

# **SPECIAL PROVISIONS**

## **- GENERAL**

## SPECIAL PROVISIONS - GENERAL

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**G1 Execution of Contract**

The successful bidder shall be notified in writing of the acceptance of his tender. He shall be bound to execute the Agreement with the Owner within fourteen (14) days of contract award. Date of contract award shall be taken as the date on which the successful bidder is notified of the acceptance of his tender.

The successful bidder must submit the following to the Owner within fourteen (14) days of the contract award:

- a) A Performance Bond and Labour and Material Payment Bond for 100% of the contract amount, which includes HST. The said Performance Bond shall unconditionally guarantee that the work will be satisfactorily completed within the terms of the contract up to the face value of the bond. In other words, the bonding company will be liable whenever the Contractor is liable. Without limiting the generality of the foregoing, such bonds shall cover extensions to the contract, modifications thereof, and the 12 month maintenance guarantee. The bonding company shall not replace a prime Contractor or Subcontractor without prior approval of the Owner. Bonding companies are subject to acceptance by the Owner. The Owner reserves the right to request substitute suitable bonding.

It is the Contractor's responsibility to advise the Bonding Company of any change in the scope or extent of the work encompassed in the construction contract.

- b) Confirmation of insurance coverage and, if required, a certified true copy of the policies certified by an authorized representative of the insurer in a form satisfactory to the Owner. The insurance coverage must meet the requirements of General Condition GC6.0, "Insurance, Protection and Damage" with the following addition:
  - i) An endorsement certifying that the Owner and those parties listed in the Special Instructions to Bidders are included as additional insured. For all projects constructed on roads or property owned by others, it shall also include the Owner as an additional insured.
- c) A certificate from Workplace Safety & Insurance Board certifying that the Contractor is in good standing with the Board.

**G2 Failure to Execute Contract**

Failure to execute the contract and to file satisfactory bonds, insurance policies and Workplace Safety & Insurance Board clearance certificate as required herein within the fourteen (14) days of contract award shall be just cause for the cancellation of the contract award and the forfeiture of the tender deposit to the Owner, in liquidation of damages sustained.

The Owner shall then have the right to award the contract to any other bidder or to re-tender the contract.

**G3 Commencement and Completion**

The successful Contractor or Contractors shall be required to commence construction within seven (7) days of receipt of written notice to commence from the Contract Administrator, unless otherwise agreed upon in writing. Working days will be charged to the contract and commence following receipt of written notice to commence.

Extension of the completion time shall be in accordance with GC 3.07 of the 'General Conditions'.

**G4 Local Labour**

The Contractor shall employ only orderly, skillful and competent persons to do the work.

The Contractor is requested to consider the hiring of local labour whenever possible and shall give preference to the hiring of local labour within the Regional Municipality of Niagara, provided the labour is available locally and is physically fit and properly qualified by training and experience to meet the Contractor's requirements. The foregoing shall not apply to supervisory staff, major equipment operators, nor shall it apply until ten days after the Contractor has actually commenced operation.

Whenever the Contract Administrator shall inform the contractor in writing that any person or persons on the work are, in the opinion of the Contract Administrator, incompetent or disorderly, such person or persons shall be discharged from the work and shall not again be employed on the work without the consent in writing of the Contract Administrator.

**G5 Non-Resident Contractors**

If the Contractor is non-resident in Ontario, he shall, immediately after he has received the Contract Administrator's written order to commence work, obtain from the Retail Sales Tax Branch, a certificate showing that the Contractor has registered with the Retail Sales Tax Branch and shall submit such certificate at the same time that he furnishes the Performance Bond.

If the Contractor is non-resident in Ontario, he shall not commence work or order any materials or equipment for the Contract until he has registered with the Retail Sales Tax Branch.

The Contractor shall ensure that all Sub-Contractors whom he proposes to use for carrying out any of the work required by the Contract, and who are non-resident in Ontario, have registered with and have complied with the requirements of the Retail Sales Tax Branch

before they commence any such work.

**G6 Occupational Health and Safety Act**

The Contractor shall, before commencing work on the project, give to the Director of the Ministry of Labour, a notice in writing with a copy to the Contract Administrator in accordance with the current Section(s) of the Occupational Health and Safety Act.

A copy of all notices received by the Contractor from the Ministry of Labour shall be forwarded to the Contract Administrator within twenty-four (24) hours of receipt of the same.

Should an inspector discover an infringement of the Health and Safety Act, the Contract Administrator will request the Contractor to correct the problem. If this is not done, the Contract Administrator will immediately inform the local Ministry of Labour Inspector of the situation.

