

**This page to be inserted in the division “General Conditions”  
of the Contract document.**

**City of Greater Sudbury  
General Conditions**

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The City of Greater Sudbury has not adopted the Ontario Provincial Standards General Conditions.

The City of Greater Sudbury General Conditions are in effect and will form an integral part of the Contract to be executed between the City of Greater Sudbury and the successful Bidder.

A copy of the City of Greater Sudbury General Conditions can be viewed and/or obtained from the City's Engineering Department.

## **City of Greater Sudbury**

### **General Conditions**

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City of Greater Sudbury, General Conditions dated February 28, 2022 are in effect:

Any reference to Sections shall take to mean and include any City of Greater Sudbury Supplemental Specifications (G.S.S.S.) that may apply to the same Sections.

The revision date indicated in the Index, forming part of these General Conditions, shall be the version applicable to this document.

## General Conditions Index

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## Section 101 Interpretation

In this Contract, the following definitions shall apply:

- 101-1 "A.A.S.H.T.O." or "A.A.S.H.O." - means the American Association of State Highway Transportation Officials.
- 101-2 "A.S.A." - means the American Standards Association.
- 101-3 "A.S.T.M." - means the American Society for Testing and Materials.
- 101-4 "AUTHORITY" means the Authorized Nominating Authority designated under subsection 13.2 of the *Construction Act*.
- 101-5 "A.W.G." - means the American Wire Gauge.
- 101-6 "A.W.W.A." - means the American Water Works Association.
- 101-7 "BASE" - means a layer of material of specified type and thickness placed immediately below the asphalt, driving surface, curb and gutter or sidewalk.
- 101-8 "BID SOLICITATION" - means the formal request for competitive bids issued by the City for the Work, including instructions, terms, appendices, exhibits, attachments, reference documents, notices, addenda or any other information issued or provided by the City thereto.
- 101-9 "BUSINESS DAY" means any day other than Saturday, Sunday, or a statutory or civic holiday.
- 101-10 "CERTIFICATE OF SUBSTANTIAL PERFORMANCE" - means the certificate issued by the General Manager at Substantial Performance.
- 101-11 "CITY OF GREATER SUDBURY" or "CITY" - any reference in the Contract documents to the City shall mean the City of Greater Sudbury.
- 101-12 "COMPLETION" - means Contract Completion as set out in the *Construction Act*.
- 101-13 "COMPLETION CERTIFICATE" - means the certificate issued by the General Manager at Completion.
- 101-14 "CONSTRUCTOR" - means, for the purpose of, and within the meaning of the *Occupational Health and Safety Act*, R.S.O. 1990, c. O.1, as amended, the Contractor who executes the Contract.
- 101-15 "CONSTRUCTION ACT" - means the *Construction Act*, R.S.O. 1990, c. C.30, and any regulations, as amended.
- 101-16 "CONTRACT" - means the agreement covering the performance of the Work including the supply of any and all work, labour, equipment and materials that could reasonably be required to properly and satisfactorily complete the Work to be performed and includes the Bid Solicitation, Tender, the formally executed agreement, General Conditions, OPSS, GSSS, Special Provisions, bonds, letters of credit, addenda, Plans, O.P.S.D., G.S.S.D, change orders envisioned by the Contract and any written supplementary agreements that may be made in order to ensure the completion of the Work.
- 101-17 "CONTRACT ADMINISTRATOR" - means any person that the General Manager may appoint for the purpose of administering the Contract to act in his behalf.

- 101-18 "CONTRACT DRAWINGS" or "CONTRACT PLANS" - means Drawings or Plans provided by the City for the Work.
- 101-19 "CONTRACTOR" - means the partnership or corporation undertaking the execution of the Work under the terms of the Contract.
- 101-20 "CONSTRUCTION SCHEDULE" means the document completed by the Contractor in accordance with Subsection GC 104-21 Construction Schedule.
- 101-21 "C.S.A." - means the Canadian Standards Association.
- 101-22 "CULVERT" - means a structure other than a bridge which is designated as a culvert in the Contract documents and which is designed to provide an opening under a roadway, railway or side entrance for the passage of surface water, or pedestrians.
- 101-23 "DAY(S)" - means a calendar day.
- 101-24 "DRAFT PROPER INVOICE" means a preliminary invoice submitted by the Contractor to the City on the form or similar to that as provided by the City in the tender containing the following information, to the extent applicable:
1. The Contractor's invoice number.
  2. The City's progress payment or purchase order number.
  3. The Contract title and number.
  4. The Contractor's name and address.
  5. The date on which the Draft Proper Invoice is submitted to the City and the period during which the services or Materials for which payment is being applied were supplied.
  6. Information identifying the authority, whether in contract or otherwise, under which the services or Materials were supplied.
  7. A description of the services or Materials that were supplied during the payment period detailing the following information:
    - (a) item number;
    - (b) item description;
    - (c) tender quantity;
    - (d) unit of measurement;
    - (e) unit price;
    - (f) quantity for the previous payment period;
    - (g) quantity for the payment period;
    - (h) approved revised quantity;
    - (i) quantity to date; and
    - (j) percentage of the Work completed to date.
  8. Previous payment amount.

9. The amount payable for the services or Materials that were supplied during the payment period, and the payment terms.
  10. Contract price.
  11. Total amount paid to date.
  12. Subtotals detailing tender items, approved change orders, incentives, disincentives, and Quality Assurance payment adjustments.
  13. A clear identification of the portions of the payment amount that are subject to interest on late payments, Harmonized Sales Tax (HST), holdbacks, reserves, set-offs, retainers, securities and liquidated damages.
  14. The name, title, telephone number and mailing address of the person to whom payment is to be sent.
  15. The Contractor's HST number.
  16. An updated Construction Schedule.
  17. Signature of the Contractor.
- 101-25 "EASEMENT" - means an acquired section of property for which permission has been received from the City, allowing the permanent installation of proposed Works on such property.
- 101-26 "E.S.A." - means the Electric Safety Authority.
- 101-27 "EQUIPMENT" - means all machinery and equipment used for preparing, fabricating, conveying or erecting the Work and normally referred to as construction machinery and equipment.
- 101-28 "EXCESS SOIL" - has the same meaning as defined in Ontario Regulation 406/19 (On-Site and Excess Soil Management) ("O. Reg. 406/19").
- 101-29 "EXTRA WORK" - means Work which is required, but not described in the Contract documents or on the Plans.
- 101-30 "FINAL ACCEPTANCE" - means the date on which the General Manager determines that the Work has passed all inspection and testing requirements and the General Manager is satisfied that the Contractor has rectified all imperfect Work and has discharged all of the Contractor's obligations under the Contract.
- 101-31 "FINAL ACCEPTANCE CERTIFICATE" - means the certificate issued by the General Manager at Final Acceptance of the Work.
- 101-32 "GALLON" - means Imperial Gallon.
- 101-33 "GENERAL MANAGER" - means the General Manager of Growth and Infrastructure 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 Growth and Infrastructure to act on his behalf.
- 101-34 "GRADE" - when used in the sense of elevation as in the expressions "to grade", "up to grade", "above grade", "below grade", or expressions of similar implications, means the required elevation of the completed Work.



- 101-35 "GRADE LINE" - means the line representing the established elevation of the completed Work in profile or longitudinal section, taken along a reference line established for the control of the Work.
- 101-36 "GRADE POINT" or "TRANSITION POINT" - means the point where the Grade Line passes from cut to fill.
- 101-37 "G.S.S.D." - means City of Greater Sudbury Standard Drawing.
- 101-38 "G.S.S.S." - means City of Greater Sudbury Supplemental Specification.
- 101-39 "INSPECTOR" - means any person that the General Manager may appoint for the purpose of inspection of the Work and of the materials to be used in the Work.
- 101-40 "MAJOR ITEM" - means any individually bid item that has an actual value, calculated on the basis of its actual or estimated Tender unit price, equal to or greater than five percent (5%) of the total Tender value, calculated on the basis of the total of all the estimated quantities and the Tender unit prices.
- 101-41 "MATERIAL" - means material, machinery, equipment, and fixtures forming part of the Work.
- 101-42 "MECP" - means Ontario's Ministry of the Environment, Conservation and Parks.
- 101-43 "OHSА" - means *Occupational Health and Safety Act*, R.S.O 1990, c. O.1, and any regulations, as amended.
- 101-44 "ONTARIO'S EXCESS SOIL AND WASTE LAWS" - means O. Reg. 406/19, Ontario's *Environmental Protection Act*, R.S.O. 1990, c. E.19 ("EPA"), R.R.O. 1990, Regulation 347 (General – Waste Management) ("Reg. 347"), Ontario Regulation 351/12 (Registrations under Part II.2 of the Act – Waste Management Systems) ("O. Reg. 351/12"), the Rules for Soil Management and Excess Soil Quality Standards, and the Beneficial Reuse Assessment Tool, where applicable, and all as amended.
- 101-45 "O.P.S.D." - means Ontario Provincial Standard Drawings.
- 101-46 "O.P.S.S." - means Ontario Provincial Standard Specifications.
- 101-47 "OWRA" - shall refer to the Ontario Water Resources Act.
- 101-48 "PAVEMENT" - means the entire envelope of selected materials placed on the subgrade and designed to carry vehicular traffic. Pavements may include any combination of asphalt cement concrete, Portland cement concrete, and granular base courses or wearing courses.
- 101-49 "PERSON" - includes an individual, corporation, partnership and the heirs, executors, administrators, or other legal representatives of whom the context can apply according to law.
- 101-50 "PLANS" or "DRAWINGS" - the terms plans and drawings are used interchangeably and mean any Contract plans or Contract drawings or any approved working plans or approved working drawings or any reproduction of plans or drawings pertaining to the Work.
- 101-51 "PROJECT" - means the construction of the Work as contemplated by this Contract.
- 101-52 "PROPER INVOICE" means an invoice submitted by the Contractor to the City on the form or similar to that as provided by the City in the tender on or after ten (10) Days following

submission by the Contractor to the City of a Draft Proper Invoice containing the following information, to the extent applicable:

1. The Contractor's invoice number.
2. The City's progress payment or purchase order number.
3. The Contract title and number.
4. The Contractor's name and address.
5. The date on which the Proper Invoice is submitted to the City and the period during which the services or Materials for which payment is being applied were supplied.
6. Information identifying the authority, whether in contract or otherwise, under which the services or Materials were supplied.
7. A description of the services or Materials that were supplied during the payment period detailing the following information:
  - (a) item number;
  - (b) item description;
  - (c) tender quantity;
  - (d) unit of measurement;
  - (e) unit price;
  - (f) quantity for the previous payment period;
  - (g) quantity for the payment period;
  - (h) approved revised quantity;
  - (i) quantity to date; and
  - (j) percentage of the Work completed to date.
8. Previous payment amount.
9. The amount payable for the services or Materials that were supplied during the payment period, and the payment terms.
10. Contract price.
11. Total amount paid to date.
12. Subtotals detailing tender items, approved change orders, incentives, disincentives, and Quality Assurance payment adjustments.
13. A clear identification of the portions of the payment amount that are subject to interest on late payments, HST, holdbacks, reserves, set-offs, retainers, securities and liquidated damages.
14. The name, title, telephone number and mailing address of the person to whom payment is to be sent.
15. The Contractor's HST number.

16. An updated Project Schedule.
  17. An executed CCDC 9A Statutory Declaration of Progress Payment Distribution by Contractor.
  18. Certificate of Clearance from the Workplace Safety and Insurance Board (WSIB) confirming that all assessments or compensation to the WSIB have been paid at the time the Proper Invoice is submitted.
  19. Insurance certificate confirming coverage as required under the Contract.
  20. Signature of the Contractor.
- 101-53 "QUALITY ASSURANCE (QA)" - means a system or series of activities carried out by the City to ensure that Work meets the specified requirements.
  - 101-54 "QUALITY CONTROL (QC)" - means a system or series of activities carried out by the Contractor, Sub-contractor, supplier, and manufacturer to ensure that Work meets the specified requirements.
  - 101-55 "ROAD ALLOWANCE" or "HIGHWAY" - means the lands acquired at any time for the use of the public as a common highway.
  - 101-56 "ROADWAY" - means that part of the highway designed or intended for use by vehicular traffic and shall include the shoulders, sidewalks, and bicycle paths.
  - 101-57 "ROCK GRADE" - means that rock surface, whether in cut or fill, as prepared for the granular base course.
  - 101-58 "SEWER" - means a conduit which has been designed as a sewer to carry storm waste, sanitary waste or both, and which is designated as a sewer in the Contract documents.
  - 101-59 "SHOULDERS" - means that portion of the roadway between the edges of the surfacing material and the inside edges of the ditch or fill slopes.
  - 101-60 "SPECIAL PROVISIONS" - means special directions containing requirements peculiar to the Work not adequately provided for by the standard or General Conditions.
  - 101-61 "SPECIFICATIONS" - means all written descriptions or instructions pertaining to the method and manner of performing the work, or to the quantities of the materials to be furnished under the Contract, and includes the tender, General Conditions, O.P.S.S., G.S.S.S., and Special Provisions, 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.
  - 101-62 "STANDARD SPECIFICATIONS" - means the requirements and stipulations of standard practice by the City for the control of Work.
  - 101-63 "STATUTORY HOLDBACK" means the holdbacks required under the Construction Act.
  - 101-64 "SUB-BASE" - means a layer of material of specified type and thickness between the sub-grade and the base.

- 101-65 "SUB-CONTRACTOR" - means a person, partnership or corporation performing a part of the work or supplying goods, materials, or service by virtue of an agreement between himself and the contractor.
- 101-66 "SUB-GRADE" - means the earth or rock surface, whether in cut or fill, as prepared for the granular base course.
- 101-67 "SUBSTANTIAL PERFORMANCE" - has the meaning as set out in the Construction Act.
- 101-68 "TENDER" – means an offer in writing from the Contractor in response to the Bid Solicitation to complete the Work, including all schedule of items and prices, appendices, exhibits, attachments, proposal clarification letter(s) and any other information proposed or issued by the Contractor.
- 101-69 "SURETY" - means the person, partnership or corporation, other than the Contractor, licensed in Ontario to transact business under the *Insurance Act*, R.S.O. 1990, c. I.8, as amended, executing a bond provided by the Contractor.
- 101-70 "TON" - means two thousand pounds avoirdupois.
- 101-71 "TONNE" - means one thousand kilograms.
- 101-72 "UTILITY" - means an aboveground or underground facility maintained by a municipality, public utility authority or regulated authority and includes services such as sanitary sewer, storm sewer, water, electric, gas, oil, steam, data transmission, telephone, and cable television.
- 101-73 "WATERMAIN" - means a conduit which has been designed to carry potable water.
- 101-74 "WORK" - means the Work undertaken by the Contractor pursuant to the provisions of the Contract.
- 101-75 "WORKING AREA" - means all the lands and easements owned or acquired by the City for the construction of the Work.
- 101-76 "WORKING DRAWINGS", "working drawings" or "working plans" - means any drawing or plans prepared by the Contractor for the execution of the Work and may, without limiting the generality thereof, include falsework plans, roadway protection plans, shop drawings, shop plans or erection diagrams.
- 101-77 "WORKING EASEMENT" - means an additional temporary easement to facilitate construction of proposed Works on an acquired easement.
- 101-78 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 and Conformity of Work with Plans and Specifications**

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

The Contractor shall perform all Work and shall furnish all materials and complete the whole of the Work in strict conformance with the Plans and Specifications.

