's Work to avoid delays.

**.03.20 Labour Disputes**

The Contractor shall bear the risk and responsibility of any loss, damage or expense to the Work or to themselves of any nature and kind whatsoever, arising from strikes or labour disputes.

**.03.21 Plans and Working Drawings**

The Contractor shall submit to the Project Manager for approval any shop Plans and working drawings which are not furnished by the City and which may be required for any part of the finished Work and the Contractor may be required to submit for the Project Manager's approval, working drawings for any falsework, forms or other incidental details of construction required in the construction, but not required as part of the finished Work.

It is expressly agreed that neither the provisions of Plans, shop drawings and/or working drawings by the Project Manager or the City nor the approval by the Project Manager of any Plans, shop drawings and/or working drawings submitted by the Contractor, shall relieve the Contractor from any responsibility for the adequacy or soundness of such Plans, shop or working drawings or such Work, or for any deviation from such Plans, shop drawings, working drawings or Specifications.

**.03.22 Explosives and Blasting**

The Contractor shall comply with all laws respecting the handling, storage and use of explosives.

In addition to any other precaution that may be necessary, the Contractor shall, immediately prior to a blast, clear the blasting area of all residents, vehicular and pedestrian traffic, and shall post flagmen on each road entering the blasting area, who shall stop all traffic and shall prevent such traffic from entering the area until the

blasting has finished. The Contractor shall provide and use a siren or whistle to warn the public and the workers that a blast is to be set off and to indicate the "all clear" after the blast has taken place. Four short soundings of the siren or whistle, two minutes before detonation of a blast shall be used for warning and for protection, and one long ten to fifteen second sounding of the siren or whistle shall be used to give the "all clear".

Notwithstanding any direction of the Project Manager in regard to explosives, drilling or methods of blasting used, the Contractor shall take all precautions necessary to ensure that persons are not injured and that property and the structures, including public utilities are not damaged. Without limiting the generality of Section 200.03.18, the Contractor shall be responsible for all claims whatsoever arising from the hauling, handling, use of or storing of explosives and all effects direct or indirect of the blasting operation.

No payment shall be made by the City for protective measures or for damages to persons or for damages or repairs to property, structures, or public utilities, or for any claim whatsoever arising from blasting operations.

The Contractor shall employ, at its own expense, the services of a specialist experienced in seismic investigations to determine and control the permissible intensity of vibrations which will result from blasting operations. Investigations shall be carried out by the Contractor and the specialist before any rock excavation is started in order to determine the maximum explosive charges that can be used at different locations throughout the area of rock excavation. The Contractor shall submit a report to the Project Manager outlining the results of the investigations and tests made and detailing the control required during blasting throughout the area of rock excavation.

Further seismic reading shall be taken by the specialist during blasting operations. Such readings shall be continuous and shall be taken where buildings and structures are located within 60 metres of the blasting area.

Within the area of the above buildings and structures the monitoring equipment shall be placed to obtain representative readings. As construction proceeds, the monitoring equipment shall be repositioned on an on-going basis.

In addition to the above, vibrations generated shall not exceed a vibrational peak particle velocity of 50 mm per second when monitored at the nearest building or structure.

If the monitoring station is not at the nearest structure, then the allowable particle velocity shall be reduced in accordance with the increased distance from the blast and shall be determined by the blasting specialist.

Additional monitoring and readings shall be obtained in other sensitive areas where the pre-blast survey indicates the need.

The Contractor and specialist shall visit the Owners of properties and buildings where tests and/or investigations are required and shall describe blasting and seismic investigations to them and obtain their permission to carry out the necessary

investigations and notify them of the blasting schedule.

The Specialist will be an advisor to the Contractor and the acceptance of their reports and recommendations by the Project Manager will in no way relieve the Contractor of any responsibility for damage or injury by blasting.

All costs incurred by the Contractor in the employment of the specialist in seismic investigations shall be deemed to be included in the items in the Contract under which any rock excavation is required.

**.03.23 Claims - Follow Up Procedure**

The Contractor shall retain an independent adjuster who will determine the Contractor's liability for all third party claims and advise the claimants in writing of the determination of liability within thirty (30) days of service of the claim on the Contractor.