No claims will be entertained as a result of delays caused by work stoppages for safety infringements.

**G7 Work Place Hazardous Material Information System (WHMIS) Reporting**

Prior to commencement of work the Contractor shall provide, to the Contract Administrator, a list of those products controlled under WHMIS which he expects to use on the contract. Related Material Safety Data Sheets shall accompany the submission. All containers used in the application of projects controlled under WHMIS shall be labelled.

The Contractor shall notify the Contract Administrator of changes to the list in writing and provide relevant material Safety Data Sheets.

The Contract Administrator shall supply a list and related data on hazardous materials which are known to be present on the construction site or utilized during the estimated duration of the contract.

**G8 Payment for Testing**

Where required by the Contract Administrator, the Contractor shall supply certified copies of all tests upon all materials to be used in the construction of the works, indicating that materials comply with the specifications. Such tests shall be made by an approved or designated testing company and shall be at no additional cost to the Owner.

Quality control tests on the works, such as concrete cylinder compression tests, compaction tests, asphalt extraction tests, etc., shall be carried out by the Contract Administrator at the expense of the Owner. However, any re-testing to verify the quality of the work from previously failed test results shall be paid by the Contractor.

If the Contractor deviates from the specified method of compaction, all compaction tests to prove his method meets the specified degree of compaction, shall be paid by the Contractor.

The following tests, called for by the Contract Administrator, will be paid for by the Owner:

- i) Analysis of granular materials and approval of sources. Limit of one analysis per stockpile or type of material.
- ii) Analysis of aggregates for asphalt and asphalt mix design. Limit of one analysis per class of asphalt.
- iii) Concrete and related items shall be tested in accordance with requirements of appropriate OPSS.

**G9 No Payment for Materials on Site**

Notwithstanding Clause GC8.02.02 in the General Conditions of Contract, no payment will be made for materials or equipment stockpiled on site, which are to be incorporated into the work, unless specified for a particular item or agreed to by the Contract Administrator.

**G10 Salvageable Materials**

All materials designated by the Contract Administrator to be salvaged will be carefully removed by the Contractor and delivered to the appropriate Municipal Service Centre or other designated facility.

Materials so designated and subsequently damaged, or allowed by the Contract Administrator to be reused on the contract, shall be assessed at 50% of the replacement cost of the material and will be calculated as a credit to the Owner under the appropriate item.

**G11 Disposal of Surplus or Unsuitable Excavated Material**

All unsuitable excess materials become the property of the Contractor and from thereon, he has full responsibility and liability to arrange for its removal and disposal outside the area of work at no additional cost to the Owner. The Contractor shall obtain all necessary written approvals from various government agencies including, but not limited to, the Niagara Peninsula Conservation Authority, the Niagara Escarpment Commission, the Ministry of Environment and Energy, and the Ministry of Natural Resources, prior to removal of surplus material from the site being permitted.

All materials suitable for recycling, where so specified (e.g., asphalt, concrete) shall be separated and delivered to an approved recycling location, and paid for under the applicable removal item.

The Contractor must provide the Contract Administrator with written authorization for use of any private disposal site, including a brief description of the key terms and conditions of the authorization.

#### **G12 Reinstatements**

The Contractor shall reinstate the boulevard, road shoulder, road surfaces, ditches, driveway entrances, road culverts, curbs and sidewalks along the alignment of the proposed works in accordance with the specific requirements indicated on the contract drawings. Where specific reference is omitted, then it shall be understood that as a minimum, reinstatement must be equal to the existing conditions prevailing prior to commencement of construction.

All areas requiring reinstatement outside of the limits of reinstatement shown or described on the contract drawings shall be reinstated by the Contractor at no cost to the Owner, unless specifically agreed to by the Contract Administrator.

If weather conditions, or other considerations, do not permit permanent road reinstatement immediately upon completion of construction and backfilling of excavations on existing pavements, a temporary resurfacing shall be provided using cold mix asphalt or other materials approved by the Contract Administrator, at the end of each day.

All reinstatements, permanent or temporary, shall be carried out at no additional cost to the Owner and the costs shall be included in the unit price bid for the contract, unless specific items for reinstatement are included in the contract.

#### **G13 Sawcutting of Existing Pavement**

The Contractor shall sawcut all existing pavement and concrete surfaces prior to placing new pavement or concrete adjacent to the existing pavement. This shall include the full depth removal of sufficient material to provide a butt joint. On composite or concrete roads, unless otherwise noted or specified, the sawcut shall be to a minimum depth of 50 mm and the balance will be broken by pneumatic chisels in a roughly vertical plane in order to provide for aggregate interlock. This is a non-pay item, unless otherwise noted, and should be included in the appropriate unit prices.