### **102-2 Contractor's Investigations:**

The Contractor declares that in tendering for the Work and in entering into the Contract he has either investigated for himself the character of the Work to be done and all local conditions including the location of any 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, having jurisdiction or control over the Utility, that might affect his tender or his acceptance of the Work, or that, not having so investigated, and except as hereinafter provided, he is willing to assume and does assume all risks or 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 tender was made or the Contract signed.

The Contractor also declares that in tendering for the Work and in entering into the Contract he did not and does 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 Project, 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 conditions and all other matters which could in any way affect the performance of the Work 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 on or in the Project site which could have been made known to the Contractor by reasonable enquiries or tests prior to tendering the Work, including Excess Soil requirements in accordance with GC 105-9 Excess Soil and compliance with Ontario's Excess Soil and Waste Laws.

### **102-3 Surety and Deposit**

As covered in the Bid Solicitation, 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 Scope of Work**

### **103-1 Estimated Quantities**

The estimated quantities set forth in the schedule of items and prices are approximate only. If the quantity of Work to be done and the Material to be furnished exceeds or is less than the estimated quantity, the Contractor shall proceed with the Work and payment will be made for the actual amount of Work done and Material furnished at the unit prices set forth in the Contract except as provided below:

- a) in the case of a Major Item where the quantity of Work done or Material furnished exceeds the Tender amount by more than twenty percent (20%), a reduction will be made at the rate equal to ten percent (10%) of the Tender unit price on the amount of overrun in excess of twenty percent (20%) of the quantity; and
- b) in the case of a Major Item where the quantity of Work done or Material furnished is less than the quantity by more than twenty percent (20%), an allowance to compensate for the Contractor's losses in fixed costs will be made at a rate equal to ten percent (10%) of the Tender unit price on the amount of under-run in excess of twenty percent (20%) of the quantity.

## **Section 104 Control of the Work**

### **104-1 General Manager's Authority**

The General Manager shall be responsible for ensuring the fulfilment by the Contractor of the Work in accordance with the Plans and Specifications. He shall determine the quantities of the several kinds of Work which are to be paid for under the Contract, and determine all questions relating to the said Work and the construction thereof. The General Manager shall in all cases decide every question which may arise relative to the performance of the Contract, and his estimate and findings shall be final. He 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 Work, or the interpretation of the Contract. The authority of the General Manager herein shall not be interpreted to provide the City with any ability to control or direct health and safety in relation to the Work.

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

The Contractor shall not backfill until such time as the Work has been approved by the General Manager or an Inspector for the City and in default thereof, the Contractor must reopen, at his own expense, the Works at the discretion of the General Manager to complete such inspections as the General Manager deems necessary. The Contractor shall, at his 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 instructions of any Inspector so appointed and these instructions shall be made in writing if necessary.

Notwithstanding any inspection that the City might carry out, the failure of the General Manager or the Inspector to condemn or object to any defective Work or Material shall not constitute a waiver of any Specification or the approval or acceptance except as otherwise provided herein, and the Contractor shall be and remain liable for such defective Work or Material and any loss, costs, charges or expenses in connection therewith.

In case the Contractor shall fail in the due performance of any part of his undertaking or shall become bankrupt or insolvent or if a receiver be appointed or proceedings to wind up be commenced, or he shall make a proposal to creditors, formal or informal, it shall be lawful for the City in any such case to reflect the undertaking of the Contractor, 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 Works and employ the same in such manner as the City may think necessary and proper for completing the Works 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 work 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 the Contract.

### **104-2 Claims**

When a Contractor considers that he has a claim for compensation for costs he has incurred or for losses he 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 he will follow the procedure set out below.

His failure to follow the procedure set out below shall 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.

### **104-3 Claims 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 Contractor shall keep detailed "daily work records" of all aspects of the claim and the Inspector will keep daily work records to be used in assessing the Contractor's 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 thirty (30) days as hereinbefore set out. The details of the claim shall:
  - a) identify the item or items in respect of which the claim arises;
  - b) state the grounds, contractual or otherwise upon which the claim is made; and
  - c) include the records maintained by the Contractor supporting such claim.

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 with those of the Contractor's Work shall not be construed to be acceptance of the claim.
7. Subject to the notice requirements in Step 8 below, if either party wishes to refer a claim to adjudication in accordance with Part II.1 of the *Construction Act*, such party shall give to the other party notice in writing of an adjudication setting out, to the extent applicable:
  - (a) Contractor's invoice number.
  - (b) City's progress payment or purchase order number.
  - (c) Contract title and number.
  - (d) The names and addresses of the parties.
  - (e) The nature, and a brief description of the dispute, including details respecting how and when it arose.



- (f) The nature of the redress sought, including but not limited to:
    - i. summary of quantities;
    - ii. summary of actual or estimated costs; and
    - iii. summary of indirect costs or estimated indirect costs.
  - (g) Relevant provisions of the Contract in support of the dispute and the reasons the provisions are relevant, including the Work affected by the dispute, areas of the Work incurring additional costs and the change from the tender.
  - (h) Copies of all supporting documentation and records of the Contractor applicable to the dispute.
  - (i) The names of three (3) adjudicators that the referring party nominates to adjudicate the dispute, each of whom must be listed in the registry established by the Authority.
  - (j) The date that any required notice was given in accordance with Step 8 below and a copy of the notice.
8. Notwithstanding Step 7, a party seeking to refer a claim to adjudication for a dispute that does not arise from a notice of non-payment of a Proper Invoice or holdback shall provide notice of a dispute in writing to the other party setting out the nature and a brief description at least thirty (30) Days prior to referring the claim to adjudication.
  9. Notice in writing of an adjudication by the Contractor shall be given to the General Manager either by prepaid registered mail or electronic format bearing the Contract number in the subject line. Only portable document format (PDF – non-editable) file attachments will be accepted by the City.
  10. The party giving notice in writing of an adjudication in accordance with this Subsection GC 104-3 Claims Procedure shall, on the same day, provide a copy of the notice to the Authority in electronic format. For clarity, a notice of adjudication received by the City on a date that is not a Business Day shall be deemed to be received by the City on the next Business Day following such date.
  11. No later than three (3) Days following receipt of the notice in writing of an adjudication, the responding party shall give notice in writing to the referring party stating either that (a) the responding party accepts one of the referring party's nominees or (b) none of the referring party's nominees are acceptable. If the responding party accepts one of the referring party's nominees, the referring party shall notify the nominee of such appointment on the day that notice in writing of the acceptance is received from the responding party, and shall request the nominee's prompt consent to conduct the adjudication. If none of the referring party's nominees are acceptable to the responding party, the parties may discuss the appointment of another mutually agreeable adjudicator. In the event that the parties have not selected a mutually agreeable adjudicator by the close of business three (3) Days following the giving of notice in writing of an adjudication, the referring party shall, by the next calendar day, request that the Authority appoint an adjudicator.
  12. If, by the close of business four (4) Days following the giving of the notice in writing of an adjudication, the parties' agreed upon adjudicator, if any, has not consented to conduct the adjudication, the referring party shall immediately request that the Authority appoint an adjudicator.

13. No later than five (5) Days after an adjudicator agrees or is appointed to conduct the adjudication, the party who gave notice in writing of an adjudication shall provide to the adjudicator a copy of such notice, and shall provide to the responding party and the adjudicator a copy of the contract and any documents that the party intends to rely upon during the adjudication.
14. Subject to the provisions of the *Construction Act*, a party who received notice in writing of an adjudication shall provide to the adjudicator and to the referring party any documents that it intends to rely upon at the adjudication within twenty (20) Days of receiving the documents referred to in Step 13.
15. The adjudicator shall make a determination of the matter that is the subject of the adjudication no later than thirty (30) Days after receiving the documents referred to in Step 13, subject to any extension of the deadline in accordance with subsection 13.13(2)(a) of the *Construction Act*.
16. Subject to the consent of the adjudicator, each party shall, if requested by the other party, agree to extend the deadline referred to in Step 14 to forty (40) Days and the deadline referred to in Step 15 to sixty (60) Days or such other reasonable extensions as either party may request.
17. The following procedures shall apply to any adjudication the parties engage in under the *Construction Act*.
  - (a) any hearing shall be held at a venue within the jurisdiction of the Project or such other venue as the parties may agree and which is acceptable to the adjudicator;
  - (b) the adjudication shall be conducted in English;
  - (c) the parties may be represented by their legal representatives throughout an adjudication; and
  - (d) there shall not be oral communications with respect to issues in dispute that are the subject of an adjudication between a party and the adjudicator, unless it is made in the presence of both parties or their legal representatives.
18. Any documents or information disclosed by the parties during an adjudication are confidential and the parties shall not use such documents or information for any purpose other than the adjudication in which they are disclosed and shall not disclose such documents and information to any third party, unless otherwise required by law, save and except for the adjudicator.
19. Notwithstanding any adjudication between the parties, there shall be no interruption of the Work pending a resolution or determination of the dispute by adjudication.
20. Neither party may deliver notice in writing of an adjudication in accordance with this Subsection GC 104-3 Claims Procedure or Part II.1 of the *Construction Act* after completion of the Work.
21. The Contractor shall respond promptly to all requests made by the City for documents and information required in connection with any adjudication that is not directly between the City and the Contractor under Part II.1 of the *Construction Act*. If requested by the City, the Contractor agrees to attend such adjudication and provide evidence at its own cost and expense.

#### **104-4 Contract Plans and Working Drawings**

When the nature of the Work so requires, the City will provide the Contractor with Plans showing the details of the construction required. Working Drawings showing shop details, erection diagrams, falsework, formwork, and such other details as may be required for the Work and which are not shown on the Drawings furnished by the City shall be provided by the Contractor in as many copies as required.

Work related to the working Drawings shall not proceed until such Drawings have been approved by the General Manager. Approval by the General Manager shall not relieve the Contractor from any responsibility for the adequacy or soundness of such working Drawings, or for the Work they represent.

Costs related to all Drawings required to be supplied by the Contractor shall be deemed to be included in the unit prices.

#### **104-5 Deviation from Plans**

The Contractor shall not deviate from the Contract Plans, Specifications and approved working Drawings without the consent in writing of the General Manager.

#### **104-6 Product Dimensions**

The Contractor shall be responsible for verifying the product dimensions and their conformance with the Drawings prior to undertaking Work relating to or affected by the product.

#### **104-7 Order of Precedence**

The Contractor shall do all Work and furnish all Materials in accordance with the best practice, and in the event of any inconsistency or conflict in the provisions of the Plans or Specifications, such provisions shall take precedence and govern in the following order:

- (a) Change Order or an amendment to the Contract, with the most recent having priority (if any);
- (b) Agreement;
- (c) Addenda;
- (d) Special Provisions;
- (e) Bid Solicitation;
- (f) Tender;
- (g) Contract Plans;
- (h) City of Greater Sudbury Supplemental Specifications (G.S.S.S.);
- (i) City of Greater Sudbury Standard Drawings (G.S.S.D.);
- (j) Ontario Provincial Standard Specifications (O.P.S.S.);
- (k) Ontario Provincial Standard Drawings (O.P.S.D.);

- (l) City of Greater Sudbury General Conditions; and
- (m) Working Drawings.

Where any part of the Work is shown or mentioned in one part of the Contract and not in another, it shall be considered to have been mentioned in all (for example, a detail included in the Drawings omitted from the Specification sheet, is treated as having been included in both).

Where figured dimensions are shown in Plans and Drawings, they shall be interpreted accordingly and, in the event of any inconsistencies, figured dimensions on Plans and Drawings shall prevail.

Where the Contractor requires any dimension that is not given by the Contract, it will be the duty of the Contractor to obtain such dimensions from the General Manager before proceeding with the portion of the Work for which they are required.

Detailed Drawings shall control general Drawings and, where there is an inconsistency between detailed Drawings and general Drawings, the more detailed Drawings shall prevail over the more general.

Where the Contractor alleges any uncertainty, lack of information or detail of the information, or any other difficulty in determining the nature, scope or amount of Work to be done or labour, plant or Material to be supplied to carry out the Contract, he shall refer such allegation to the General Manager and the General Manager shall forthwith direct the Contractor as to the nature, extent or amount of Work to be done and labour, plant and Material to be provided and the determination of the General Manager shall be final and binding upon the parties at no cost to the City.

Neither party to the Contract shall take advantage of any apparent error or omission in the Plans or Specifications, but the General 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 or Material not herein specified but which may be fairly implied as included in the Contract, of which the General Manager shall be the judge, shall be done or furnished by the Contractor as if such Work or Material has been specified.

#### **104-8 Changes and Alterations**

The City may, by order in writing, at any time before or after the commencement of the Work, delete, extend, increase, decrease, vary, or otherwise alter the Work to be done or Material to be furnished or any part thereof. If the character of the Work to be done or Material to be furnished is actually changed from that on which the Contractor based his 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 Work to be done or Material to be furnished, the Contractor shall proceed with the Work 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, provided that if such change in character relates solely to quantities, it shall be dealt with under Subsection GC 103-1 Estimated Quantities and not otherwise.

#### **104-9 Substitutions**

The Contractor may apply to the General Manager to substitute, as an approved equal, another article or group of related articles identified by a different trade name or by a different trade or other name. In all cases, the proposed substitution must be justified by the Contractor in his written application to the General Manager indicating reasons why he wishes to substitute and be accompanied by sufficient descriptive and technical information for the General Manager, to thoroughly compare articles or groups of articles with that specified. Failure to comply with this requirement to the General Manager's satisfaction may result in rejection of the request due to insufficient information or time to evaluate it. All applications and submissions related to substitutions shall only be made by the Contractor and not the Sub-contractor or suppliers.