If the Contractor's independent adjuster fails to determine the liability for any of the third-party claims as noted above, the City reserves the right to have an independent adjuster review the claim and determine liability therefore. Any monies paid by the City in satisfaction of any third-party claim determined to be the Contractor's liability plus all associated costs will be deducted from monies owing to the Contractor by the City.

**.03.24 Construction Liaison Committee**

Upon the request of the Project Manager, the Contractor shall participate in a Community Construction Liaison Committee.

This committee may consist of local residents, the Contractor and City representative(s) and shall meet on a regular basis to discuss issues related to the Work being performed by the Contractor. In these cases, the City, and the Contractor will aid the local residents in establishing a Community Construction Liaison Committee.

**.04 CONTROL OF WORK****.04.01 Project Manager's Authority**

The Project Manager may supervise all Work included herein and shall determine the quantities, quality, acceptability and fitness of the several kinds of Work and materials which are to be paid for under this Contract, and determine all questions relating to the said Work and materials and the construction thereof. The Project Manager shall in all cases be the sole judge of all questions of fact which may arise in respect to the Contract, including, but not so as to limit the generality of the foregoing, all claims by the Contractor and all questions relating to the execution and progress of the Work, the supplying of materials and the interpretation of the documents comprising the Contract. The Project Manager's decision shall in all cases be final.

The Project Manager has authority to stop the progress of the Work or any part or parts thereof in an emergency or whenever in it's opinion such stoppage may be necessary to ensure the safety of life, or the structure, or neighbouring property, or whenever in his/her opinion the Work or any parts thereof is being carried out in an unsatisfactory manner, and the City shall not be responsible for any loss, expense, costs, charges, damages, indemnities and/or liability which may be sustained, paid or incurred by the Contractor, any other Contractor or Contractors, any Sub-Contractor or Sub-Contractors or any other person or persons by reason of such order to stop by the Project Manager.

If the Contractor should neglect to prosecute the Work properly or fail to perform any provision of this Contract, the City after five (5) days written notice by the Project Manager to the Contractor, may without prejudice to any other right or remedy the City may have, make good such deficiencies and may deduct the cost thereof from any monies then or thereafter due the Contractor.

Notwithstanding any other provisions in the Contract, in case of immediate danger to public safety, the City may take such emergency measures or may cause such immediate corrective repair Work to be done as the Project Manager deems necessary under the circumstances and shall notify the Contractor of the City's action, in writing, as soon as possible.

The cost of such emergency Work shall be borne by the Contractor, and the cost shall be deducted, collected or recovered by the City as provided in the Contract and in the Performance of Contract Security.

**.04.02 Inspector's Authority**

Inspectors of the City shall see that the provisions of the specifications are faithfully adhered to, especially with regard to the quality of workmanship and materials. Work done in the absence of an Inspector may be ordered to be opened-up for thorough examination, and if unacceptable, must be rebuilt or replaced as directed, at the Contractor's sole expense. Approval by an Inspector shall not be taken as, or construed into, an acceptance of defective or improper Work or materials, which must be removed and properly replaced whenever discovered at any stage of the Work. Directions given by Inspectors relating to the quality of material and workmanship, shall be obeyed at once by the Contractor. Inspectors do not have the power to set

out Work or give any stakes, lines gauges, levels, or grades. Any orders or directions given by the Inspector, other than as herein provided for, shall not be binding upon the City.

The Inspector is responsible for public relations on the project site. The Contractor must restrain its employees from giving unauthorized information and shall refer all inquiries from whatever source, relating to the Works to be undertaken within the scope of the Contract, to the Inspector.

#### **.04.03 Inspection**

The Contractor shall at all times and at its own expense furnish all reasonable aid and assistance required by the Project Manager or Inspector for the proper inspection and examination of the Work or any part thereof. The Contractor shall, at its own expense, furnish samples for testing when required and shall furnish all reasonable facilities for the inspection of material and workmanship. The Contractor shall obey the directions and/or instructions of the Project Manager or his/her authorized representatives such directions and/or instructions and they shall be made in writing at the request of the Contractor.

