

SUPPLEMENTARY GENERAL CONDITIONS TO OPSS MUNI 100

1. GENERAL CONDITIONS

Where a General Condition or paragraph of the General Conditions are deleted by these Supplementary Conditions, the numbering of the remaining General Conditions or paragraphs shall remain unchanged, and the number of the deleted items will be retained, unused.

2. GC 3.05 Layout

2.1. Delete GC 3.05 in its entirety and replace it with the following:

“3.05 It shall be the responsibility of the Contractor to provide his own layout for the work covered in all contracts. The costs of such layout work shall be included in the unit or lump sum prices in the tender.

The City shall provide geodetic benchmarks at key points for use by the Contractor. Once such benchmarks have been provided, it shall be the Contractor’s responsibility to maintain and otherwise protect benchmark locations. All costs expended by the City to replace and/or relocate benchmark locations at the Contractor’s request, shall be at the Contractor’s expense

It shall be the Contractor’s responsibility to protect survey stakes, monuments, and iron bars from any damage due to his operation. Markers or poles 1.2 to 1.5 m in height painted red on top shall be placed next to each iron bar or monument by the Contractor. Any iron bars or monuments damaged by the Contractor due to his operations shall be replaced at the Contractor’s cost and the City may withhold monies from the final payment due the Contractor until the iron bars or monuments are replaced.

If any survey marker established by an Ontario Land Surveyor is disturbed as a result of the Contractor’s negligence, it shall be reset by an Ontario Land Surveyor and the entire cost shall be borne by the Contractor.”

3. GC 3.07 Delays

3.1. Add the following paragraph:

“.04 Without limiting the requirements of GC 3.07.02 of the General Conditions of Contract, it is hereby expressly agreed that, should the Contractor be prevented from carrying out the work according to the agreed upon program through labour disputes directly affecting the Contractor’s own labour, the Contract may be terminated by the City. Upon termination of the Contract under these circumstances, the Contractor will be paid for all work carried out prior to termination and would have no further liability for the costs of completion of the work.”

SUPPLEMENTARY GENERAL CONDITIONS TO OPSS MUNI 100

4. GC 4.10 Termination of Contract

4.1. Amend paragraph 0.1 by adding the following to the end of the paragraph:

“The City shall have the right to delete any part of the work from the Contract, or to terminate all or part of the Contract, upon five days written notice, without claim for compensation from the Contractor, except that the Contractor shall receive payment for all work completed to date of receipt of the notice at the rates or unit prices in the Schedule of Unit Prices.”

5. GC 6.02 Indemnification

5.1. Delete GC 6.02 in its entirety and replace it with the following:

“.01 The Contractor, both during and after the term of this Agreement, shall at all times, and at its own cost, expense and risk, defend, indemnify and hold harmless the City, its elected officials, officers, employees, volunteers, agents, contractors, and all respective heirs, administrators, executors, successors and assigns from any and all losses, damages (including, but not limited to, incidental, indirect, special and consequential damages, or any loss of use, revenue or profit by any person, organization or entity), fines, penalties and surcharges, liabilities (including, but not limited to, any and all liability for damage to property and injury to persons, including death), judgments, claims, demands, causes of action, contracts, suits, actions or other proceedings of any kind (including, but not limited to proceedings of a criminal, administrative or quasi criminal nature) and expenses (including, but not limited to, legal fees on a substantial indemnity basis), which the indemnified person or persons may suffer or incur, howsoever caused, **arising out of or in consequence of or directly or indirectly attributable to the Services required to be performed by the Contractor, its agents, employees and sub-contractors on behalf of the City, provided such losses, damages, fines, penalties and surcharges, liabilities, judgments, claims, demands, causes of action, contracts, suits, actions or other proceedings of any kind and expenses as defined above are due or claimed to be due to the negligence, breach of contract, and/or breach of law of the Contractor, its agents, employees or sub-contractors.**”

6. GC 6.03 Contractor’s Insurance

6.1. Delete 6.03 in its entirety and replace it with the following:

“6.03 a.) **General Liability Insurance:** The Contractor shall maintain liability insurance acceptable to the City throughout the term of this Agreement from the date of commencement of work until one year from the date of substantial performance of work. Liability coverage shall be provided for completed