The approval or rejection of a proposed substitution shall be at the discretion of the General Manager and his decisions shall be final.

If the proposed substitution is approved by the General Manager, any saving in cost by reason of such substitution shall be for the sole benefit of the City.

The Contractor shall assume all liabilities and additional cost that may subsequently arise as a result of his proposed substitution being accepted by the General Manager.

#### **104-10 Extra Work**

Where the General Manager directs or otherwise authorizes the Contractor in writing to undertake Work 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 Work and such Work shall be considered Extra Work and shall be paid for as negotiated or on a force account basis under Subsection GC 108-4 Prices and Payments. Where Extra Work is required that is covered in the Schedule of Unit Prices, the work shall be paid for under the unit price quoted in the Contract documents.

#### **104-11 Change Orders**

Any addition to or reduction of Work relative to the 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 Work commencing.

#### **104-12 Lines and Grades**

The General Manager shall provide a base line and a bench mark for the general location, alignment and elevation of the Work, but the Contractor shall assume full responsibility for the alignment, elevations, and dimensions of each and all parts of the Work. The base line survey is referenced to the Canadian Spatial Reference System, NAD(83), and the co-ordinates are expressed in UTM Zone 17 or City of Greater Sudbury Zone 81.

The Contractor shall provide qualified personnel to properly layout and establish all lines and grades necessary for construction. The Contractor shall construct and maintain substantial alignment markers and secondary bench marks as may be required for the proper execution of the Contract.

The General Manager shall be notified by the Contractor of any layout Work carried out and the General Manager shall check same if he so desires. The checking of layout or failure to do so on the part of the General Manager in no way relieves the Contractor of the full responsibility for construction to the proper location, line, and grade.

The Contractor shall supply one (1) copy of all alignment and grade sheets to the General Manager.

All stakes, marks, and reference points shall be carefully preserved by the Contractor and in case of their destruction or removal, such stakes, marks, and reference points shall be replaced by the General Manager at the Contractor's expense.

The General Manager may require the Contractor at the Contractor's expense to provide such masts, scaffolds, batter boards, straight edges, templates, and other devices as may be necessary to facilitate laying out, inspecting, and constructing the Work.

Whenever necessary, Work shall be suspended for such reasonable time as may be necessary to permit the General Manager to layout and inspect any portion of the Work, and the Contractor will not be allowed any extra compensation for this suspension of Work.

#### **104-13 Preliminary Measurement**

Before commencement of any excavation, fill, or other Work for which the basis of payment is volume in place, the Contractor will inform the General Manager sufficiently in advance to allow cross-section Work to be carried out. The cross-sections taken by the General Manager will be available to the Contractor for checking. If the Contractor begins Work without having checked the cross-sections, he shall have forfeited all rights to dispute the accuracy of the General Manager's cross-sections.

#### **104-14 Right of Entry**

The Contractor shall cooperate with other contractors, Utility authorities and other agencies, and the City, and they shall be allowed free access to their work at all times. The General Manager reserves the right to alter the method of operations on the Contract to avoid interference with other work.

#### **104-15 Contractor's Responsibility**

The Contractor shall be responsible for and shall give adequate attention to the prosecution and completion of the Work in accordance with the terms of the Contract. The Contractor shall at all times have on the Work, as his agent, a competent superintendent or foreman capable of reading and thoroughly understanding the Plans and Specifications, and to adequately communicate with the General Manager and his representatives, and who is thoroughly experienced in the type of Work being performed. Such superintendent shall be furnished irrespective of the amount of Work sublet and shall be responsible for the supervision and direction of all Sub-contractors.

The General Manager shall be provided to his satisfaction with the address and telephone number of a Contractor's representative who may be contacted and available within reasonable notice twenty-four (24) hours a day, seven (7) days a week, on matters relating to the Contract.

#### **104-16 Damage by Vehicles and Other Equipment**

If at any time, in the opinion of the General Manager, damage is being done or is likely to be done by the Contractor's unlicensed Equipment, to any highway or any improvement thereon, other than such portions that are part of the Work, the Contractor shall, on the direction of the General Manager and at the Contractor's own expense, make changes in or substitutions for such unlicensed Equipment or shall alter loading or shall in some other manner remove the cause of such damage and reinstate the damaged area to the satisfaction of the General Manager.

#### **104-17 Working Areas**

The City shall acquire Easements for the construction of Work and other structures over, across, and upon private property where shown. The Contractor shall not enter upon, occupy with workmen, tools, Equipment or Materials of any nature, any lands outside the public highway and the right-of-way shown on the Plans, except after consent has been received by him from the proper parties, in writing.

The Contractor's sheds, offices, toilets, other structures and storage areas for Material and Equipment shall be grouped in a compact manner and maintained in a neat and orderly condition at all times. Should the Contractor desire or need more space than that available on public highways and City easements and property, the Contractor shall obtain such space on private property at no additional cost to the City by agreement with the owner thereof. Before the Contractor or any of his Sub-contractors shall make use of any private property for any purpose, he shall first submit to the General Manager a copy of a written agreement granting permission by the owner. The written agreement shall include a clause that the Contractor shall indemnify and save the City harmless from and against all claims as outlined in Subsection 106-1 Contractor's Responsibility for Damages. At the completion of the Contract, the working areas used by the Contractor shall be restored to their original condition, unless otherwise indicated and all excavated or stockpiled Materials shall be completely removed. This work will be done at no additional cost to the City. Except where otherwise provided for in the Specifications, the Contractor shall not use any lands owned by or under the control of the City.

#### **104-18 Condition of Site**

The Contractor, during the progress of the Work, shall keep the Project site and Work in as tidy a condition as practicable. He shall not deposit any Material on any portion of street, sidewalk, boulevard or other City or public property without permission of the General Manager, and shall remove same without delay when as directed by the General Manager.

Unless all surplus material, or plant, rubbish, falsework, etc., is removed from time to time, when and as directed, the General Manager will proceed to do whatever is necessary to restore the site, street, sidewalk, boulevard, or other City or public property, to a tidy condition, and charge the cost thereof to the Contractor. Whenever and wherever any Work is closed, suspended or stopped for the winter, all Material of every description must be gathered up from the streets, footwalks, and boulevards, and removed.

#### **104-19 Use or Occupancy of the Works Prior to Completion**

The use or occupancy of the Works or any part thereof by the City shall not be taken in any matter as an acceptance by the City of any Work or Material not in accordance with the Contract or relieve the Contractor of any of his obligations save to the extent that loss or damage is caused during such use or occupancy by the City or by employees of the City for whom the City is responsible. In particular, without limiting the generality of the foregoing, the use or occupancy of the Work or any part thereof by the City shall not release the Contractor from any liability to pay the City, or waive, or impair the right of the City to deduct and retain any amounts otherwise recoverable by the City.

#### **104-20 Condonation Not a Waiver**

Any failure by the City to insist in one or more instances upon strict performance by the Contractor of any of the terms or conditions of the Contract shall not be construed as a waiver by the City of its right to require strict performance of any such terms or conditions, and the obligations of the Contractor with respect to such performance shall continue in full force and effect.

#### **104-21 Construction Schedule**

The Contractor shall prepare and update on a monthly basis, as required for payment pursuant to Subsection GC 108-4 Prices and Payments, a Construction Schedule indicating the proposed methods of construction and sequence of Work and time the Contractor proposes to complete the various items of Work within the time specified in the Contract.

1. Initial and updated Construction Schedules shall be prepared and submitted as detailed below:
  - a) Two paper copies and an electronic copy in a portable document format (PDF – non-editable) shall be submitted to the General Manager no less than (3) Business Days prior to the pre-construction meeting.
  - b) Where the Contractor has revised the initial Construction Schedule prior to the pre-construction meeting, the revised Construction Schedule shall be submitted to the General Manager at least three (3) Business Days prior to the pre-construction meeting.
  - c) Two paper copies and an electronic copy in a portable document format (PDF – non-editable) shall be submitted to the General Manager not less than three (3) Business Days prior to all regularly scheduled site meetings. All revisions shall be highlighted on the updated Construction Schedule. Updated Construction Schedules submitted shall reflect actual progress of the Work and any additions, deletions, or revisions to the Work that have arisen since the previous update. At regularly scheduled site meetings, the Contractor shall explain the revisions and any increase or decrease in resources required to complete the Work on time. At the General Manager's request, and at no additional cost to the City, the Contractor shall submit an updated Construction Schedule within seven (7) Business Days of any major increase or decrease in quantities, or major change in the staging or perceived change in character of the Work.
  - d) All copies shall be legible and shall show the date the Construction Schedule was prepared.



2. The requirements for the Construction Schedule are detailed below:
  - a) The critical path method shall be used to prepare and update the Construction Schedule. The initial and updated Construction Schedules shall consist of a time scaled network diagram with its related bar charts or a time scaled linear diagram.
  - b) The construction time shown on the initial Construction Schedule shall not extend beyond the specified Contract Completion date. The Construction Schedule shall include all non-working periods and appropriate allowances for inclement weather.
  - c) The Construction Schedule shall reflect operational constraints, interim completion dates, and other scheduling requirements specified in the Contract.
  - d) A delay for an activity shall be deemed to have occurred when the activity is not complete on its late finish date established by the Construction Schedule or it exceeds the specified Completion Date for the Contract.
3. The requirements for diagrams and bar charts are detailed below:
  - a) The Contractor may select to submit initial and updated Construction Schedules in either logic diagram format with accompanying time scaled bar charts or time scaled linear diagrams.
  - b) The Contractor shall select the activities so that the Work is identifiable and the progress of each activity can be determined. The Owner reserves the right to limit or increase the number of activities on the diagram.
  - c) Each activity in the initial and updated Construction Schedules shall include a description of the operation and the number of Days allocated or actually used for it. When the duration of an activity is dependent on weather conditions, the number of Days allocated shall include an allowance for normal frequency of inclement weather. When the activity has an associated tender item quantity, the approximate quantity shall also be shown.
  - d) The Construction Schedule shall show the sequence and interdependence of all activities required to complete the Work under the Contract, including time for review of Working Drawings and mix design submissions, early start date, early finish date, and float times. All network connections used to create a logical schedule and the corresponding durations shall be shown. Activities on the critical path shall be identified clearly on the diagram.
4. The Contractor shall not be permitted to start work until a Construction Schedule, conforming to this specification, is received by the General Manager.
5. If, for any reason, the Contractor cannot produce an acceptable Construction Schedule within 30 Business Days of initial submission of the Construction Schedule, the Contractor shall be in default of the Contract.

## **Section 105 Control of Materials**

### **105-1 Supply of Materials**

All Materials necessary for the proper completion of the Work, except those listed as being supplied by the City, shall be supplied by the Contractor. Measurement for payment and basis of payment clauses as may be included in Material Specifications shall not apply to the Contract. The Contract prices for the appropriate tender items shall be deemed to include full compensation for the supply of such Materials.

### **105-2 Quality of Materials**

All Materials supplied by the Contractor shall conform to the requirements of the Contract documents. Where required by the General Manager, the Contractor shall furnish a complete written statement of the origin, composition and manufacture of any Materials to be supplied by him. All Material shall be new unless otherwise specified.

### **105-3 Quality Control**

The cost of all quality control activities, as detailed in the Contract documents, shall be borne by the Contractor, included but not limited to all transportation charges for the samples and testing costs. The Contractor shall not change the source of supply of Materials without the written authorization of the General Manager.

Approval of any Materials by the General 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.

### **105-4 Quality Assurance**

The City reserves the right to perform quality assurance activities at its own cost as specified in the Contract documents and as may be requested by the General Manager in his or her sole discretion. At no additional cost to the City, the Contractor shall make available for inspection or testing samples of any Material to be used in the Work.

The Contractor shall obtain for the General Manager the right to enter upon the premises of the Material manufacturer, supplier or the Project site to carry out such inspection, sampling and testing as specified or as requested by the General Manager.

The Contractor shall notify the General Manager of the sources of supply sufficiently in advance of the Material shipping dates to enable the Contract Administrator to perform the required inspection, sampling and testing.

The City shall not be responsible for any delays to the Contractor's operations where the Contractor fails to give sufficient advance notice to the General Manager to enable the General Manager to carry out the required inspection, sampling and testing before the scheduled shipping dates.

#### **105-5 Conformity with Specifications Overriding Principle**

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

Upon the direction of the General Manager, the Contractor, at his own expense, shall replace or correct any defective Work resulting from faulty material supplied by the City, which has been damaged while under the Contractor's care.

#### **105-6 Materials Furnished by the City**

Materials to be furnished by the City shall be ordered by the Contractor from the Purchasing Agent of the City within a reasonable time for him to have the Materials in stock. The City shall not be responsible for any claims of compensation on account of delays from any cause whatsoever including neglect or default of agents or servants of the City or its suppliers.

The General Manager in his sole discretion may determine points within the City limits where the Contractor shall pick up all Materials furnished by the City. All Material shall be deemed to be in possession of and at the risk of the Contractor from time of receipt of the Material. The Contractor shall be bound to make, at his own expense, any further distribution thereof that may be required to carry out the terms of the Contract.

The Contractor shall be liable for all rental or other charges for handling, hauling or storing Materials or excess Materials ordered by the Contractor for the Contract including demurrage charges.

Material supplied to the Contractor by the City shall not be used by him for purposes other than the performance of the Work under the Contract. Materials damaged while in the possession of or under the control of the Contractor shall be replaced by the Contractor at his own expense and the City shall not be responsible for any delay resulting therefrom.

Once Material has been supplied to the Contractor by the City, the Contractor is responsible for its storage. Any loss, theft or damage occurring after the Material goes into the possession or constructive possession of the Contractor, the Contractor shall be responsible and liable therefor.

Before taking delivery of the City's supplies and Materials, the Contractor shall examine such Materials and satisfy himself as to possible damages which they may have suffered in transit. Where damage has occurred, the Contractor shall immediately notify the General Manager so that a claim may be made against the carrier. Should the Contractor fail to notify the General Manager of damage to Equipment, the Contractor will be liable for the cost of making good any damages subsequently found.

#### **105-7 Project Signs**

The City of Greater Sudbury will fabricate all project signs. The Contractor shall make arrangements with the City of Greater Sudbury's Sign Shop **(705) 674-4455 extension 3660** to obtain and erect the project signs accordingly. The Contractor shall be responsible for the maintenance of the project signs and provide adequate safeguards to protect these signs from their operations. Upon completion of the Project, the Contractor shall remove the signs from the Project site and return the signs to the City of Greater Sudbury Sign Shop. All costs associated with obtaining, erecting, maintaining, removal and return of the project signs shall be deemed as all inclusive in the appropriate tender items.