Notwithstanding any inspection that the City might carry out, the failure of the Project Manager or the Inspector to condemn or object to any defective Work or material shall not constitute a waiver of any Specification or approval or acceptance of such defective Work or material and except as otherwise expressly provided herein the Contractor shall be and remain liable within the terms of the Contract for such defective Work or materials, any losses, damages, costs, charges or expenses in connection therewith.

#### **.04.04 Superintendence**

The Contractor shall at all times have on the Work as its agent a competent superintendent or foreman capable of reading and thoroughly understanding the Plans and Specifications and of adequately communicating with the Project Manager and their representatives, and thoroughly experienced in the type of Work being performed who shall receive instructions from the Project Manager or his/her authorized representatives. The superintendent or foreman shall have full authority to execute the orders or directions of the Project Manager without delay, and to promptly supply such materials, equipment, tools, labour and incidentals as may be required. Such superintendence shall be furnished irrespective of the amount of Work sub-let.

The Project Manager shall be provided, to his/her satisfaction, with the address and telephone number of the Contractor's representative who may be contacted and available within reasonable notice 24 hours a day, 7 days a week, on matters relating to this Contract.

#### **.04.05 Methods and Sequence of Work**

Before starting the Work the Contractor shall submit in writing to the Project Manager, their proposed methods and sequence of Work and shall obtain approval thereof and such approval shall not relieve the Contractor of any of their duties and obligations

under this Contract.

The Contractor must notify the City at least one full week prior to the scheduled start of the Contract in order that the necessary inspection forces and traffic control procedures can be established.

Within seven (7) days of the award of this Contract, the Successful Bidder shall submit Three (3) copies of a construction schedule bar chart for approval by the Project Manager. This chart shall show clearly the proposed dates of commencement and completion of each major phase of the Work.

The Contractor will be required to employ a sufficient number of working crews to complete the Work within the working time specified in the Contract Documents.

#### **.04.06 Quality of Materials**

All materials supplied by the Contractor shall be new, shall conform to the requirements of the Specifications and be approved by the Project Manager prior to use in the Work.

Where required by the Project Manager, the Contractor shall furnish a complete written statement of the origin, composition and manufacture of all materials to be supplied by it and shall furnish samples thereof for testing purposes. The Contractor shall not change the source of supply of materials without the prior written authorization of the Project Manager.

Approval of any materials by the Project Manager shall not be considered as waiver of objection to the Work or materials at any subsequent time, due to their failure to conform with the Specifications.

#### **.04.07 Modifications of Methods and Equipment**

The Contractor shall furnish for the Project Manager's approval, such materials tests, mix designs and tests of items manufactured or fabricated off the job site as the Project Manager may require.

The Contractor shall make such alterations in its method, equipment and working forces as the Project Manager in writing directs if at any time the method or equipment or working forces are found by the Project Manager to be unsafe or inadequate to ensure the protection, safety, or quality of the Work or to ensure a rate of progress sufficient in the opinion of the Project Manager to complete the Work within the time limit specified under the Contract, but notwithstanding the foregoing, the onus is on the Contractor to ensure that such required safety protection, progress and quality of the Work is maintained.

#### **.04.08 Defective Work and Materials**

The Contractor shall correct or replace any defective Work or material supplied by them, at its own expense, upon the direction of the Project Manager.

If the Contractor should refuse or neglect to remove any defective Work or material

supplied by it in accordance with a written notice from the Project Manager, such Work or material may be removed by order of the Project Manager, at the Contractor's expense, and in addition to any other remedies available to the City, to recover the cost and expense of such removal, the City may deduct the cost and expense of such removal from any monies due to or to become due to the Contractor on any account.

**.04.09 Deviation from Plans**

The Contractor shall not deviate from the approved Plans, Specifications, or working drawings without the prior written consent of the Project Manager.