SUPPLEMENTARY GENERAL CONDITIONS TO OPSS MUNI 100

operations hazards from the date of substantial performance of the work, as set out in the certificate of substantial performance of work, on an ongoing basis for a period of 6 years following substantial performance of work. Coverage shall consist of a comprehensive policy of public liability and property damage insurance, with all available coverage extensions/endorsements, in an amount of not less than \$5,000,000 per occurrence. **Such insurance shall name The Corporation of the City of Waterloo, the Regional Municipality of Waterloo and Walter Fedy, as an additional insured with a cross liability endorsement and severability of interests provision.** The policy SIR/deductible shall not exceed \$100,000 per claim and if the policy has an aggregate limit, the amount of the aggregate shall be double the required per occurrence limit. A combination of primary coverage plus umbrella or excess liability insurance may be used.

Such insurance coverage shall be endorsed to cover shoring, blasting, excavation, underpinning, demolition, pile driving, caisson work and work below ground surface including tunnelling and grading.

b.) **Owned and Non-Owned Automobile Liability Insurance:** The Contractor shall maintain liability insurance on all Owned, Non-Owned and Leased Automobiles used in the performance of this work to a limit of \$5,000,000 per occurrence throughout the term of this Agreement from the date of commencement of work and until one year after the date of substantial performance of work.

c.) The Contractor shall provide and maintain during the term of the Agreement, **Broad Form Contractors' Equipment Insurance** coverage for construction machinery and equipment used by the Contractor for the performance of the work. Such insurance shall be in a form acceptable to the City and shall not allow subrogation claims by the Insurer against the City.

d.) **Provisions:** Prior to the commencement of work the Contractor shall forward a Certificate of Insurance evidencing this insurance with the executed Agreement. The Certificate shall state that coverage will not be suspended, voided, cancelled, reduced in coverage or in limits except after thirty (30) days (ten 10 days if cancellation is due to non-payment of premium) prior written notice by certified mail to the City.

It is also understood and agreed that in the event of a claim any deductible or self-insured retention under these policies of insurance shall be the sole responsibility of the Contractor and that this coverage shall preclude subrogation claims against the City and any other person insured under the policy and be primary insurance in response to claims. Any insurance or self-insurance maintained by the City and any other person insured under the policy shall be considered excess of the Contractor's insurance and shall not contribute with it.

SUPPLEMENTARY GENERAL CONDITIONS TO OPSS MUNI 100

The minimum amount of insurance required herein shall not modify, waive or otherwise alter the Contractor's obligation to fully indemnify the City under this Agreement.

The City reserves the right to modify the insurance requirements as deemed suitable.

±

e.) Claims Process:

Claims reported to the Contractor, either directly by a third party or through the City shall be promptly investigated by the Contractor. The Contractor shall make contact with the third party claimant within 48 hours of receipt of notice of a claim. The Contractor shall initiate an investigation of the claim immediately upon notice, and advise the third party claimant in writing, with a copy to the City, of its position regarding the claim within 21 calendar days of the notice. The Contractor shall include in their response the reasons for their position.

Should this position not resolve the claim and be accepted by the third party claimant, the Contractor shall immediately report the claim to its Insurer for a further review. The Contractor's Insurer upon receipt of this claim shall advise the third party claimant by letter, with a copy to the City, that they are now investigating the claim. When a final position on the claim has been determined, the Contractor's Insurer shall advise the third party claimant by letter, with a copy to the City. Failure to follow this procedure shall permit the City to investigate and resolve any such claims.

Nothing herein shall limit the right of the City to investigate and resolve any such claims notwithstanding the response of the Contractor and/or its Insurer and to seek indemnification from the Contractor or to exercise any other rights under the Contract.

The City may, without breaching this contract, retain from the funds owing to the Contractor an amount that, as between the City and the Contractor, is equal to the balance in the City's favour of all outstanding debts, claims or damages, whether or not related to this contract."

7. GC 7.16.02 Warranty Maintenance Guarantee

7.1. Delete the number "12" from paragraph .02 a) and replace it with "24".

7.2 Add a new number.04

This guarantee shall also include the lawn and boulevard areas sodded under this contract. At the end of the 24 month maintenance period the grass shall be healthy and alive.