## **105-8 Weigh Bills**

All weigh bills for the supply of material to be paid shall be made in triplicate.

At least two (2) of these weigh bills must be signed by the Inspector with the Contractor retaining one (1). Payment shall only be made for weigh bills signed by the City's representative.

## **105-9 Excess Soil**

Unless expressly stated otherwise in the Contract, all materials determined to be excess by the Contractor, including earth and rock excavation, broken concrete, rubble and broken asphalt, shall be removed by the Contractor. The cost of removal and disposal of excess materials shall be included in the Contract price.

The Contractor shall determine the extent to which Ontario's Excess Soil and Waste Laws apply to the Work and shall provide the City with immediate written notice of such determination. For clarity, the Contractor acknowledges and agrees that this is an ongoing obligation of the Contractor during the performance of the Work.

To the extent that excess material is neither "excavated soil" as that term is referred to in O. Reg. 406/19 ("Excavated Soil") nor Excess Soil, but otherwise constitutes "waste" pursuant to the EPA and Reg. 347 ("Non-Soil Waste"), the Contractor shall ensure that the Non-Soil Waste is managed, transported, and disposed of in accordance with the EPA, Reg. 347 and O. Reg. 351/12, including but not limited to ensuring that the Non-Soil Waste is transported by a hauler approved by the MECP to transport the Non-Soil Waste and disposed of at a waste disposal site approved by the MECP to receive the Non-Soil Waste for final disposal.

To the extent that material that is Excavated Soil and/or Excess Soil is generated and/or otherwise needs to be managed as part of the Work, the Contractor, at the Contractor's cost and expense, shall:

- (a) perform the Work in accordance with Ontario's Excess Soil and Waste Laws and arrange for and ensure management, processing, transporting, tracking, storage, reuse and/or disposal of Excavated Soil and/or Excess Soil is completed in accordance with Ontario's Excess Soil and Waste Laws, including but not limited to completing the following tasks:
  - i. ensure that the excavation of "soil" and "rock" as those terms are defined in Ontario's Excess Soil and Waste Laws is completed under the supervision of a qualified person as defined in O. Reg. 406/19 ("Qualified Person") retained by the Contractor and subject to the City's prior approval;
  - ii. ensure that Excavated Soil and/or Excess Soil is lawfully transported to and then either reused for a beneficial purpose or disposed of with consideration to the quantity of the soil, the quality of the soil, the intended receiving site (if not reused at the Place of the Work), and the presence or absence of debris or deleterious materials, all in accordance with Ontario's Excess Soil and Waste Laws;
  - iii. if required by Ontario's Excess Soil and Waste Laws, implement a record-keeping system to document and track information about the Excess Soil transported to an intended receiving site (if not reused at the Place of the Work), including the quantity and quality of the Excess Soil;
  - iv. generate all required records within the deadlines stipulated by Ontario's Excess Soil and Waste Laws, maintain its records in an organized manner for a minimum of seven (7) years, and provide these records to the City;

- v. in advance of commencing the Work, ensure that the Qualified Person prepare and implements a procedure in compliance with section 23 of O. Reg. 406/19 (the "Section 23 Procedure") to ensure that, in the event that during the Work any person working at the Project site who makes an observation that suggests that soil being excavated may be affected by the "discharge" of a "contaminant" as those terms are defined in Ontario's Excess Soil and Waste Laws, the Contractor and all persons on-site follow the Section 23 Procedure;
  - vi. if required by Ontario's Excess Soil and Waste Laws, file and update specified notices on the registry as defined in O. Reg. 406/19, and provide a copy of these notices to the City;
  - vii. if required by Ontario's Excess Soil and Waste Laws, require the Contractor's Qualified Person to complete and/or update an assessment of past uses, sampling and analysis plan, soil characterization report and/or excess soil destination assessment report;
  - viii. provide to the City the name, address, current permits, approvals and sampling requirements of any and all proposed receiving facilities for the Excess Soil arising from the Work prior to the transportation of the Excess Soil to the proposed receiving facility/facilities;
  - ix. where applicable, require the Contractor's Qualified Person to issue a letter to any proposed receiving facility/facilities for the Excess Soil providing a summary of soil testing results about the Excess Soil and a professional opinion regarding the suitability of the Excess Soil for off-site temporary storage, temporary processing, reuse or disposal at the intended receiving facility/facilities ("QP Letter"), and provide a copy of the QP Letter to the City; and
- (b) comply with all by-laws of the City, including site alteration and/or fill by-law(s), as amended, and any additional prescribed earthworks best practices required by the City.

Without restricting the generality of any other provision in the Contract:

- (a) for the duration of the Project, until completion of the Work, the City is the Project Leader and the Contractor shall carry out, and fulfill, the duties and responsibilities of the Project Leader in accordance with the requirements of this Contract and Ontario's Excess Soil and Waste Laws;
- (b) the Contractor's responsibilities include, without limitation, procuring, and, as a part of the Contract price, paying for, all permits, approvals and disposal fees, costs and expenses required pursuant to Ontario's Excess Soil and Waste Laws; and
- (c) the documents at the site of the Project include, without limitation, all documents evidencing that the Work complies with Ontario's Excess Soil and Waste Laws and such other documents as required by Ontario's Excess Soil and Waste Laws.

For clarity, this GC 105-9 Excess Soil is applicable to Excavated Soil and Excess Soil, even when such Excavated Soil and Excess Soil differs materially from that as indicated in the Contract or is of a nature which differs materially from as ordinarily found to exist and generally recognized as inherent in construction activities of the character provided for in the Contract.

The City's receipt of any document or record required under this GC 105-9 Excess Soil shall not be deemed to connote acceptance or approval of its content or derogate from or diminish the Contractor's obligations contained in this GC 105-9 Excess Soil. The City shall not be liable or be under any obligation to the Contractor or any person whatsoever merely by reason of receipt of a document or record from the Contractor.

## Section 106 Legal Relations and Responsibility

### 106-1 Contractor's Responsibility for Damages

The Contractor, his agent, and all workmen and persons employed by him, or under his control, including Sub-contractors, shall use due care that no person or property is injured and that no rights are infringed upon in the prosecution of the Work, and the Contractor shall be solely responsible for all damages by whomsoever claim able 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 Work or any part hereof, or by any neglect, misfeasance or nonfeasance on the Contractor's part or on the part of any of his agents, workmen or persons employed by him or under his control including Sub-contractors, and shall bear the full cost thereof and shall at his own expense make such temporary provisions as may be necessary to ensure the avoidance of any such damage, injury or infringement and to prevent the interruption of or danger or menace to the traffic on any railway or any public or private road entrance or sidewalk and to secure to all persons and corporations the uninterrupted enjoyment of all their rights in and during the performance of the Work, 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.

Whenever any Work is of such an extent and nature that it must necessarily be confined to particular areas of the right-of-way, the Contractor shall use reasonable care not to damage or deface the remaining portions of the right-of-way and if any damage is occasioned as a result of the Contractor's operations, it shall be rectified by the Contractor at his own expense, to the satisfaction of the General Manager.

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 his claim, and provided further that the amount withheld under this Section shall not exceed the amount of such claims against the Contractor.

### 106-2 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 Work until the date of the Final Acceptance Certificate. Prior to commencement of the Work, 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 **Five Million Dollars (\$5,000,000)** inclusive for any one occurrence and shall include the following:

- i) property damage deductible of not more than Two Thousand, Five Hundred Dollars (\$2,500);
- ii) occurrence form;
- iii) occurrence property damage;
- iv) personal injury;
- v) employees as additional insured's;
- vi) broad form equipment;
- vii) blanket contractual liability;
- viii) protective liability for all contracted/subcontracted operations;
- ix) contingent employers' liability (for employees covered by WSIB);
- x) employer's liability (for employees not covered by WSIB);
- xi) medical payments;
- xii) broad form property damage;
- xiii) broad form completed operations;
- xiv) incidental medical malpractice;
- xv) intentional acts to protect persons and property;
- xvi) non-owned automobile;
- xvii) deletion of exclusions related to use of explosives, pile driving or caissons, collapse of ;
- xviii) buildings, underpinning, or underground work (where the project involves such risks);
- xix) forest and prairie protection acts liability (where the project involves such risks); and
- xx) City, its agents, servants, employees and volunteers added as additional insureds with respect to the operations of the Contractor.

All liability coverage shall be maintained for completed operations hazards from the date of Substantial Performance of the Work, as set out in the certificate of Substantial Performance of the Work, on an ongoing basis for a period of six (6) years following Substantial Performance of the Work. Where the Contractor maintains a single, blanket policy, the addition of the City and consultant is limited to liability arising out of the Project and all operations necessary or incidental thereto. The policy shall be endorsed to provide the City with not less than thirty (30) days notice in writing in advance of any cancellation, change or amendment restricting coverage.

**(b) Automobile Liability Insurance**

Automobile liability insurance in respect of licensed vehicles shall be subject to limits of not less than **Five Million Dollars (\$5,000,000)** 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 thirty (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 **Two Million Dollars (\$2,000,000)** inclusive per occurrence for bodily injury, death, and damage to property including loss of use thereof and limits of not less than **Two Million Dollars (\$2,000,000)** 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 thirty (30) days notice in writing in advance of any cancellation, change or amendment restricting coverage.

**(d) Property and Boiler and Machinery Insurance**

“All Risks” property insurance shall be in the joint names of the Contractor, the City and the consultant, if any, insuring not less than the sum of the amount of the Contract price and the full value of products that are specified to be provided by the City for incorporation into the Work, with a deductible not exceeding \$2,500. The insurance provided shall not be less than that provided by the “Comprehensive Builders Risk Form” and shall be maintained continuously until ten (10) days after the date of the Final Acceptance Certificate.

Boiler and machinery insurance shall be in the joint names of the Contractor, the City and the consultant, if any, for not less than the amount of the “All Risks” property insurance. The insurance provided shall not be less than the insurance provided by the “Comprehensive Boiler and Machinery Form” and shall be maintained continuously until ten (10) days after the date of the Final Acceptance Certificate.

The policies shall allow for partial or total use or occupancy of the Work. If, because of such use or occupancy, the Contractor is unable to provide coverage, the Contractor shall notify the City in writing.

The policies shall provide that, in the case of loss or damage, payment shall be made to the City and the Contractor as their respective interests may appear. The Contractor shall act on behalf of the City for the purpose of adjusting the amount of such loss or damage payment with the insurers. When the extent of the loss or damage is determined, the Contractor shall proceed to restore the Work. Loss or damage shall not affect the rights and obligations of either party under the Contract except that the Contractor shall be entitled to such extension of contract time relative to the extent of the loss or damage as the General Manager may allow.

The Contractor shall be entitled to receive from the City, in addition to the amount due under the Contract, the amount at which the City’s interest in restoration of the Work has been appraised, such amount to be paid as the restoration of the Work proceeds. In addition, the Contractor shall be entitled to receive, from payments made by the insurer, the amount of the Contractor’s interest in the restoration of the Work.

Where the full insurable value of the Work is substantially less than the Contract price, the City may reduce the amount of insurance required or waive the requirement for Property and boiler and machinery insurance.



**(e) Contractors' Equipment Insurance**

"All Risk" contractors' equipment insurance covering construction machinery and equipment used by the Contractor for the performance of the Work, including boiler insurance and temporary boilers and pressure vessels, shall be in a form acceptable to the City and shall not allow subrogations against the City. The policies shall be endorsed to provide the City with not less than thirty (30) days notice in writing in advance of any cancellation, change or amendment restricting coverage. Subject to satisfactory proof of financial capability by the Contractor for self-insurance, the City may agree to waive the requirement for Contractors' equipment insurance.

**(f) 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 Work.

"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 Work 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.

**106-3 Provision for Municipal Signs**

Prior to commencement of the Work, the Contractor must record the location and type of each sign within the limits of the Working Area. The Contractor is responsible for removal, storage and reinstallation of all signs within the Working Area including the cost of replacing missing or damaged signs as a result of the Work or theft. The signs must be reinstalled conforming to the Contract Drawings, Ontario Traffic Manual, *Highway Traffic Act*, R.S.O. 1990, c. H.8, and City G.S.S.D. Temporarily relocated existing signs shall be reinstated at the same height, off-set and location as before removal or at a new location specified in the Contract documents. Where the Contract documents specify that new signs are required, the Contractor shall make arrangements with the City of Greater Sudbury Sign Shop to obtain the new signs.

**106-4 Maintaining Roadways and Detours**

Where the Roadway is affected by the Work, the Roadway must be kept open to traffic, and the Contractor shall, except as otherwise provided in this Section, provide and maintain for the duration of the Work a road throughout the length of the Work, whether along an existing public road including the road subject to the Work, or on detours within or adjacent to the right-of-way.

The Contractor shall not close the road, reduce lane widths or close traffic lanes except as specified in the Contract documents.

Existing Traffic control signals shall remain active for the duration of the Work, with the exception of short term power supply interruptions to accommodate replacement or modifications to existing traffic control signals as defined in the Contract.

The Contractor will not be required to maintain a road through the Work until such time as the Contractor has commenced operations or during seasonal shut-down or on any part of the Contract that has been accepted in accordance with Subsection 108-4(f) Final Acceptance Certificate or on public roads outside the limits of the Contract.

Where localized and separated sections of the Roadway only are affected by the Contractor's operations, the Contractor will not be required to maintain intervening sections of the existing public road until such times as these sections are located within the limits of the Roadway affected by the Contractor's general operations under the Contract. The Contractor will not be required to apply de-icing salts and abrasives or carry out snow ploughing operations as may be required for the safe passage and control of traffic. However, if the Contractor's operations make it impractical to carry out normal snow removal operations, the Contractor is responsible for such work.

When the Contractor constructs a detour which is not specifically provided for in the contract, or required by the General Manager, the construction of the detour and the subsequent removal shall be carried out at the Contractor's expense. The detour shall be constructed and maintained to structural and geometric standards approved by the General Manager. Removal shall be carried out as directed and at the discretion of the General Manager and shall consist of the disposal, levelling, and trimming of the excavated material and such restorative measures as may be required.

Where 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 ensure the Roadway and detours are in a passable, safe and satisfactory condition for public travel, to the satisfaction of the General Manager.