**.04.10 Conflicts and Omissions**

The documents comprising the Contract are complementary and what is required by any one of them shall be as binding as if required by all of them. The Contractor shall do all Work and furnish all materials in accordance with the best Construction and Engineering practices. In the event of a conflict between them, each shall enjoy priority against the others (subject to any express term or condition to the contrary) in accordance with the following successive order:

- (1) Contract For Work
- (2) Addenda
- (3) Special Provisions
- (4) Plans
- (5) Specifications
- (6) standard drawings and standard specifications
- (7) Form of Tender
- (8) General Conditions – Form 200
- (9) General Construction Requirements – Form 300
- (10) Supplementary Instructions to Bidders
- (11) Instructions to Bidders

Neither party to the Contract shall take advantage of any apparent error or omission in the Plans or Specifications, but the Project Manager shall be permitted to make such corrections and interpretations as may be necessary for fulfilment of the intent of the Plans and Specifications. Any Work material not herein specified but which may be fairly implied as included in this Contract, of which the Project Manager shall be the sole judge, shall be done or furnished by the Contractor as if such Work or material had been specified and the Project Manager's decision shall be final.

**.04.11 Lines, Levels and Grades**

The City will provide the locations of published vertical bench marks and horizontal control points to the Contractor. The Contractor shall employ at it's own expense a qualified person who shall establish all other necessary lines, elevations and grades, and shall erect required batter boards and sight lines necessary to construct all proposed Works under the Contract. All monuments and reference stakes shall be placed so as to be undisturbed during excavation operations, and subsequent construction. The name of the person who is going to do this Work, their qualifications and experience must be submitted to the Project Manager for approval.

From time to time, the above mentioned person shall verify by an instrument, base lines, bench marks and all other reference marks and the Contractor shall be responsible for the accuracy of all lines and levels and of the Work as built in accordance therewith.

The Project Manager may, at any time, check the lines, elevations, grades, batter boards and any other reference marks, set by the person employed by the Contractor, and the Contractor shall correct any errors disclosed by such check.

Such check shall not be construed to be approval of the Contractor's Work and shall not relieve the Contractor of the responsibility for the accurate construction of the entire Work.

In the event that the Contractor elects to use laser equipment to establish reference marks for any portion of the work, the Contractor shall provide the Inspector with the means of checking grades and/or reference marks including but not limited to batter boards or other means as may be approved by the Project Manager.

**.04.12 Right of Entry**

At any time during the currency of this Contract, the City, its Contractors, employees or agents, may enter the property or location for the purpose of constructing or installing such collateral Works as the City may desire, and the Contractor shall not interfere with or prevent the construction of such collateral Works.

**.04.13 Notices to Contractor and City**

All notices and demands provided with respect to the Contract shall be in writing and shall be served (i) personally, (ii) by registered mail, return receipt requested, or (iii) by facsimile or, in the case of the notices specified below, other form of electronic communication during the transmission of which no indication of failure of receipt is communicated to the sender, as follows:

to the Contractor at the address set out on the Form of Tender

to the City at the address given by the City at the commencement of the Contract.

The only notices which will be served by electronic communication are applications for progress payment, completion invoice, and notices of non-payment. All other notices and demands will be served personally, by registered mail, return receipt requested, or by facsimile.

If notice is sent by registered mail as stated above, it shall be deemed to have been received by the recipient five business days after date of posting. If the notice is delivered by hand to the recipient it shall be deemed to have been received by the recipient on the date of delivery. If the notice is delivered by fax or email, it shall be deemed to have been received by the recipient on the day it was sent if sent on a business day during regular business hours (Monday to Friday, 8:30 a.m. to 4:30 p.m.), and if not, then on the first business day thereafter. "Business day" means a day when the administrative offices of the City are open.

Each party may change any such address by giving five days' prior written notice of such change to the other party in the manner prescribed above.

**.04.14 INTENTIONALLY DELETED**

**.04.15 Hindrances and Delays**

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

When the Work under this Contract is for any reason discontinued, and will not be resumed until the following working season, or for any extended period, the Contractor shall, when directed by the Project Manager, open and place the roadway in a passable, safe and satisfactory condition for public travel, and the roadway shall not again be closed to pedestrian or vehicular traffic thereon or be obstructed without written authority of the Project Manager.