#### **G14 Construction Layout**

(Note: This clause applies only when the layout is being undertaken by the Owner. If a tender item is not included in the Schedule of Tender Unit Prices with reference to the appropriate specification number, (i.e. A4) then it may be assumed that the construction

layout is being undertaken by the Owner.)

The Owner will provide such stakes to properly define the location, alignment, elevation and grade of the work. This layout is defined as an offset reference point or points, at a minimum of 20-metre intervals or as directed by the Contract Administrator. The Contractor shall give the Contract Administrator two working days' notice as to the time and place where the lines and grades will be needed. The Contractor shall assume full responsibility for detail, dimensions, and elevations measured from the lines, grades and elevations so established.

All stakes, marks and reference points shall be carefully preserved by the Contractor, and in case of their destruction or removal by him, his agents or his employees, such stakes, markers and reference points shall be replaced by the Owner at the Contractor's expense.

The Contractor shall provide and erect at his expense all masts, scaffolds, batterboards, straight edges, templates and other devices as may be necessary to facilitate laying out, inspecting and constructing the work.

#### **G15 Insurance Claims**

Claims or alleged claims received by the Contractor under the appropriate Section (GC 6) of the General Conditions of the Contract shall be dealt with immediately by the Contractor.

- (a) The Contractor shall retain an independent adjuster who will determine the Contractor's liability for all third party claims, and advise the claimants in writing of the determination of liability within thirty (30) days of service of the claim on the Contractor. Copies of such determination shall be forwarded to the Contract Administrator and/or Owner.
- (b) If the Contractor or the Contractor's independent adjuster fails to respond within the time noted in (a) or responds in a manner inconsistent with evidence at hand, the Owner reserves the right to have another independent adjuster review the claim and determine liability therefore. Any monies paid by the Owner in satisfaction of any third-party claim determined to be the Contractor's liability plus all associated costs will be deducted from monies owing to the Contractor by the Owner. This shall include the cost of additional third party review.
- (c) If a claim is settled to the satisfaction of the Claimant, the Contractor shall submit to the Contract Administrator a copy of the Claimant's release. The Claimant's release shall cover both the Owner and the Contractor in the release form.

**G16 Working Days and Liquidated Damages****(a) Time**

Time shall be the essence of this contract and the contract agreement.

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

The Contractor shall commence the work in accordance with Clause G3 - Commencement & Completion of the Special Provisions - General, and shall complete it before the expiration of the specified number of working days in the Form of Tender from the commencement date specified.

If this time limit above specified 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 daylight shift basis, it is expected that additional and/or augmented daylight 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 thereafter.

Working time shall be charged until the date of acceptance of the work by the Contract Administrator. Acceptance will be upon completion as defined in the *Construction Lien Act*.

**(c) Working Day**

A working day is defined under Subsection GC1.04 of the General Conditions of Contract included in this specification.

No work will be permitted on Saturdays, Sundays and Statutory Holidays unless prior approval is obtained from the Contract Administrator.

The Contract Administrator will furnish the Contractor with a weekly statement showing the number of working days charged to the contract for the preceding 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; otherwise, the statement shall be deemed to have been accepted by the Contractor as correct.

**(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 completed within the number of working days set forth in this

clause, damage will be sustained by the Owner. This actual damage resulting directly or indirectly from such delay may be impractical or extremely difficult to ascertain or determine and therefore, an estimated amount shall be designated as liquidated damages.

The parties hereto agree that the Contractor will pay the Owner the sum as specified in the Special Instructions to Bidders for liquidated damages for each and every working days delay in finishing the work in excess of the number of working days, including any extensions resulting from approved extra works prescribed, and it is agreed that this amount is an estimate of the actual damages to the Owner which will accrue during the period in excess of the prescribed number of working days.

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

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, Fire, Flood, Epidemics, Quarantine Restrictions, Embargoes or delays of subcontractors due to such causes.

#### **G17 Inspection**

The Owner shall employ the services of an Inspector during the entire construction period. The Contractor shall co-operate with the Inspector and provide any data or information requested by the Inspector. The Contractor shall also provide reasonable assistance to the inspector to assist him in taking measurements of the work. It will be the duty of the Inspector to be present during all phases of the work, unless specifically instructed otherwise; to maintain a daily record of all work; to check the Contractor's grades and work operations; and to secure all samples of any materials to be tested.

The Contractor when requested, must arrange for the inspector's presence prior to undertaking such work as may be designated for constant inspection. A minimum of 24 hours advance notice must be provided to the inspectors, for such work. Where such notice is not provided, the Contract Administrator may deduct an amount representing further inspection, checking, etc., deemed appropriate by the Owner.