SUPPLEMENTARY GENERAL CONDITIONS TO OPSS MUNI 100

8. GC 8.01.02 Variation in Tender Quantities

8.1. Delete clause GC 8.01.02 of the General Conditions of Contract in its entirety and replace it with the following:

“8.01.02 The City does not guarantee as set forth in the Schedule of Contract Prices. These quantities are approximate only, and the basis of payment under this Contract will be actual amount of work done and material furnished regardless of the actual amount of variation from the tender quantities.”

9. GC 9.0 OTHER PROVISIONS

9.1. Add new SECTION 9.0 as follows:

“SECTION 9.1 EARTH EXCAVATING AND GRADING

9.1 Excess materials, which include but are not limited to bituminous pavement, concrete, fabricated metal and plastic products, wood, masonry, pipes, surplus or unsuitable excavated earth and rock and other wastes that are not otherwise designated for salvage or reuse by the Owner, shall be managed in accordance with OPSS 180, and the City’s Supplementary Conditions to OPSS 180.

These excess materials shall be removed from the working area and properly transported and re-used or disposed off-site in accordance with all applicable legislation at the Contractor’s sole expense. More specifically, the Contractor shall comply with the *Environmental Protection Act*, including Ontario Regulation 347/90 (as amended), and shall use appropriately licensed haulers and receivers for all waste transportation and disposal, as required.

This work shall include all labour, equipment and materials to carry out all earth excavation and grading to pre-grade elevations (i.e. bottom side of topsoil, granular, etc.) to the satisfaction of the Engineer. This item includes roadway, driveway, and boulevard excavations, and grading and preparation for placement of the specified granular, asphalt, concrete or imported topsoil.

Payment will be made on a percent completion basis to complete all work including disposal of surplus material off site.

SUPPLEMENTARY GENERAL CONDITIONS TO OPSS MUNI 100

SECTION 9.2 CONTAMINATED SOILS

a. General

The Contractor, at its own cost, shall undertake any sampling, testing, and analyses required for the proper management (including transportation and disposal) of excess materials generated by the Contract work.

The Contractor shall account for any high SAR of the soils and price the handling, removal and/or disposal of fill accordingly.

The Contractor shall follow OPSS 180. Further, the Contractor in the sign off to the Engineer must indicate that the disposal Site Owner accepts the fill as contaminated fill.

Note that there are innovative methods to cost effectively dispose of SAR fill. While two such methods are outlined below, it remains the Contractor's sole responsibility to determine the appropriate and legal method that they will employ, and coordinate and arrange for this disposal accordingly:

1. The Contractor can over-excavate and dispose of "clean" fill off site and backfill this excavation with the SAR material provided the SAR material is appropriate fill for the location (i.e., if under road, fill must be inorganic) and that it is compacted appropriately for the use as determined by the Engineer.
2. It is believed the MOE permits the disposal of SAR material in a location that is of similar use (the Contractor is responsible to confirm this). For example, the SAR fill could be disposed of in a proposed parking lot or in a proposed roadway needing fill as these areas would be expected to receive salt in winter.

b. Contractor's Sole Responsibility

The Contractor is solely responsible for the characterization of quality, designation of waste types, delineation of quality and extent of excess material, estimation of quantity, and costs associated with excavation, removal, segregation, temporary stockpiling, loading, transportation and re-use or disposal of excess materials, including excess earth and rock generated by the Contract work.

Under no circumstances shall the Contractor claim additional payment from the Owner related to the characterization of quality, designation of waste types, delineation of quality and extent of excess material, estimation of quantity, and costs (whether accurate and correct or not) associated with excavation, removal, segregation, temporary stockpiling, loading, transportation and re-use or disposal of excess materials, including excess earth and rock generated by the Contract work.

SUPPLEMENTARY GENERAL CONDITIONS TO OPSS MUNI 100

c. Disposal Sites

For greater certainty, the Owner has not designated or identified specific haulers, receivers, and/or disposal sites for excess materials generated under this Contract. The Contractor is solely responsible for identifying and selecting appropriate haulers, receivers, and/or disposal sites required to complete the work of this Contract. The Contractor shall name all haulers, receivers and/or disposal sites for all excess materials in the spaces provided in the Tender Bid and shall attach additional sheets as necessary. Failure to name all haulers, receivers and/or disposal sites for all excess materials may result in disqualification of the tender bid.

END OF SUPPLEMENTARY CONDITIONS OPSS MUNI 100