**.04.16 Character and Conduct of Employees**

The Contractor shall employ only orderly, experienced and competent persons to do the Work and should the Project Manager inform them in writing that any person or persons on the Work, are in the opinion of the Project Manager, inexperienced, incompetent or disorderly such person or persons shall be discharged from the Work and shall not again be employed on the Work without the consent in writing of the Project Manager.

The Contractor shall neither permit, nor allow the introduction or use of alcoholic liquors or beverages upon or about the Works in this Contract, or upon any of the grounds occupied under this Contract by them.

**.04.17 City Office Closures**

The Contractor shall not carry on it's operations under any Contract on Sundays, holidays or any days on which the City's administrative offices are closed, without the prior written permission of the Project Manager.

**.05 PROSECUTION AND PROGRESS**

**.05.01 Time - The Essence of the Contract**

Time shall be of the essence of this Contract.

**.05.02 Commencement and Completion**

The Work shall be commenced on the commencement date specified in the Notice to Proceed, and shall be continuously and with utmost diligence and dispatch carried on to completion unless otherwise provided in the Contract, and shall be completed and full possession given to the City within the time allowed in the Special Provisions, said time to commence on the commencement date specified in the Notice to Proceed, unless a longer time shall be allowed in writing by the Project Manager, in which case the Contract shall be carried on to completion and possession given to the City within the additional time as allowed.

**.05.03 Non-Fulfilment of the Contract**

If the Contractor fails or neglects to commence the Work or to prosecute the Work diligently and at a rate of progress that in the opinion of the Project Manager, will ensure the entire completion of the Work within the time limited therefore under this Contract; or should the Contractor become bankrupt or insolvent, or commit any act of insolvency, or bankruptcy, or abandon the Work or fail to observe and perform any of the provisions of this Contract, of which the Project Manager shall be the sole judge, or should the Contractor default in the completion of the Work within the time or extended time limit therefore under this Contract or if the Work or any part thereof, is not progressing continuously and in such a manner as to ensure its entire completion, in the opinion of the Project Manager, within the time stipulated for completion, or if the Contractor fails or refuses to remedy any

defective or unsatisfactory Work or remove any defective material or cease any unsatisfactory Work when so ordered by the Project Manager or to comply with any reasonable order of the Project Manager, or if the Contractor shall persist in any course of action in violation of any of the provisions of this Contract, then in any or all of such cases, the Project Manager may notify the Contractor to discontinue all Work under the Contract, and the City may then employ such means as it may deem necessary to complete the Work, including exercising any right of the City under the Performance of Contract Security, and in such case the Contractor shall remain liable for all losses, damages, expenses, or costs which may be suffered by the City by reason of such delay and/or default by the Contractor. If the said losses, damages, expenses, or costs exceeds the sum which would have been payable under this Contract, if the same has been completed by the said Contractor, the Contractor or their surety, or both, shall pay the amount of such excess to the City or such amount or any portion thereof may be deducted from any monies due or to become due to the Contractor under this Contract.

All property, materials, articles and things whatsoever, including all machinery, tools, plant and equipment, and all rights, proprietary or otherwise, licenses, powers and privileges, whether relating to or affecting real or personal property, acquired, possessed or provided by the Contractor or by the City for the purpose of the Work

shall be the property of the City and may be used, exercised and employed by the City as fully as they might have been used, exercised and employed by the Contractor, and the City may sell or otherwise dispose of at public auction, or private sale or otherwise, the whole or any portion or number of such property, materials, articles and things, at such price or prices, as it may deem fit and retain the proceeds of any sale of disposition and all other amounts then or thereafter due by the City to the Contractor on account of or in part satisfaction of any losses, damages, expenses or costs which the City may sustain or have sustained by reason of any delay or default or defect aforesaid.