Where the Contract specifies or the General Manager approves in writing, that the road be closed and traffic diverted entirely off the road allowance to any other public roads, the Contractor shall give the General Manager fourteen (14) days advance notice prior to the road closure. The Contractor shall at his own expense supply, erect and maintain traffic control devices, in accordance with the Ontario Traffic Manual – Book 7, barricades, lights, and such other protection as may reasonably be required at all points where traffic might enter on that portion of the road so closed to traffic, outside and within the limits of the Contract or within other public roads which may be used during the said closure of the road. The Contractor, where specified in the Contract documents, shall supply watchmen twenty-four (24) hours a day to protect the barricades and direct traffic at each end of the portion or portions of the highway closed to traffic.

The Contractor shall at his own expense erect and maintain advisory signs of the temporary closure and associated dates, at least one week in advance of the first day of the closure. The sign configurations, locations and detours shall be approved by the General Manager. All signs shall be removed immediately following the completion of the Work.

Without limiting the responsibility of the Contractor to properly notify the public of and protect it from traffic hazards, the General Manager may require the Contractor to provide additional notification or protection for the public.

If at any time the Contractor fails to provide for the safe passage and control of traffic on any existing road or detour for which, under the Contract, he is responsible, and if the Contractor fails to correct forthwith such unsatisfactory condition upon being so directed in writing, the General Manager may immediately correct the unsatisfactory condition and take such other action as he deems necessary to provide for the safe passage and control of traffic. In such circumstances, the City may take any required steps with its own forces or its chosen contractor acting as the Constructor under OHSA. The City may deduct from any monies due or to become due to the Contractor on any account, any cost or expense incurred by the City under this Section. No act or failure to act on the part of the General Manager under this Section shall relieve the Contractor from his responsibilities under the Contract.

The Contractor will be responsible for all traffic control measures as defined in the Ontario Traffic Manual - Book 7. There will be no separate or additional payment made for traffic control measures, including, without limitation, the cost for paid duty police officers, where required, as such cost shall be deemed as all inclusive in the appropriate tender items.

The Contractor shall, in writing, notify Greater Sudbury Fire and Paramedic Services at the end of each day, in order to specify access restrictions due to the Work for the following day.

The Contractor shall, in writing, notify Greater Sudbury Transit, forty-eight (48) hours prior to closing bus bays or any Work on any street that is a bus route.

The Contractor shall, in writing, notify Sudbury Student Services Consortium, five (5) business days, prior to any access restrictions due to construction.

If parking meters are affected, the Contractor shall, in writing, notify City Parking Services at a minimum of forty-eight (48) hours in advance.

At any time upon request, the Contractor shall provide the General Manager with copies of the notifications required herein.

The foregoing provisions shall in no way relieve the Contractor of his obligations under the various provisions of the Contract dealing with the Contractor's responsibility for damage claims, except for claims arising on sections of road within the limits of the Contract that are being maintained by the City.

#### **106-5 Access to Properties Adjoining the Work**

The Contractor shall provide at all times and at his own expense, adequate pedestrian and vehicular access to private homes and commercial establishments, unless otherwise authorized by the General Manager.

Where interruptions to access have been authorized by the General Manager, reasonable notice shall be given by the Contractor to the affected property owners and such interruptions shall be arranged so as to create a minimum of interference to those affected.

#### **106-6 Construction Affecting Railway Property**

The methods of construction and the timing of Work within or adjacent to railway property shall be subject to the approval of the General Manager.

Before any Work is commenced, the Contractor shall receive railway company approval and fulfil all of their requirements.

The Contractor shall provide and pay for all protection and flagging required in accordance with Subsection GC 106-4 Maintaining Roadways and Detours.

#### **106-7 Explosives**

The Contractor shall comply with all statutes, regulations, by-laws and orders relating to the supply, hauling, handling, use of, and storing of explosives.

Before any blasting operations are carried out, the Contractor shall give reasonable notice to any department or agency of government and to any person, partnership or corporation, including a municipal corporation, and board or commission thereof affected thereby.

Before blasting, the Contractor must give adequate warning to all parts of the Project by siren or other suitable means.

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 traffic control persons on each road entering the blasting area who shall stop all traffic and shall prevent such traffic from entering the area until the blast has taken place.

The Contractor shall take all precautions necessary in regard to explosives, drilling, or methods of blasting used to ensure that persons are not injured and that adjoining property and structures, including public utilities, are not damaged. Without limiting the generality of Subsection GC 106-1 Contractor's Responsibility for Damages, 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, whether on or off the limits of the contract.

For purposes of defending himself and the City against claims for damages to buildings in the vicinity of the Work, the Contractor shall, prior to construction and at his own expense, carry out a complete inspection of all houses likely to be affected or damaged by detonations under the Contract. Such inspection shall be by an independent qualified agency, at the Contractor's expense. The City may, in writing, request from the Contractor any and all data collected by the independent qualified agency in relation to any property and such data shall be provided within two (2) weeks of such request.

No payment shall be made for protection measures or for damage to persons or for damages or repairs to property, structures, or public buildings or for any claim whatsoever arising from blasting operations.

#### **106-8 Trees and Shrubs**

Except as otherwise provided for in the Contract, the Contractor shall protect from injury all trees and shrubs on or near the line of the Work and on private property. Where the line of a trench passes close to trees the Contractor shall construct timber barricades around each tree or group of trees, or tunnel below the trees. Excavated material shall not be placed in contact with any tree, and the cutting of branches will not be allowed, except with the written approval of the General Manager and the owners of the trees. No extra payment will be allowed the Contractor on account of any expense he may be put to in protecting existing trees, and the Contractor shall be responsible for any damage done to the trees by his workmen, trucks, or Equipment.

Where a branch of a tree has to be cut down, it shall be cut flush with the trunk of the tree and the wound shall be dressed with "Bracco" or other approved fluid to the satisfaction of the General Manager. The greatest care shall be taken to preserve the bark of trees from bruising or tearing. Where excavating and backfilling machinery damages branches of trees, the damaged portion shall be cut off and treated as outlined above.

#### **106-9 Roadways and Surfaces**

All restoration Work must be carried out simultaneously with the Contract progress.

Road intersections shall be constructed to existing radii or a minimum of 5 metres whichever is greater. No additional payment shall be made for this Work as the Work shall be included in the respective unit prices.

Backfilling of trenches and the restoration Work must be carried out simultaneously with the Contract progress. When the Contractor's operations are suspended for the day, the remaining section of the trench opened shall be backfilled within a maximum distance of three (3) metres from the end of the last section of "main line pipe" installed.

In the event that the Contractor fails or neglects to make satisfactory progress in the execution of any restoration Work within forty-eight (48) hours of the receipt of written notice from the General Manager, the General Manager may remove or cause to be removed any surplus material or to re-grade any area or perform any Work which he deems necessary to leave the Project site in an approved condition and the cost of any such Work shall be charged to the Contractor and shall be deducted from any monies due or to become due him.

Roadways, entrance driveways, sidewalks, or other surface subject to vehicle or pedestrian traffic shall be reinstated with a minimum of delay and inconvenience to the general public and shall be maintained in a satisfactory condition until completion and Final Acceptance of the Works by the City.

Additional surfacing materials, whether they existed prior to the commencement of the Work or not, may be required to be placed on Roadways or walkways to maintain the surface in a condition suitable for vehicular traffic, and the cost of any such material and work shall be borne by the Contractor.

Failure to maintain the roadways, driveways and walkways in an acceptable condition, shall result in the Work being undertaken directly by the General Manager with the costs to be deducted from any monies due the Contractor by the City.

#### **106-10 Ditches and Lawns**

Where established lawns or other landscaped areas within the right-of-way are excavated or damaged, these areas shall be restored by sodding according to the Specifications. All other areas requiring general landscaping shall be seeded according to the Specifications. In the case of controversy as to whether the area is to be seeded or sodded, sodding shall be used. Wherever road ditches are grassed, restoration shall be restored by sodding. Restoration done within the right-of-way will be paid for at the Contract unit price, outside of this area will be done at the Contractor's expense, unless otherwise specified.

**106-11 Dust Control**

The Contractor will be solely responsible for controlling dust resulting from his operations, both within the right-of-way and elsewhere.

Those quantities of water and calcium which are both:

- a) applied to areas within the right-of-way; and
- b) authorized by the City as made necessary and unavoidable for the prevention of dust or hazard to the public, will be measured for payment as provided for in the form of tender in the Contract. In the case that no provision has been made for this payment it will be deemed to be included in the unit prices submitted by the Contractor.

**106-12 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 him in connection with Work to be done or Material furnished by him under the Contract.

**106-13 Observance of Laws, Regulations and Policies**

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

The Contractor must do all Work in conformance with OHSA. Without limiting the generality of the foregoing, the Contractor:

- a) acknowledges that it has read and understood OHSA and, in particular, Sections 23, 24, 25, 30, and 66 thereof;
- b) covenants and agrees to observe strictly and faithfully the provisions of the OHSA for Construction Projects;
- c) agrees to utilize an Occupational Health and Safety policy as required pursuant to Section 25 of the OHSA;
- d) agrees to indemnify and save the City harmless for damages or fines arising from any breach or breaches of the said OHSA;
- e) agrees to assume full responsibility for the enforcement of OHSA to ensure compliance therewith;
- f) further acknowledges and agrees that any breach or breaches of the OHSA by the Contractor or any of its Sub-contractors may result in:
  - i) the immediate termination of the Contract herein and the forfeiture of all sums owing to the Contractor by the City; and
  - ii) the initiation against the Contractor of quasi-criminal proceedings under the OHSA which may result in a finding of guilt on summary conviction.

- g) agrees that any damages or fines that may be assessed against the City by reason of a breach or breaches of OHSA 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 the Contract or under any other contract whatsoever; and
- h) 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.

#### **106-14 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 Work to be done 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 he may have specified in his 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 seventy-two (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 (2) hours after notice is sent to the Contractor's last address personally known to the General Manager.

#### **106-15 Notice to the City**

Unless expressly stated otherwise in these General Conditions, 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

#### **106-16 Warranty**

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

The Contractor agrees to correct, at his own expense, any defects or deficiencies in the Work which appear during the period of 2 years from the date of Substantial Performance or such longer period as may be specified for certain products or Work provided (the "maintenance period"). Where a date of Substantial Performance is not established, the maintenance period shall commence on the date of completion.

Where the Contractor performs Work or supplies Materials, Equipment, or machinery subsequent to the date of Substantial Performance, or where the Contractor corrects deficiencies subsequent to the date of Substantial Performance, then in any such case the warranty for such Work, supply of Materials, Equipment, machinery, or correction of deficiencies shall commence and run from the date that the same was completed.

The City shall promptly give the Contractor written notice in accordance with Subsection GC 106-14 Notice to the Contractor 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 he shall be responsible to correct or pay for any damage to other Works resulting from any correction required under the conditions of this clause.

Neither the General Manager's Final Acceptance Certificate nor payment thereunder shall relieve the Contractor from his responsibility hereunder.

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 Work which were not apparent prior to the expiration of the maintenance period.

#### **106-17 Discharge of Liabilities**

It is agreed that the Contractor shall indemnify and save the City harmless from and against all claims against said City for labour done, Materials, machinery and plant, furnished under the Contract. The Contractor shall furnish said City with satisfactory evidence when called upon that all persons who have done Work or furnished Materials, machinery and plant, for the execution of the 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 the Contract until the liabilities aforesaid shall be fully discharged or satisfactorily secured.

#### **106-18 Maintenance of Existing Drainage**

All sewers and open channels interfered with during construction of the Work, whether shown on the Plans or not, shall be adequately maintained by the Contractor for both dry weather and storm water flow and shall be reinstated to original condition. All gutters and storm water inlets encountered shall be kept open for drainage. The Contractor shall not raise levels in sanitary or storm sewers within or without the limit of the Contract to the extent of flooding. Any damage caused shall be the Contractor's responsibility.

The Contractor's attention is drawn to the fact that lands under the jurisdiction of Conservation Authorities may well be involved within or without the limits of the Contract. If any Contractor's activity will affect lands under the jurisdiction of such Conservation Authority, it shall be the Contractor's responsibility to communicate with such Authority before interfering with their flood plain. Any consequential damages arising as a result of the Contractor's failing to make such a provision shall be borne by the Contractor. It shall be the Contractor's responsibility to obtain such approvals as are required by such Conservation Authority, prior to the commencement of the work.

#### **106-19 Surface and Ground Water**

The Contractor shall, so far as practicable, maintain the Project site free of surface and ground water so that construction may be carried out in the dry. The disposal of surface and ground water from the Works, including all temporary diversions of watercourses, shall be the responsibility of the Contractor and shall be carried out to the satisfaction of the General Manager. Property, real or personal, shall be protected from damage by the diversion or disposal of ground and surface water.



De-watering operations are to be carried out in accordance with the OWRA and any regulations thereunder. All costs associated with the OWRA shall be the responsibility of the Contractor.

#### **106-20 Septic Tank and Field Beds**

Where septic tank and field beds or other treatment works are encountered in the construction of the Works, the Contractor shall provide adequate "Maintenance of Flow" to septic tank systems disrupted and immediately upon completion, restore the field tile beds to their original condition and ensure that the works reconstructed are in good working condition.

No additional payment will be made for this work.

#### **106-21 Continuation of Municipal Services**

The Contractor is solely responsible for ensuring the continuance of municipal services during the course of the Contract.

During the normal course of water service installation, there will be a disruption in service (at the time of change over). The Contractor shall provide each affected property owner/occupant with a minimum of twenty-four (24) hours advance notice of service disruption prior to change over taking place. A sample form is included as part of the Special Provisions of the Contract documents.

If, in the opinion of the General Manager, the Works being constructed affect the normal rate of existing water supply or quantity of supply to the homes in the work area, the Contractor is responsible for supplying not less than four hundred and fifty (450) litres per home per day in safe, disinfected, potable water containers.

No additional payment will be made for this work.

If the Contractor fails to comply within two (2) days, the City shall arrange for water delivery and all costs thereof shall be deducted from the Contractor's payment certificates.

#### **106-22 Protection, Soundness, and Repair of the Work**

All the Work shall be carefully protected from damage in any way. Any damage resulting to the Work from such failure shall be repaired or replaced to the satisfaction of the General Manager at the expense of the Contractor.

#### **106-23 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 the 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 Work.

