

**THE CORPORATION OF THE CITY OF BURLINGTON
INDEX FOR GENERAL CONDITIONS OF CONTRACT**

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101 DEFINITIONS

"Contract"

Means the agreement covering the performance of the work, including the supply of any and all work, labour, implements and materials that could reasonably be required properly and satisfactorily to complete the work to be performed and also includes the plans, specifications, Contract bond and any written supplementary agreements that may be made in order to ensure the completion of the work in an acceptable manner.

"Contractor"

Means the person, partnership or company undertaking the execution of the work under the terms of the Contract.

"Corporation" or "City"

Means the Corporation of the City of Burlington.

"Clerk"

Means the person appointed as City Clerk for the City of Burlington.

"Contract Administrator"

Means the Executive Director of Capital Works for the Corporation, or designate or such other person, partnership or company as may be authorized by the Corporation to act on its behalf.

"Constructor"

Means, for the purposes of, and within the meaning of the Occupational Health and Safety Act, R.S.O. 1990 and amendments thereto, the Contractor who executes the Contract.

"Engineer"

Means a professional engineer licensed by the Association of Professional Engineers of Ontario to practice in the Province of Ontario.

"Inspector"

Means any person that the Contract Administrator may appoint for the purpose of assisting in the supervision and inspection of the work and the materials to be used in the work.

"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 reproductions of plans and drawings pertaining to the work.

"Contract Plans" or "Contract Drawings"

Means plans or drawings provided by the Corporation for the work.

"Working Plans" or "Working Drawings"

Means any plans or drawings prepared by the Contractor and approved by the Contract Administrator for the execution of the work.

"Region"

Means the Corporation of the Regional Municipality of Halton.

"Standard Specifications"

Means all written or printed descriptions or instructions pertaining to the method and manner of performing the work, or to the quantities and qualities of the materials to be furnished and works to be carried out under the Contract, and includes the Tender, Ontario Provincial Standards, General Conditions, 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 and works to be carried out under the Contract.

"City of Burlington Standard Specifications"

Means the requirements and stipulations of standard practice by the Corporation for the control of work, as outlined under City of Burlington Amendments to Ontario Provisional Standards, City of Burlington Drawings or City of Burlington Specifications.

"Special Provisions"

Means special directions containing requirements peculiar to the work not adequately provided for by the General Conditions or Standard Specifications.

"Subcontractor"

Means a person, partnership or company undertaking the execution of a part of the work by virtue of an agreement between himself and the Contractor.

“Substantial Performance”

Means Substantial Performance as defined by the Construction Lien Act.

“Total Completion”

Means the date so established in the Certificate of Total Completion issued by the Contract Administrator.

“Work”

Means the total construction and related services required by the Contract Documents.

102 CONTRACTOR'S INVESTIGATIONS AND CONFORMITY OF WORK WITH PLANS AND SPECIFICATIONS

102-1 Conformity of Work with Plans and Specifications

The works are to be built of the materials and to the sizes, dimensions and grades as called for in the Specifications and Contract Drawings and/or as modified at the direction of the Contract Administrator.

If the Contractor, in the course of the work, discovers any discrepancy between the Specifications or Drawings and the physical conditions of the job site, or finds any errors or omissions in the Specifications or Drawings, it shall be his duty immediately to inform the City in writing. If the Contractor discovers a conflict between the Drawings and Specifications, the conflict shall be referred to the City for clarification. The City will promptly clarify such matters and so inform the Contractor. Any part of the work affected by any or all such discoveries, which is performed by the Contractor prior to clarification by the City, shall be done at the Contractor's risk.

During the process of the Work, additional Drawings may be issued by the Contract Administrator as necessity arises to supplement, supersede, or further set forth details shown on the Drawings hereto attached, (see List of Drawings), and such additional Drawings shall thereupon become part of these Specifications. The Contractor shall immediately review such drawings and promptly inform the City of any errors, discrepancies or conflict with other parts of the Contract.

The Contractor shall be governed by dimensions given on the Drawings. Where required dimensions are not shown in figures, the Contractor shall obtain such dimensions from the Contract Administrator before proceeding with the construction of the portion of the Work to which they refer. In every case, detail Drawings shall take precedence over general Drawings.