**.05.04      Extension of Time**

An extension of time for completion of the Work or part thereof under this Contract may be granted in writing, by the Project Manager in the event of delay caused by strikes on the part of the workers employed, or by any act of the City, or any combination thereof or from such other cause as is beyond the Contractor's control, or in the event of extra or additional Work being ordered by the Project Manager. Such extension shall be for such time as the Project Manager may prescribe as being fair and reasonable, and the Project Manager shall fix the terms on which the said extension may be granted. An application for an extension of time as herein provided shall be made in writing by the Contractor to the Project Manager at least fifteen (15) days prior to the date of completion fixed by the Contract. Any additional time granted for the completion of the Contract will be conditional upon the Contractor providing the City with evidence that all bonds or other securities, furnished to the City by the Contractor have been increased and extended at least to the limit of the time extension. 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 of such rights shall continue in full force and effect after the time limited in this Contract for the completion of the Work and whenever in this Contract, power and authority is given to the City or the Project 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 Work or Contract, or any portion thereof, such powers and/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 Work, 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 Work under an extension of time granted by the Project Manager. In the event of the Project Manager granting an extension of time, time shall continue to be of the essence of this Contract.

**.06 PAYMENT**

**.06.01 Price for Work**

Unless otherwise provided in the Contract, the Contractor shall accept the compensation as herein provided in full payment for furnishing all necessary labour, materials, services, taxes, tools, equipment, supplies, light, power, water and other incidentals, and for performing all Work under the Contract.

**.06.02 Prices and Payments**

Applications for payment shall be made in writing to the City to the email address given by the City for this purpose at the commencement of the Contract.

Each application for payment shall meet the requirements of a “proper invoice” as defined in the Construction Act if the Contractor includes the following:

- a statement of work performed and values, which statement shall include the Contract number, project name and purchase order number;
- breakdown of approved change orders and percentage completed of each;
- any other documents prescribed by the Project Manager at the commencement of the Contract; and
- any other requirement that the Construction Act prescribes for a proper invoice.

A Progress Payment Certificate will be given by the General Manager of Public Works Department using the Contractor's invoice as a guide only, once a month, as to the estimated amount of Work done and material furnished to the satisfaction of the General Manager of Public Works Department and of the value thereof in the opinion of the General Manager of Public Works Department according to the terms of the Contract. Where such certificate differs from the Contractor's invoice, the City will issue a notice of non-payment to the Contractor as required by the Construction Act. The City will pay to the Contractor 90 percent of the amount shown on such certificates, less previous payments and the amount of any liens (plus 25% for security for costs) of which the City has notice and any amounts that the City deems necessary to retain for its protection against claims or liabilities or for any claim or claims the City may have, or have notice of, against the Contractor under this Contract, other Contracts, or otherwise and such payments shall not in any way be construed as an acceptance of all or any part of the Work or material under this Contract.

The parties agree that the City has the contractual right to set-off against any amounts owing by the City to the Contractor under this Contract, any amount owed to the City by the Contractor, whether such amount arises from this Contract or under any other contract between the City and the Contractor, irrespective of whether or not those contracts are related or arise at equity or law. This right of setoff shall be subject to the Construction Act, as applicable.

Along with the Contractor's notification of completion of the Work as per Section 200.02.11, the Contractor shall submit by email transmission, in quadruplicate, a Completion Invoice addressed to the General Manager of Public Works Department. The Completion Invoice shall meet the requirements of a “proper invoice” as set out above and also include satisfactory evidence that section 32 of

the Construction Act, as amended, has been complied with.

If the Work has been completed to the satisfaction of the Project Manager, subject to and upon such approval, and subject to a current Workplace Safety and Insurance Board Certificate, a Completion Payment Certificate will be issued to the Contractor. Payment shall then be made in an amount equal to the amount of the said certificate less 10 per cent holdback and less all amounts previously paid to the Contractor, provided that the City may retain any proportion or all of such payment that it deems necessary for its protection against claims, liabilities, damages, or costs or for any claims that the City may have or have notice of against the Contractor under this Contract or other Contracts or otherwise. Within one calendar month after the issuance of the Completion Payment Certificate, the Contractor shall notify the Project Manager of any errors or omissions herein.

The Contractor shall not submit an invoice between the period of December 14 to January 4, inclusive, in any year. The Contractor shall not submit an invoice during any other reasonable period which the City advises the Contractor in writing due to downtime for payment system upgrades.

Notice of non-payment by the City shall be made to the Contractor by email transmission.