The indemnity in this Section includes:

- a) the Contractor's failure to comply with the requirements of GC 105-9 Excess Soil, including without limitation, compliance with *Ontario's Excess Soil and Waste Laws*; and
- b) orders, actions, suits, claims, proceedings, penalties (including administrative monetary penalties), fines, statutory obligations, professional fees (including retainers for professional services), settlements, and/or other penalties whether imposed by a governmental authority (including any competent local government, board, commission, department or officer), court or through settlement, and legal fees and disbursements to defend and/or appeal any orders, offences, charges, prosecutions, actions, suits, claims, administrative monetary penalties, or proceedings, including, without limitation, those arising out of or attributable to *Ontario's Excess Soil and Waste Laws* and the City's failure or alleged failure to comply with any duties or responsibilities it may be found to have, or alleged to have, as a Project Leader.

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 solicitor and client 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 the 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 Work. 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.

#### **106-24 Field Office**

The Contractor shall as soon as the Contract commences provide a field office of 18 square metres minimum area with adequate lighting, heating, and telephone with messaging capability on the Project site for the sole use of the General Manager and his representative for the duration of the Contract.

The structure shall be waterproof, lined with common plywood and painted on the interior and exterior. The following furnishings and Equipment shall be supplied:

- a) 1 desk with two drawers and chair;
- b) 5 office chairs;
- c) 1 table 2 m x 1 m;

- d) 1 lock-up filing cabinet 0.5 m deep, four drawers; and
- e) 9 metres of 0.3 metre shelving.

Used furnishings in good condition will be considered.

Where a site office is not required, the Contractor shall provide a cellular telephone complete with messaging capabilities, charging unit and portable charging unit for the exclusive use of the General Manager. Only calls related to the specific project shall be paid by the Contractor. Cell phones shall not be older than three (3) years.

**The Contractor shall bear all expenses in connection with the office, including the monthly service charges for lighting, heating, telephone and cellular phone costs.**

#### **106-25 Protection of Survey Monuments and Bars**

It shall be the Contractor's responsibility to protect any survey monuments and legal iron bars from damage due to the Work. Markers or poles 1.2m to 1.5m in height and painted red at the top shall be placed at each iron bar for protection.

Any survey monument and legal iron bars damaged by the Contractor due to the Work shall be replaced at his sole expense, and to the satisfaction of the General Manager.

Any survey monument or legal iron bars, that must be removed in order to construct the Work, and are approved by the General Manager prior to construction, shall be established at the expense of the City.

#### **106-26 Environmental Considerations**

- a) This Section covers the obligations of the Contractor for the protection of the environment during construction of the Work.

The provisions of this Section are in addition to other sections of the Contract.

The Contractor represents to the City that it is familiar with legislation relating to the protection of the environment. It agrees, at all times, to carry out its obligations under the Contract in full compliance with the *Environmental Protection Act*, R.S.O. 1990, c. E.19, the *Ontario Water Resources Act*, R.S.O. 1990, c. O.40, and any similar or successor legislation respecting the protection of the environment, including compliance with regulations and orders made or issued under the authority of such legislation.

- b) Protection of the Natural Environment**

The land areas surrounding the Project site have a wildlife and vegetative value to the community. Acceptance for any Work in these areas will be closely controlled by the General Manager. The Contractor shall be responsible for the protection of the natural environment in this area and cooperate fully with the requested protective procedures.

The Contractor shall submit to the General Manager for review Plans and sketches showing areas proposed to be used for construction, storage, and access, including dimensions of these areas and show the location and size of all trees within and adjacent to these areas.

**c) Working Areas**

The Contractor shall confine operations to limits of the Working Area shown on Drawings.

The Contractor shall provide access roads to the Working Area and on the Project site in locations acceptable to the General Manager.

The Contractor shall install fencing suitable to the General Manager to clearly define the working limits to the Working Area, haul routes, parking areas, access routes and maintenance areas to ensure that activity is confined to these areas.

**d) Inclement Weather**

The Contractor shall make adequate protection and take precautions at times of inclement weather.

The Contractor shall clear, grub and strip topsoil from areas of the Project site immediately before commencing Work in these areas. The Contractor shall not allow large areas of the Project site to lie cleared, grubbed and stripped of topsoil unless Work is progressing in those areas.

The Contractor understands and agrees that inclement weather or Extra Work caused by such weather will not be accepted as reason for additional payment or an extension to the time for completion of the Work.

**e) Surface Drainage & Watercourses**

The Contractor shall maintain ditches and watercourses for surface water drainage of Project site and external properties during construction of the Work, and bear the responsibility for damage that may result by reason of not doing so.

The Contractor shall incorporate appropriate sediment retention measures with check dams, sediment traps, settling basins, silt fences, floating silt curtains, etc. where feasible, or, work in "the dry" by pumping water around site, constructing diversion ditches, temporary culverts, sheet piling, gabions, caissons, etc. where crossing drainage courses. The Contractor shall outline location, type and extent of proposed measures and obtain the General Manager's acceptance of the same prior to commencing Work in these areas.

The Contractor shall locate and protect stockpiles of a semi-permanent nature to the satisfaction of the General Manager to ensure minimum environmental interference.

**f) Noise Control**

The Contractor shall adhere to local noise by-laws.

The Contractor shall equip vehicles and Equipment with efficient muffler devices to minimize noise levels in the vicinity of the Working Area.

Where necessary, the Contractor shall place noise attenuation devices (barriers) around stationery pumps and compressors.

**g) Equipment Fuelling, Maintenance and Storage**

The Contractor shall carry out refuelling, except the fuelling of backhoes and shovels, at acceptable refuelling areas.

The Contractor shall obtain the General Manager's acceptance of refuelling areas.

The Contractor shall submit to the General Manager for review prior to starting Works, procedures for the interception and rapid clean-up and disposal of fuel spillages which occur.

The Contractor shall ensure that materials required for the clean-up of fuel spillages are readily accessible on the Project site at all times.

The Contractor understands and agrees that refuelling of backhoes or shovels will be allowed at locations other than the accepted refuelling areas, but not closer than 30m from any watercourse.

The Contractor understands and agrees that the cleaning of Equipment in streams and lakes and the emptying of fuel, lubricants and pesticides into watercourses is prohibited. The Contractor shall contain construction debris and dispose of it in approved locations.

The Contractor shall clean Equipment prior to entering public Roadways to prevent littering and shall ensure that debris cleaned from Equipment cannot gain access to storm sewers or watercourses.

The Contractor shall store Equipment and materials in an orderly manner and in locations acceptable to the General Manager.

**h) Archaeology**

During the performance of the Work, the Contractor shall have regard to the requirements of the *Ontario Heritage Act*, R.S.O. 1990, c. O.18 and the *Cemeteries Act*, R.S.O. 1990, c. C.4.

If any archaeological and historical resources are discovered during the performance of the Work, the Contractor shall halt the performance of the Work in the area of the discovery. The Contractor shall notify the Ministry of Tourism, Culture and Sport for an assessment of the discovery and shall not resume Work in the area of the discovery until cleared to do so by an Archaeologist.

**i) Restoration**

In general, the Contractor shall restore the site to condition equal to or, if specified elsewhere, to a condition better than existing conditions.

The Contractor shall restore lands outside of the limits of the Work which are disturbed by the Work to their original condition in addition to complying with these general conditions.

**j) Spills Reporting**

In the event of a spill or other emission of a pollutant into the natural environment, the Contractor and every person responsible for the emission or who causes or permits it must forthwith notify:

- i) the Ministry of Environment, Conservation and Parks (Phone: 1-800-268-6060);
- ii) the City of Greater Sudbury within the boundaries of which the spill occurred;
- iii) the owner of the pollutant, if known; and
- iv) the person having control of the pollutant, if known, of the spill, of the circumstances thereof, and of the action taken or intended to be taken with respect thereto.

**k) Hazardous Wastes and Designated Substances (OSHA)**

In the process of performing the Work required under the Contract, the Contractor or his/her employees may encounter hazardous wastes as defined by R.R.O. 1990, Regulation 347: General – Waste Management or designated substances as identified by OSHA.

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

For the purposes of this GC 106-26 Environmental Considerations, hazardous wastes and designated substances shall exclude *Excess Soil*.

**Note:** All City landfill sites and designated dump sites can only accept solid non-hazardous waste.

**l) Contingency Plan**

Prior to commencing construction, the Contractor shall prepare a contingency plan for the control and clean-up of a spill. The contingency plan shall include:

- i) the names and the telephone numbers of the persons in the local municipalities to be notified forthwith of a spill;
- ii) the names and the telephone numbers of the representatives of the fire, the police and the health departments of the local municipalities who are responsible to respond to emergency situations;
- iii) the names and the telephone numbers of the companies experienced in the control and clean-up of hazardous materials that would be called upon in an emergency involving a spill;
- iv) the Contractor's proposal for the immediate containment and control of the spill, the clean-up procedures to be initiated immediately and any other action to be taken to mitigate the potential environmental damage while awaiting additional assistance; and

- v) the name and telephone number of the Contract representative responsible for preparing, implementing, directing and supervising the contingency plan.

The Contractor shall ensure the immediate availability of the products with which to effect temporary repair to broken pipelines and other services to the spill or other emission of a pollutant is immediately controlled and stopped and to mitigate the damages.

The Contractor shall submit for the General Manager's review and the review of other responsible parties a copy of the Contingency Plan and make appropriate changes to it based on review comments received.

**m) 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 work immediately, the City may proceed to complete the 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.

**106-27 Work on Private Property**

When performing Work on private property, the Contractor shall obtain a completed release form from each property owner, certifying that the restoration work has been carried out to the owner's satisfaction. A sample form is included as part of the Special Provisions of the contract documents.

**106-28 Salvaging Structures**

All existing structures and appurtenances removed during construction of the Work are the exclusive property of the City. The Contractor shall return all salvageable items as listed in the Special Provisions to a Designated Public Works Depot, at no additional cost to the City.

The Contractor shall also be responsible for the proper disposal of all damaged or unsuitable structures and appurtenances recovered from the Project site.

**106-29 Solid Waste Collection**

When a section of Roadway or curbside lane is closed to traffic, the Contractor shall bring all solid waste (garbage, blue boxes, green carts, leaf & yard waste and other items) to the outside ends of the closed area so that the solid waste may be collected. After the collection has been completed, the Contractor shall return all garbage containers, blue boxes and green carts to their original location.

The day of the week and time for solid waste collection for the area shall be provided to the Contractor. The day of the week and time for regular collection may change due to statutory holidays and the Contractor shall make the necessary adjustments to their Work schedule for this change.

Should the Contractor not work on the day of the solid waste collection, and a section of Roadway or curbside lane remain closed, it will be the Contractor's responsibility to ensure that the conditions mentioned above are followed.

All the above shall be at the Contractor's expense and there shall be no additional payment or compensation.

### **106-30 Cleaning Up Before Acceptance**

Upon attaining Substantial Performance of the Work, the Contractor shall remove surplus materials not required for the performance of the remaining Work. The Contractor shall also remove all temporary works and debris other than that caused by the City or others and leave the Work and Working Area clean and suitable for occupancy by the City, unless otherwise specified.

The Work shall not be deemed to have reached Completion until the Contractor has removed all surplus materials. The Contractor shall also have removed debris, other than that caused by the City, or others.



## **Section 107 Prosecution and Progress**

### **107-1 Time and Order of Completion**

Before commencing the Work, the Contractor shall submit in writing to the General Manager, his proposed sequence of Work and shall obtain approval therefor from the General Manager. Such approval shall not relieve the Contractor of any of his duties and obligations under the Contract. Such approval shall in no way create any liability on the City but shall only amount to an acknowledgement by the General Manager that the proposal is not objectionable at that time.

The General Manager may direct the Contractor in writing as to the time, precedence or order in which any Work to be done under the Contract shall be performed.

The Work shall not be commenced until the Contractor has received a written order to commence the same, signed by the General Manager and it shall thereupon be commenced within seven (7) days of the commencement date specified therein and continuously and with utmost diligence and dispatch carried on to Completion, subject to any other provisions of the Contract and shall be completed and full possession thereof given to the City within the time allowed in the Special Provisions, said time to commence on the date of said written order; unless a longer time shall be allowed in writing by the General Manager, in which case it shall be carried on to Completion and possession given to the City within the additional time as allowed.

### **107-2 Extension of Time**

An extension of time may be granted in writing by the General Manager in the event of the Work 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 Work, 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 Work 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 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 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.

### **107-3 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 Work 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 him 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 he 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 Section, 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.

### **107-4 City's Right to Terminate the Contract**

If the Contractor should fail to perform the Work 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 he is in default in his contractual obligations and instruct him 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 he:

- a) commences the correction of the default within the specified time;
- 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:

- a) correct such default and deduct the cost thereof from the payment then or thereafter due the Contractor; or
- b) stop the Work 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 Section, the City shall be entitled to:

- a) take possession of the Working Area or that portion of the Working Area devoted to that part of the Work terminated;
- b) utilize any Material within the Working Area;
- c) withhold further payments to the Contractor with respect to the Work or the portion of the Work withdrawn from the Contractor until the Work or portion thereof withdrawn is completed;
- d) charge the Contractor the additional cost over the Contract price of completing the Work or portion thereof withdrawn from the Contractor, as certified by the General Manager and any additional compensation paid to the General Manager for such additional service arising from the correction of the default;
- e) charge the Contractor a reasonable allowance, as determined by the General Manager, to cover correction to the Work performed by the Contractor that may be required under Subsection GC 106-16 Warranty;
- f) charge the Contractor for any damages the City sustained as a result of the default; and
- g) charge the Contractor the amount by which the cost of corrections to the Work under Subsection GC 106-16 Warranty, exceeds the allowance provided for such corrections.

The Contractor's obligation as to quality, correction and warranty of the Work performed by him 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 Work being taken out of the control of the Contractor, or any other contractor of the City by provision of the Contract.

#### **107-5 City's Right to Suspend Work**

Should the funds provided for this Work by the City be at any time expended previous to the completion of the Work contracted for, the Contractor may or may not, on receiving a notice from the City to the above effect, stop the Work; but in any case the Contractor shall not be entitled to any further payment for the Work done 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 Work with the permission of the City after such notice and without being entitled to payment for such Work, he 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 Work so done.

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

#### **107-6 Losses and Damages**

Except as otherwise provided for in the Contract 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 reasonable foreseeable circumstance in the prosecution of the same, or from any normal 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 his 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.

#### **107-7 Labour Disputes**

Except to the extent that relief is granted under Subsection GC 107-2 Extension of Time, the Contractor shall bear the risk and responsibility of any loss, damage or expense to the Work or to himself 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.