#### **G18 Maintenance Holdback**

The maintenance holdback, where specified in the "Special Instructions to Bidders", shall be the percentage amount specified applied to the final contract value, rounded to the nearest one hundred dollars, or one thousand dollars (\$1,000.00) whichever is greater, as certified by the Contract Administrator. The aforesaid holdback shall be released upon

receipt of Contractor invoice only after:

- (i) the expiration of one (1) year period from date of completion or any extension thereof as agreed upon with the Contractor;
- (ii) the Contractor has submitted a letter from the Worker's Compensation Board certifying that he is in good standing with the Board;
- (iii) the Contractor has submitted a Statutory Declaration re Liens and Payment of Accounts;
- (iv) **There are no outstanding deficiencies**

A one (1) time reduction request at six (6) months of up to fifty percent (50%) of the amount held will be considered provided there are no outstanding deficiencies at time of application.

#### **G19 Completion of Contract, Final Inspection and Final Acceptance**

The works covered by this contract will not be deemed complete by the Corporation until an inspection has been made by the Contract Administrator or his representative. He shall be accompanied during the inspection by a competent person supplied by the Contractor at the Contractor's expense. The inspection shall not be made until all the finished roads, grades and lines have been established and the site reinstated and cleaned to the satisfaction of the Contract Administrator.

Where inspection(s) is required or requested with advance notice, this shall be adhered to. If work by the Contractor proceeds where field inspection is required and not arranged as required, any additional costs relating to inspection, engineering and administration shall be charged to the Contractor.

Upon expiration of the maintenance guarantee period, the works will be inspected by the Contract Administrator and, provided all deficiencies have been rectified to the Contract Administrator's satisfaction, the works shall be accepted by the Owner and thus become the responsibility of the Owner. The Contract Administrator shall issue to the Contractor a "Certificate of Final Acceptance" in the form of a letter indicating the date of final acceptance.

If, upon inspection of the works, all deficiencies have not been rectified to the Contract Administrator's satisfaction, the maintenance guarantee period and all insurance policies shall be extended until such time as all deficiencies have been rectified and the Certificate of Final Acceptance has been issued.

**G20 Contractor's Responsibility for Existing Services****(a) General**

The Owner disclaims any responsibility or liability for the support and protection of sewers, drains, pipes, conduits, tracks or other structures owned by the Owner, or by private companies or individuals enjoying special franchise or occupying any portion of the streets, rights-of-ways or easements and on or below or above the surface.

The Contractor is directed to carefully examine the location of the work, and to make special enquiry of the companies or individuals owning, controlling or operating said pipes, conduits, tracks, and other structures and to determine to his own satisfaction, the character, size, position and length of such pipes, conduits, tracks and structures, and to inspect the public records of the various Utility, Municipal Departments or others having recognizance and control of pipes, conduits and sewers, and to make further personal inspection and investigation as he may deem proper, subject to the Owners approval, to determine the correctness of the information so obtained. Information supplied is not deemed to be full or comprehensive but only that generally available. It is the Contractor's responsibility to consult the companies concerned as to the exact location of the services and where necessary, the Contractor shall protect and support these services to maintain their operation at no additional cost to the Owner.

In the event that damage is done to a utility, that Utility Company or other owner, shall be notified immediately by the Contractor and any costs arising from such damage shall be paid for by the Contractor. A copy of such notice shall be sent to the Contract Administrator. The Owner will pay for any relocations only when in direct conflict with the proposed work.

**(b) Direct Conflicts**

Where existing utilities, not shown as such in the contract drawings, conflict directly with the proposed work, the Contractor shall be prepared to stop all work in the area where such a conflict exists. Any period of time exceeding two hours during which the Contractor's equipment is not performing its normal function as a result of inaction by the Owner is considered "standby time". If the Contractor's labour and equipment cannot be gainfully employed in other parts of the contract work, the Contractor shall be entitled to additional compensation for his labour and equipment on "standby time" basis.

Standby rates shall be in accordance with the General Conditions of Contract.

**G21 Protection of Overhead Construction and Tree Removal**

No machinery shall be employed which, in the opinion of the Contract Administrator, will unduly interfere with wires or other overhead construction. Permission in writing shall be obtained from the Contract Administrator before any trees, branches or foliage are

removed or destroyed.

### Tree Removal

Any tree removal planned as part of the works shall be reviewed with the Owner prior to start of construction. Additional removals or major trimming shall be confirmed with the Contract Administrator or Owner before proceeding with the works.