The determination of a matter by an adjudicator under the Construction Act may be submitted to the courts at any time.

Hold Back Monies Will Be Released On The Following Basis:

#### **Substantial Performance**

Holdback monies will be released no earlier than sixty (60) days after the date the Contractor publishes the Certificate of Substantial Performance in accordance with the Construction Act, as amended from time to time, and satisfactory evidence thereof has been submitted to the City.

Substantial Performance and Certificate of Substantial Performance shall have the same meaning as set out in the Construction Act, as amended from time to time.

#### **Contract Completion**

A Final Payment Certificate for any balance of holdback monies due, less any liens (plus 25% of any such liens for costs) which the City has notice and less any amounts that the City deems necessary to retain for its protection against claims, liabilities, damages or costs for any other claims the City may have against the Contractor otherwise, and such payment shall not in any way be construed as an acceptance of all or any part of the Work or material required under this Contract.

The final Payment Certificate will become due and payable on or before the deadline prescribed by the Construction Act.

The Contract shall be deemed to be completed and services or materials shall be deemed to be last supplied to the improvement when the price of completion,

correction of a known defect or last supply is not more than the lessor of,

a) 1% of the Contract Price; or

b) \$5,000.00

### **Contingency Allowance**

Where a contingency allowance is provided for in any of the Contract Documents, the Contractor shall not be entitled to payment of the whole or any part of that amount, except to the extent that it can be shown that extra or additional work has been carried out by the Contractor beyond that contemplated within the Contract Documents, and that a Change Order has been issued by the Project Manager entitling the Contractor to receive such payment.

### **.06.03 Contractor's Discharge of Liabilities**

The Contractor shall discharge all liabilities incurred by it for labour, materials or services, used or reasonably required for use in the performance of this Contract on the date upon which each become due.

The Contractor shall cause each Sub-Contractor engaged in the performance of this Contract to discharge all liabilities incurred by such Sub-Contractor for labour, materials, or services used or required for use in the performance of this Contract. Workers employed by a Sub-Contractor shall be paid in full at intervals not less frequently than semi-monthly and other liabilities of the Sub-Contractor, as aforesaid, shall be discharged on the date upon which each becomes due. At the request of the City, the Contractor shall furnish the City with evidence satisfactory to the City that the Contractor's liabilities and those of its Sub-Contractors as aforesaid have been discharged and this shall include a Certificate of Clearance or statement of status from the Workplace Safety and Insurance Board (WSIB) that the Contractor has complied with the requirements of the Workplace Safety and Insurance Board and is in good standing before the Board. Further, the Contractor shall immediately advise the City if there is any change in the Contractor's status with the WSIB and provide the City with the necessary certificate or statement associated therewith.

No payment to which the Contractor is otherwise entitled under this Contract shall, in the discretion of the Project Manager, be due and payable to it so long as it or any of such Sub-Contractors are in default under this Section. Upon such default occurring, the Project Manager may notify the Contractor to discontinue all Work under the Contract and the City shall have the same rights and privileges as are provided in Section 200.05.03 of these General Conditions. The City, after notice in writing to the Contractor and/or its Surety, may pay any such liability of the Contractor and of the Sub-Contractors, as aforesaid, and deduct the amount so paid from any monies due or that may become due to the Contractor on any account, and, if there are insufficient monies due or to become due to the Contractor to permit of such deduction, the Contractor shall pay to the City upon demand, an amount sufficient to make up the deficiency. In making payments under this Section the City may act upon any evidence that it deems sufficient and may compromise any disputed liability and such payment should not be open to dispute or question by the Contractor or the surety, if any, but are final and binding upon them.

**.06.04 Construction Claims Holdback Provision**

The City reserves the right to withhold funds from payment to the Contractor in the event the Contractor fails to satisfy the claims handling requirements as specified in 200.03.12 and/or if it is evident that the Contractor is not responding to the claim in a legitimate manner.

The amount of the holdback will be based on an assessment by Risk Management Services of damages claimed in addition to potential investigation and administration costs.