#### **107-8 Notice to Contractors Regarding Employment, Equipment, and Materials**

The Contractor and any Sub-contractor of the Contract shall:

- a) endeavour to utilize to the fullest extent, available local labour, Equipment, and Materials in the execution of this Work; and
- b) employ only orderly, competent and skilful personnel to do the Work.

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

#### **107-9 Notices by the Contractor**

Before Work is 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 forty-eight (48) hours advance notice of the date of commencement of such Work, 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 works, the Contractor shall immediately notify the appropriate authority or owner and the General Manager of the location and details of such damage or interference.

The Contractor shall post prominently and maintain on the Project site 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.

## **107-10 Protection and Repair of Property, Structures and Utilities**

The locations of all Utilities as shown on the drawings are based on the best information available, but the General Manager assumes no responsibility for their accuracy. It will be the Contractor's responsibility to contact the appropriate Utility authority or municipality concerned to arrange for the accurate location in the field of any Utility.

The Contractor shall, at his own cost and expense, and in a proper manner, sustain in their places and protect from injury any and all water or gas mains and services (public or private), sewers, drains, conduits, subways, steam and pneumatic pipes, service pipes, transmission lines, posts, poles, buildings and all other structures or properties in the vicinity of the Work, whether above or underground.

Access to fire hydrants, water and gas valves shall always be maintained.

The Contractor shall protect all pipes from freezing. The Contractor shall not cause any hindrance to, or interfere with any person engaged in protecting their mains, pipes, poles, lines, posts, or other structures, or in shifting, removing, or replacing the same but the measures as they deem wise or as may become necessary for the purposes aforesaid.

The Contractor shall assume full responsibility for the protection of all Utilities and structures and their foundations, as outlined before, which might be affected by the Contractor's Work. Should damage of any kind, including settlement or lateral movement of adjacent structures, operations, including damage resulting from compressed air or blasting, such conditions and resultant damage shall be rectified at the Contractor's expense.

The Contractor will be responsible for the costs and repairs of all watermain breaks caused or occurring as a result of the Work. No extra costs of any kind will be allowed by the City nor will any claims be considered for such repairs by the Contractor. In the event of any watermain break the Contractor shall forthwith:

- a) notify the City of the watermain break;
- b) coordinate with the City's Supervisor II to isolate the watermain break, and perform related certified functions for quality control and reinstatement of the watermain back to service;
- c) cooperate with the City for the notification of affected persons or business; and,
- d) repair the watermain with its own forces or through Sub-contractors provided that all watermain work is performed by persons qualified and experienced in performing watermain work all of which shall be in accordance with City specifications and industry standards for watermains and to be approved by the City's Supervisor II at the time that they are notified of the damage.

The Contractor shall, in all cases, provide the City with the opportunity to inspect the watermain break repair.

Where, in the City's opinion, the Contractor is not proceeding expeditiously with any aspect related to a watermain break, the City may, at its sole discretion, upon notice to the Contractor that it will no longer be acting as the Constructor, take any required steps and perform the repairs with its own forces or its chosen contractor acting as the Constructor under the OHSA for watermain repairs. Any and all costs, damages or losses incurred or suffered by the City will be charged to the Contractor and deducted from any monies owed to it by the City.

## 107-11 Utility Relocations

Utility authorities and other agencies may be required to carry out relocation work in connection with the Contract. The Contractor will, therefore, be required to coordinate and cooperate fully with Utility authorities and agencies and schedule the Work so that the relocation can be carried out in an expeditious efficient manner. It will be the Contractor's responsibility to contact all Utility authorities and agencies regarding relocations and proper scheduling of their operations as it relates to the Work. It is understood and agreed that the Contractor is legally responsible as the Constructor under OHSA for health and safety of all employees of the utility authority or other agency on the Project. The Contractor shall have the right to obtain a Designation of Project under the OSHA for the Work being performed by the Utility authorities or other agencies. All Utilities are to be relocated by others unless otherwise specified. The City is not liable in any way for any delay occasioned by any action or non-action by others. It is understood and agreed that the City shall not be considered the Constructor under the OHSA for any work performed by Utility authorities or other agencies on the Project.

The City maintains no control over the operations of the Utility authorities and other agencies. The Contractor, at all material times, is responsible to notify the appropriate Utility authorities and other agencies of the impending Work, and shall make whatever arrangements necessary to ensure that the activities of such Utility authorities and agencies will be performed in a satisfactory fashion. The Contractor must take this fact into account, and agrees that the City may use this as an estoppel to any claim of prejudice, interference, delay or extra cost arising from the Work of others and relating from the Work of the Utility authorities or agencies such as electrical, or telephone, because of their work, relocation or maintenance or present or future plant equipment and facilities.

## 107-12 Limitations of Operations

Except for such Work as may be required by the General Manager to maintain the Works in a safe and satisfactory condition, the Contractor shall not carry on the Work on Sundays without permission in writing of the General Manager. The Contractor shall limit his working hours to conform with the applicable City by-law and in no case will the Contractor work prior to, or after daylight hours unless approved in writing by the General Manager or his representative.

The General Manager reserves the right to require the Contractor in writing to cease or limit performance of the Work under the Contract, on any day or days if the Work is of such a nature or if the Work is so located or if the traffic is of such a volume that the General Manager deems it necessary or expedient so to do.

The Contractor shall not perform the Work if it adversely affects public traffic on and the loading or unloading of Materials and Equipment onto and from the travelled portion of the Roadway shall not be carried out during the following periods:

- a) **Fridays** or a **day preceding a holiday** between the hours of 4:00 p.m. to 11:59 p.m.;
- b) **Saturdays** which fall within a holiday weekend only; and
- c) **statutory holidays** meaning all statutory Canadian holidays.

## **107-13 Commencement and Completion**

### **a) Time**

Time shall be of the essence in the Contract.

### **b) Progress of the Work and Time for Completion**

The Contractor shall begin Work within one week of written instructions to do so and shall diligently prosecute his Work on the Contract to Completion.

If the time limit specified elsewhere in the Contract is not sufficient to permit Completion of the Work 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 Work 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 Work and no additional compensation will be allowed therefor.

Working time shall be charged until the date of acceptance of the Work by the City, at which time all Work required in the Contract, including all final clean-up and trimming, shall be completed.

### **c) Working Day**

A working day is defined as any day:

- i) except Saturdays, Sundays and statutory holidays;
- ii) except a day on which the Contractor is prevented by inclement weather or conditions resulting immediately therefrom adverse to a controlling operation or operations, as determined by the General Manager, from proceeding with at least sixty percent (60%) of the normal labour and Equipment force engaged on such operation or operations is to be construed to include any feature of the Work considered at the time by the General Manager and the Contractor, which, if delayed, will delay the time of Completion of the Contract; and
- iii) except any day between November 15th and the following May 15th, inclusive, unless qualified elsewhere.

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 Work 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 the Contract, and all such right shall continue in full force and effect after the time limit in the Contract for the Completion of the Work whenever in the 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 Work 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 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 City. In the event of the City granting an extension of time, time shall continue to be deemed of the essence of the Contract.

**d) Liquidated Damages**

It is agreed by the parties to the Contract that in case all the Work called for under the Contract is not finished or 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 finishing the Work 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 Section from any monies that may be due or payable to the Contractor on any account whatsoever the liquidated damages payable under this Section 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.



If the time available for the Completion of the Work is increased or decreased because of an overrun or under-run of a major item in the Contract, the General Manager may increase or decrease the number of working days by adding or subtracting therefrom, as the case may be, a number of days calculated on the average daily production of the most productive fifty percent (50%) of the working time shown on the Contractor's schedule, divided into the difference between the actual quantity and the estimated tender quantity, provided that this basis for calculation may not be used where in the opinion of the General Manager all or any of the relevant major items are carried out concurrently.

#### **107-14 Cooperation with Other Contractors**

At points of junction with other contracts or City projects, Contractors shall jointly plan and coordinate their separate work so that the project as a whole will suffer no undue delay, nor will the Works be endangered in any way, nor will they suffer improper prosecution at such points of junction or conflict.

Under no circumstances will the City be liable for any loss sustained by the Contractor as a result of delays by contractors on adjacent contracts nor will any addition be made to the time of completion of the Contract on account of such delays.

All arrangements between Contractors must have the approval of the General Manager in writing and should disagreement occur, or should Contractors be unable to reach a satisfactory working arrangement for carrying out work by their joint operations, the General Manager shall determine the manner of carrying out the Work or the arrangements necessary for the proper protection of the Work and the Contractors shall adhere to his instructions and shall not be entitled to any additional payment for Work required in coordination of contracts, whether arranged directly between Contractors or carried out by instructions from the General Manager. The Contractor, however, shall assume full responsibility or liability for Work arranged or directed by the General Manager as by themselves.

#### **107-15 Temporary Heating and Power**

The Contractor shall supply, at his own expense, to the satisfaction of the General Manager, any heat and electrical power necessary for the prosecution, protection, and preservation of the Work.

#### **107-16 Contractor Performance Evaluation (CPE)**

The City, during and/or after the Completion of the Contract, shall monitor performance and conduct a formal evaluation of the Contractor's performance using a performance evaluation form as established by the City. A copy of the results of the CPE shall be provided to the Contractor.

The purpose of the CPE form is to provide an evaluation record, both positive and negative, of a Contractor's performance on any given construction project that has been awarded to a Contractor by the City.

Poor performance may result in the inability to bid on future contracts with the City of Greater Sudbury.

The Contractor acknowledges and agrees that the results of any CPE are governed by the *Municipal Freedom of Information and Protection of Privacy Act*, R.S.O. 1990, c. M.56, as amended ("MFIPPA").

The City reserves the right to disclose such results to third parties in accordance with the requirements of MFIPPA, and the Contractor hereby consents to such disclosure.

The Contractor further consents to the disclosure of the results of any CPE to other municipalities or government bodies upon request to the City, where the Contractor has listed the City as a reference.

## **Section 108 Payment**

### **108-1 Price for Work**

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 Work under the Contract.

### **108-2 Advance Payment for Material**

The City will not make any payment to the Contractor for Material delivered to, stockpiled or stored on site.

### **108-3 Set-Off**

Pursuant to the Construction Act, the City may retain from monies owing to the Contractor under the Contract an amount sufficient to cover any outstanding or disputed liabilities, including the cost to remedy deficiencies, the reduction in value of substandard portions of the Work, claims for damages by third parties that have not been determined in writing by the Contractor's insurer, undetermined claims by the City, and any assessment due the Workplace Safety and Insurance Board.

### **108-4 Prices and Payments**

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

The Contractor will be paid on a monthly basis for the Work done and Material furnished in accordance with the following procedure:

1. The City will provide the Contractor an estimate in writing for the amount of Work done and Material furnished by the Contractor and under the terms of the Contract, less the statutory holdback and less all stipulated forfeitures and deductions, no later than five (5) Days following the last day of the monthly payment period.

Estimates are approximate only and must not be taken or construed as an acceptance of the Work 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 Work done since the Contractor commenced the performance of the Contract, and every subsequent estimate, except the final one, will be the amount or quantity of Work done since the last estimate was made. Estimates will be electronically delivered to the Contractor by the City.

2. The Contractor shall submit a Draft Proper Invoice to the General Manager either by prepaid registered mail or electronic format, bearing the contract number in the subject line, no later than five (5) Days following the Contractor's receipt of an estimate in accordance with Step 1. Only portable document format (PDF – non-editable) file attachments will be accepted by the City.
3. Subject to Step 5, the Contractor shall submit a Proper Invoice to the General Manager either by prepaid registered mail or electronic format, bearing the contract number in the subject line, on or after ten (10) Days following the Contractor's submission of a Draft Proper Invoice. Only portable document format (PDF – non-editable) file attachments will be accepted by the City.

4. Any invoice submitted by the Contractor before the ten (10) Days following the City's receipt of a Draft Proper Invoice in accordance with Step 2 shall not constitute a Proper Invoice.
5. A Proper Invoice may be revised by the Contractor after it has been given to the City, provided that the City agrees in advance to the revision and the Proper Invoice continues to meet the definition of a Proper Invoice after it has been revised.
6. Subject to the giving of a notice of non-payment pursuant to Step 8 below, and subject to the holdbacks required to be retained under the *Construction Act* (Ontario), the City shall make payment to the Contractor for the amounts set out in the Proper Invoice no later than twenty-eight (28) Days after receipt of the Proper Invoice.
7. The Contractor shall be deemed to have been paid on the day that the Contractor is advised by the City, or its representative, in writing, that payment has been processed and will be deposited to the bank account provided by the Contractor.
8. In the event that the City intends to pay the Contractor less than the amount set out in the Proper Invoice, the City shall, no later than fourteen (14) Days after receipt of the Proper Invoice from the Contractor, give to the Contractor a notice of non-payment, in the form and manner prescribed in the *Construction Act* (Ontario), specifying the amount of the Proper Invoice that is not being paid, and detailing the reasons for non-payment.

The above Steps shall apply to any Proper Invoice submitted by the Contractor under this Subsection GC 108-4 Prices and Payments, in addition to any other requirements as expressly specified.

If the Contractor fails to submit an invoice in compliance with the requirements of a Proper Invoice, the City shall not be required to make payment to the Contractor within the twenty-eight (28) Days set out in Step 6, which shall not commence until such time as the City has received a compliant Proper Invoice from the Contractor.

A Draft Proper Invoice or Proper Invoice received by the City on a date that is not a Business Day shall be deemed to be received by the City on the next Business Day following such date.

An unpaid Proper Invoice or the unpaid balance thereof submitted under this Contract shall bear interest, calculated and compounded monthly at the rate as is specified under subsection 127(2) of the *Courts of Justice Act*, R.S.O. 1990, c. C.43, commencing on the twenty-ninth (29<sup>th</sup>) day after the date that the Proper Invoice is received by the City.

The City shall retain the statutory holdbacks from the fees payable to the Contractor in the form and amount as required under the *Construction Act*.

The City may hold up to ten percent (10%) of the total value of Work completed to date for uncompleted testing and restoration. This holdback will be released as testing and restoration work is completed to the satisfaction of the General Manager.

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 Work (the "deficiency holdback") as well as for any warranty issues ("maintenance security"). The City shall retain the deficiency holdback until the deficiencies have been corrected to its satisfaction. All deficiencies must be corrected before the City will issue a Completion Certificate. The maintenance security shall be eligible for release to the Contractor upon expiration of the maintenance period and only after all warranty issues have been resolved to the satisfaction of the General Manager.