No tree shall be removed without prior approval of the Owner of the right-of-way or easement.

## **G22 Root Damage to Trees During Construction**

The Contractor during construction is to avoid any unnecessary damage to existing trees, however, should any damage occur to existing tree roots, the following steps are to be taken:

- If any excavation is done within a one metre radius of the tree trunk, the tree must be checked for stability by the Owner or his representative.
- Any removal of roots is to be made by cutting, not tearing.
- All cuts are to be made square and clean without tears.
- Cut roots are to have moist soil placed over them after cutting to prevent desiccation.
- No wound dressing is to be applied.
- Confirm tree stability upon conclusion of work, by Owner or designated representative.

## **G23 Dust and Mud Control**

The Contractor shall take such steps as may be required to prevent dust and mud nuisance resulting from his operations within the site.

Where the work requires the saw-cutting of the asphalt or the saw-cutting or grinding of concrete, blades and grinders of the wet type shall be used together with sufficient water to prevent the incidence of dust, wherever dust would affect traffic or wherever dust would be a nuisance to residents of the area where the work is being carried out. All debris and mud tracked upon travelled roadways resulting from the Contractor's operations or the delivery of materials to the site shall be removed at the end of a day's operation.

The cost of all such preventative measures shall be borne by the Contractor except where water or calcium chloride is used to reduce the dust caused by traffic on a roadway which is the Contractor's responsibility to maintain for public traffic. The cost of such quantities of water and calcium chloride as are authorized by the Contract Administrator to restrict dust to acceptable levels, shall be paid for by the Owner at the contract prices for the appropriate tender items.

**G24 Railroad Crossing**

All work in the vicinity of the railroad crossing shall be supervised by the Railway. Flagging protection will be provided by the Railway and paid for by the Owner.

The Contractor shall be responsible for scheduling his operations to suit the Railway requirements and will provide suitable advance notice of same. The Contractor will also be responsible for any special requirements of the Railway, including insurance requirements.

**G25 Spill Reporting**

Spills or discharges of pollutants or contaminants under the control of the Contractor, and spills or discharges or pollutants or contaminants that are a result of Contractor's operations that cause or are likely to cause adverse effects shall forthwith be reported to the Contract Administrator. Such spills or discharges and their adverse effects shall be as defined in the current statutes and regulations.

All spills or discharges of liquid, other than accumulated rain water, from luminaries, internally illuminated signs, lamps and liquid type transformers under the control of the Contractor, and all spills or discharges from this equipment that are a result of the Contractor's operations shall forthwith be reported to the Contract Administrator.

This reporting will not relieve the Contractor of his legislated responsibilities regarding such spills or discharges, and reporting as may be required by regulations, laws, etc.

**G26 Use of Municipal Hydrants**

The Contractor shall make arrangements and proper application for the use of hydrants on this contract. The use of any applicable municipal forms and approval must be obtained before any use of fire hydrants will be allowed. Any damage sustained to hydrants due to the Contractor's negligence, shall be the responsibility of the Contractor. Where inspection of hydrants is requested, these shall be carried out in accordance with Municipal requirements, and where additional costs are involved, shall be the responsibility of the Contractor.

**G27 Night Work**

Work after sunset and before sunrise must be approved by the Contract Administrator in writing before commencement of the proposed work outside normal construction working hours. Prior formal approval from the municipality may be required. Upon such approval, and where no other formal approval is required, advance notice in writing must be provided to the Contract Administrator forty-eight (48) hours in advance of the work, except under emergency circumstances.

When any work is carried out during that period, the Contractor shall supply, at no additional cost to the Owner, a sufficient number of electric or other approved and efficient lights to enable the work to be done in a safe, efficient and satisfactory manner, and the Contract Administrator will have the power to order additional lights to be put on at no additional cost to the Owner if, in the Contract Administrator's opinion, they are or may be required.

Where such work involves movement or transportation of materials, all locations impacted shall be clearly defined in the request to the Contract Administrator.

**G28 Project Sign Board**

In the event that the Owner supplies a project sign board, of a temporary nature, for this project, the Contractor shall maintain the project sign board in good condition safely mounted or positioned for the duration of the contract. The Contractor shall ensure that the sign board is returned to the Owner upon completion of the project.

**G29 Low Bids With Identical Cost**

Should the tender process result in bid submissions, which have identical prices, the Owner shall undertake the following action:

- a) *“Review bids to ensure all aspects of the tender submission are appropriate and acceptable in all respects and do not include informalities or other qualities which form a basis for rejection.*
- b) *If all submissions meet conditions noted in a) above, a coin toss may be used to determine the successful low bid.”*