**.06.05 Workplace Safety and Insurance Board Certificate of Clearance (WSIB)**

The Contractor shall supply the following to the City prior to the execution of the Contract for Works or before commencing the Project, Work or Supply of any materials:

- (a) shall submit to the City an original Clearance Certificate from the Ontario Workplace Safety and Insurance Board and shall provide additional certificates with respect to such coverage as often as the City deems necessary during the term of the Contract to ensure continued good standing with the Workplace Safety and Insurance Board; or
- (b) furnish proof in a form satisfactory to the City from the Workplace Safety and Insurance Board that the Contractor does not require Workplace Safety and Insurance Board insurance, but in such a case if the Contractor changes its status during the term of the Contract so that such coverage is required, the Contractor shall immediately provide the City with the certificate required under clause (a).
- (c) during the term of the Contract, when submitting each payment invoice, a copy of the Contractor's current certificate of clearance from the WSIB for itself as well as all major Sub-Contractors as determined by the City's Project Manager must be provided. Where a substantial portion of the work to be done under the Contract is to be carried out by a subcontractor, the City may require the Contractor to furnish the same evidence as provided under subsection (1).

The Contractor will not be paid any amount until or unless all required certificates of clearance have been provided by the Contractor to the City or alternately the City will withhold funds in an amount satisfactory to the Project Manager to protect the City's potential liability of WSIB arrears.

If the City suspects that a certificate presented is not authentic or accurate, payment will be withheld until an original copy of the certificate has been received.

The City reserves the right to contact the Workplace Safety Insurance Board directly to confirm that the Contractor or Sub-Contractor is in good standing with the Board. In such cases that the City is advised that there are outstanding Workplace Safety Insurance Board payments, the provisions specified in 200.06.03 shall apply. The City will advise the Contractor when monies are withheld or deducted due to non

compliance with the requirements of the Workplace Safety and Insurance Board by the Contractor or Sub-Contractor.

**.06.06 Certificate of Status**

All successful Bidders which are corporations shall submit to the City a Certificate of Status from the Ministry of Consumer and Commercial Relations indicating that the successful Bidder is in good standing and has not been dissolved. The Certificate of Status shall be submitted to the City once per calendar year together with the executed Contract for the first Contract awarded by the City to the successful Bidder in each calendar year.

**.06.07 Inspection of Books, Payrolls, Accounts and Records**

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

The City may inspect and audit the books, payrolls, accounts and records of the Contract at any time during the period of the Contract and at any time thereafter as

deemed necessary by the City 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 Work of the Contract, or any extensions or additions thereto or claims arising therefrom, for a period of twelve (12) calendar months after the expiration of the maintenance period and the Contractor shall require that all Sub-Contractors employed by it preserve all original records pertaining in any way to the Work 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 Sub-Contractor a consent and covenant of each Sub-Contractor under seal by which the Sub-Contractor agrees to the provisions in the same Section in the same way as if the Section read, "Sub-Contractor" for "Contractor".

**.07 MAINTENANCE**

The Contractor shall maintain the Works and every part thereof, in perfect order and in complete repair during the period of twenty-four (24) calendar months from the date of the established completion thereof, as herein provided, and make good in a permanent manner, satisfactory to the Project Manager, any and all damage or injury to the Works, both during their construction and during the period of maintenance, as aforesaid, and should the Contractor from any cause fail to do so, then the City through the Project Manager, may do so, and the whole costs, charges and expenses so incurred, may be deducted, or collected by the City as provided for herein. The decision of the Project Manager is to be final as to the necessity of repairs or of any Work done or required to be done under the provisions of this or any clause in the Contract Documents and for any amount of monies expended thereunder.

**.07.01 Maintenance Review**

The City will notify the Contractor prior to the expiry of the twenty-four (24) calendar month maintenance period to permit the Contractor to coordinate a final deficiency review. The Contractor will walk and review the entire physical limits of the Contract with the Project Manager or designate to review Work completed. The review will consist of all above and below ground components covered by the scope of Work of the Contract.

The Contractor will be responsible for providing all equipment required to conduct any necessary testing for the review. All deficiencies identified by the review will be corrected at the cost of the Contractor to the satisfaction of the Project Manager prior to the expiry of the maintenance period.