The City reserves the right to withhold a monthly progress payment until a current and updated Construction Schedule is submitted by the Contractor.

**(b) Substantial Performance Certificate**

Upon application by the Contractor and when the General Manager has verified that the Contract has been substantially performed, the General Manager shall issue a Certificate of Substantial Performance. The Contractor's application shall detail non-conformances, defects to be rectified and Work yet to be completed. The Contractor's failure to detail an item shall not release the Contractor from its responsibility to complete all items of the Work in accordance with the terms of the Contract.

The General Manager will also review the application and advise the Contractor of any discrepancies. Any discrepancies that remain unresolved prior to the expiry of the lien period will be treated as set-offs.

Upon verifying that the Contract has been substantially performed, the General Manager shall issue a Certificate of Substantial Performance and shall set out in the Certificate of Substantial Performance the date on which the Contract was substantially performed and, within seven (7) Days after signing the said certificate, the General Manager shall provide a copy to the Contractor.

Upon receipt of a copy of the Certificate of Substantial Performance, the Contractor shall forthwith, as required by subsection 32(1)(5) of the *Construction Act*, publish a copy of the certificate in the manner set out in the regulations and provide proof of publication to the City within seven (7) Days.

Where the Contractor fails to publish a Certificate of Substantial Performance as required above within seven (7) Days of receiving the certificate signed by the General Manager, the City may publish a copy of the certificate at the Contractor's expense.

Except as otherwise provided for in Section 31 of the *Construction Act*, the sixty (60) Day lien period prior to the release of the basic holdback referenced in Subsection GC 108-4(c) below, shall commence from the date of publication of the Certificate of Substantial Performance as provided for above.

**(c) Substantial Performance Payment and Substantial Performance Basic Holdback Release Payment Certificates**

When the General Manager issues the Certificate of Substantial Performance, the General Manager shall also issue the Substantial Performance payment certificate and the Substantial Performance basic holdback release payment certificate or where appropriate, a combined payment certificate.

Prior to the General Manager issuing a Certificate of Substantial Performance, the Contractor shall submit a Proper Invoice for the Work performed to the date of Substantial Performance.

The Substantial Performance basic holdback release payment certificate shall be a payment certificate releasing to the Contractor the basic holdback due in respect of Work performed up to the date of Substantial Performance. Payment of such basic holdback shall be due sixty-one (61) Days after the date of publication of the Certificate of Substantial Performance, subject to the provisions of the *Construction Act* and the submission by the Contractor of the following documents:

- i) an executed CCDC 9A Statutory Declaration of Progress Payment Distribution by Contractor (release of holdback);
- ii) a satisfactory Certificate of Clearance from the Workplace Safety and Insurance Board; and
- iii) a declaration of last supply pursuant to subsection 31(5) of the *Construction Act*.

In the event that the City intends to pay the Contractor less than the amount set out in the Proper Invoice for release of the basic holdback, the City shall, no later than twenty (20) Days before the expiration of the basic holdback period stipulated in the *Construction Act*, publish a notice in the form prescribed in the *Construction Act* (Ontario), specifying the amount of the basic holdback that the City refuses to pay, and notify the Contractor of the publication of the notice.

**(d) Certification of Completion**

Upon application by the Contractor and when the General Manager has verified that the Contract has reached Completion, the General Manager shall issue a Completion Certificate.

The General Manager shall set out in the Completion Certificate the date on which the Work was completed and, within seven (7) Days of signing the Completion Certificate, the General Manager shall provide a copy to the Contractor.

**(e) Completion Payment and Completion Finishing Holdback Release Payment Certificates**

When the General Manager issues the Complete Certificate, the General Manager shall also issue the Completion payment certificate and the Completion finishing holdback release payment certificate or where appropriate, a combined payment certificate.

Prior to the General Manager issuing the Completion Certificate, the Contractor shall submit a Proper Invoice for the Work performed to the date of Completion.

The Completion finishing holdback release payment certificate shall be a payment certificate releasing to the Contractor the finishing holdback. Payment of the finishing holdback shall be due sixty-one (61) Days after the date of Completion of the Work as established by the Completion Certificate, subject to the provisions of the *Construction Act*.

In the event that the City intends to pay the Contractor less than the amount set out in the Proper Invoice for release of the finishing holdback, the City shall, no later than twenty (20) calendar days before the expiration of the holdback period stipulated in the *Construction Act*, publish a notice in the form prescribed in the *Construction Act*, specifying the amount of the finishing holdback that the City refuses to pay, and notify the Contractor of the publication of the notice.

**(f) Final Acceptance Certificate**

At the end of the maintenance period and provided all of the provisions of the Contract have been fully met, and upon receipt of a contract release releasing the City from all further claims relative to the Contract, the General Manager will issue a Final Acceptance Certificate signifying the acceptance of the entire Work by the Contractor. No certificate other than the Final Acceptance Certificate shall be deemed to imply approval of any part of the Works. The General Manager will also issue a Final Payment Certificate which will entitle the Contractor to receive the full amount then remaining unpaid under the Contract.

Prior to the General Manager issuing a Final Payment Certificate, the Contractor shall submit a Proper Invoice for the Work completed up to the end of the maintenance period.

Any maintenance security or the remaining balance thereof retained by the City will be paid to the Contractor at the expiration of the maintenance period as outlined in Subsection GC 106-16 Warranty and upon issuance of the Final Acceptance Certificate.

**108-5 Payment for Extra Work 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 Work, payment for such Work may be made on a force account basis as provided herein.

For the purpose of this Section, "COST OF LABOUR" means the amount of wages, salary and payroll burden paid or incurred directly by the Supervision Contractor to or in respect of labour and by foremen actively and necessarily engaged on the Extra Work based on the recorded time and hourly rates of pay for such labour and supervision, but shall not include any payment or costs incurred for general supervision, administration or management time spent on the Extra Work or any wages, salary or payroll burden for which the Contractor is compensated by any payment made by the City for Equipment.

"PAYROLL BURDEN" means the payments in respect to Workmen's Compensation, vacation pay, unemployment insurance, sickness and accident insurance, pension fund and such other welfare and benefit payments as from part of the Contractor's normal labour costs and shall include any cost or expense as the General Manager may approve, which has been incurred by the Contractor for food, lodging or similar items.

"COST OF MATERIAL" means the cost of material purchased by the Contractor for the Extra Work as shown by itemized invoices and the cost of Material from the Contractor's stock used on the Extra Work, valued at current prices.

The "127 RATES" means the rate for a unit of Equipment as listed in the O.P.S.S. 127 (Schedule of Rental Rates for Construction Equipment) which is current at the time the Extra Work is carried out or for Equipment which is not so listed, the rate which has been calculated by the City, using the same principles as used in determining the 127 Rates.

"RENTED EQUIPMENT" means Equipment that is rented from a person, firm or the City that is not an associate or affiliate of the lessee as defined by the *Securities Act*, R.S.O. 1990, c. S.5 and does not include Equipment that is being paid for under a rental purchase agreement or under a lease purchase agreement.

"WORKING TIME" means each period of time during which a unit of Equipment is actively and of necessity engaged on a specific operation and the first two (2) hours of each immediately following period during which the unit is not so engaged but during which the operation is otherwise proceeding and during which time the unit cannot practically be transferred to other work but must remain on the site in order to continue with its assigned task.

"STANDBY TIME" means any period of time which is not considered working time and which together with the working time does not exceed ten (10) hours in any one working day and during which time a unit of Equipment cannot practically be used on other work but must remain on the site in order to continue with its assigned task and during which time the unit is in fully operable condition.

"WORK" means Extra Work approved by the General Manager pursuant to Subsection GC 104-8 Changes and Alterations and paid for on a time and Material basis. Such Work shall be carried out by an Equipment and labour force and in such a manner as the General Manager may approve and, subject to such exceptions as the General Manager may permit in writing, the Work shall be subject to all the terms, conditions, Specifications, and provisions of the Contract.

Daily work records prepared by the General Manager and reporting the labour and Equipment employed and the Material used on each Extra Work, 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 Work project, at the rate of one hundred and fifteen percent (115%) of the cost of labour.

The City will pay the Contractor for material used on each work project one hundred and fifteen percent (115%) of the cost Material.

The City will pay the Contractor for the working time of Equipment other than rented Equipment on the basis of the 127 Rates.

The City will pay the Contractor for the working time of rented Equipment used on the extra work at one hundred and five percent (105%) of the 127 Rates.

The City will pay the Contractor for the standby time of Equipment other than rented Equipment at one third (1/3) the 127 Rate. In addition, the City will include in the cost of labour, the wages, salary and payroll burden of the operator or operating crew who cannot be otherwise employed during the standby period.

The City will pay the Contractor for the standby time of rented Equipment which has been idled by the circumstances giving rise to the Extra Work, at thirty-five percent (35%) of the 127 Rate. In addition, the City will include in the cost of labour, the wages, salary and payroll burden of the operator or operating crew who cannot be otherwise employed during the standby period or during the period of enforced idleness. Alternatively, however, the circumstances giving rise to the Extra Work, to be returned to the lessor until the Work requiring the Equipment can be resumed, in which case, the City will pay such costs as result directly from the enforced return of the Equipment.



When Equipment is transported to or from the site of the Work, payment will be made by the City only in respect to the transporting units. When Equipment is moved under its own power it shall be deemed to be working. The method of moving the Equipment and the rates shall be subject to the approval of the General Manager.

Where the Contractor arranges for the Extra Work 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 Work has been assigned or sublet and no percentage allowance over the prescribed compensation will be paid to any associate or affiliate as defined by the *Securities Act*, R.S.O. 1990, c. S.5, or in respect of any compensation for rented Equipment.

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 Work and no other payment or allowance will be made in respect of such Work.

Notwithstanding any other provision of this Section, no payment shall be made to the Contractor for or in respect of hand tools or Equipment that are tools of the trade.

Each month, the Contractor shall submit an invoice to the General Manager covering Work performed on the Extra Work during the proceeding month and to the extent that the Work covered by the invoices can be verified by the General Manager, the invoice will be processed by the City for payment.

The final invoice shall be submitted by the Contractor within thirty (30) days after the Completion of the Extra Work.

Separate invoices shall be submitted in triplicate for each Extra Work project. Each invoice shall include the order number and covering dates of the Work and shall itemize separately, labour, Materials and Equipment and submitted with the invoice, shall be invoices for Materials, rented Equipment and other charges incurred by the Contractor on the Extra Work.

#### **108-6 Measurement of Excavated Materials**

Whenever the Contract requires the payment for excavation at a price per unit volume, the volumes shall be measured in their original position and computed in cubic units by the method of average end areas unless otherwise provided for under the Specifications for the item of Work requiring their use.

#### **108-7 Contractor's Discharge of Liabilities**

The Contractor shall discharge and cause each Sub-contractor to discharge all liabilities incurred, for labour, Materials or services, used or reasonably required for use in the performance of the 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 his liabilities and those of the Sub-contractors, as aforesaid, have been discharged and this shall include a certificate or certificates from the Worker's Compensation Board that they have complied with the requirements of the Workers' Compensation Board and are in good standing on the books of the Workers' Compensation Board.

No payment to which the Contractor is otherwise entitled under the Contract shall, at the discretion of the City, be due and payable to him so long as he or any Sub-contractor 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 his 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 Sub-contractor 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 his 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.

#### **108-8 Payment of Workmen**

The Contractor shall, in addition to any fringe benefits, pay the workmen employed by him on the work at intervals of not less than twice a month or in accordance with the Labour Conditions in any of the City's By-Laws, whichever is greater. This Section is subject to the conditions as set out in the *Industrial Standards Act*, R.S.O. 1990, c. 1.6, as amended from time to time, the *Employment Standards Act, 2000*, S.O. 2000, c. 41, as amended from time to time, and any of the regulations made thereunder.

The minimum wage rates applicable to the Contract are set out in the Fair Wage Schedule, Provincial Zone by the Employment Standards Branch of the Ontario Ministry of Labour. The wage rates set out are subject to change periodically and any increase in cost incurred by a change in the wage rates shall be borne by the Contractor.

Copies of the wage rates may be obtained from the Ontario Ministry of Labour.

The Contractor shall require each Sub-contractor or other person doing any part of the Work contemplated by the Contract to covenant with the City that he shall pay the workmen employed by him on the Work at the wage rates and in the manner required by this Section.

#### **108-9 Books, Payrolls, Accounts and Records**

The Contractor shall maintain and keep sufficiently complete and accurate books, payrolls, accounts and records relating to the Work or any extensions or additions thereto or claims arising therefrom, to permit the verification and audit thereof and he 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 and Equipment employed and the material used on any specific portion of the Work, 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 or the Ministry of Labour or both 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 or the Ministry of Labour.

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) 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 Sub-contractors employed by him 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 Sub-contractor agrees to the provisions of this Section the same way as if the Section substituted "Sub-contractor" for "Contractor".

#### **108-10 Contingency Allowance**

The Contractor shall not be entitled to payment of the contingency allowance except for additional Work carried out in accordance with Section 104 of these General Conditions. No additional Work under the contingency allowance is contemplated.

#### **108-11 Government Taxes**

##### **a) Gasoline and Fuel Taxes**

The Contractor shall pay all taxes under the *Gasoline Tax Act*, R.S.O. 1990, c. G.5 and the *Fuel Tax Act*, R.S.O. 1990, c. F.35 on gasoline and diesel fuel used by him in the performance of the Contract. The Contractor undertakes not to make any claim for refund of tax paid by him or any Sub-contractor and acknowledges that no refund of tax shall be granted to him or to any Sub-contractor on gasoline or diesel fuel used for any purpose whatsoever in the performance of the Contract unless such refund is specifically authorized under the provision of the *Gasoline Tax Act*, R.S.O. 1990, c. G.5 and the *Fuel Tax Act*, R.S.O. 1990, c. F.35, respectively.

##### **b) Harmonized Service Tax (HST)**

Applicable Harmonized Service Tax shall **not** be included in the unit prices tendered. HST shall be added at the end of the Schedule of unit prices to arrive at the total Contract price.

The successful Bidder shall provide their HST Registration Number, which will be indicated on each payment certificate along with the applicable HST.

**c) Changes to Government Taxes**

Where a change in Canadian Federal or Provincial taxes occurs after the tender closing date for the Contract, and this change could not have been anticipated at the time of bidding, the City 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 engineer. Such claims for additional tax costs shall be submitted not later than thirty (30) days after the date of acceptance of the Work.

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

The engineer 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.