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 thereof, 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 risk of conditions now existing or arising in the course of the work which might or could make the work, or any items thereof more expensive in character, or more onerous to fulfil, than was contemplated or known when the 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 Corporation or any of its servants or agents respecting the nature or conformation of the ground at the site of the work, or the location, character, quality and 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 Contract Administrator, except information specifically excluded from this subsection.

102-3 Regional Works

On contracts between the City of Burlington and the Regional Municipality of Halton and the Halton Region Conservation Authority, all references made to the City of Burlington in the Contract Documents shall also apply to the Regional Municipality of Halton and the Halton Region Conservation Authority.

The Regional Drawings and Specifications related to this project are to be used for sanitary and watermain work only.

103 SECURITIES AND INSURANCE

The Contractor to whom the Contract has been awarded shall submit the following prior to the start of the project.

103-1 Performance and Labour and Material Payment Bonds

The Contractor, together with a surety company approved by the City and authorized by law to carry on business in the Province of Ontario, shall, unless otherwise directed, furnish to the City, Performance and Payment Bonds, each in the amount of **50%** of

the total contract price and such additional amount, if any, as may be required by the City.

The cost to obtain the necessary bonds shall be at the Contractor's expense.

The Contractor agrees that they will furnish the Performance and Payment Bonds in the number specified in the Form of the Agreement as required within seven days after notification of the award of proposal by the City has been mailed to him. One copy of the said bonds shall be bound into each of the executed sets of the Contract.

As an alternative to performance and payment bonds, the contractor may provide to the City, an irrevocable letter of credit or a cash security in the amount of **100%** of the total contract price that will be held until end of the Maintenance Period of the project.

103-2 Surety and Deposit

Where applicable, the performance and payment bonds or cash security deposited with the Corporation in connection herewith shall be held by the Corporation to secure the due performance and observation of the Contract and the payment of all creditors as required by the Contract.

The cash or other tender deposit made with the Tender shall be released to the Contractor when the Contract has been signed by him, proof of WSIB coverage submitted, and the performance and the payment bonds deposited with and approved by the Corporation.

103-3 Insurance

The Contractor shall take out and keep in force until the end of the Guaranteed Maintenance Period, equipment insurance, property damage insurance, and a comprehensive policy of public liability insurance with and not less than \$5,000,000 for any one occurrence, death of one or more persons and loss or damage to property or equipment and such policy shall name the Corporation of the City of Burlington, Regional Municipality of Halton, and all other Utility Providers (Burlington Hydro, Union Gas, Cogeco, Bell Canada etc.) as required as additional insured thereunder and shall protect the parties named against all claims for all damage or injury including death to any person or persons and insurance shall be endorsed to provide a thirty day prior written notice to the City in the event the policy is to be altered, cancelled or about to lapse. The Contractor shall forward a certified copy of the policy or certificate thereof, as the Contract Administrator directs. The Contractor shall protect the work and the City's property and property adjacent to the place of work from any damage and shall be responsible for any damage.

In the event this tender relates to an addition or alteration to any existing City building, the Contractor is required to obtain all insurance set out herein except for insurance for the building which will be obtained by the City. The Contractor, in the event of any

loss, is responsible to pay the deductible amount to the maximum of \$10,000. Construction shall not commence until this insurance is obtained and in effect.

103-4 Insurance Claims

Claims or alleged claims received by the Contractor and not settled within five (5) Business Days of receipt shall be handled in the following manner.

- (a) The Contractor shall retain an independent adjuster who will determine the Contractor's liability for all third party claims, and advise the claimant in writing of the determination of liability within thirty (30) Business Days of notice of claim on the Contractor. Copies of such determination of liability shall be forwarded to the City.
- (b) If the Contractor or the Contractor's independent adjuster fails to respond within the timeframe noted in (a) or responds in a manner inconsistent with the evidence at hand, the City reserves the right to appoint another independent adjuster to review the claim and determine liability thereof. All costs incurred by the City to investigate, defend and satisfy any third-party claim will be deducted from the contract or monies owing to the Contractor by the City.
- (c) If a claim is settled to the satisfaction of the Claimant, the Contractor shall provide the City with a copy of the Claimant's Release. The Claimant's Release shall cover the interests of the Contractor and the City, its employees, agents and anyone for whom it is in law responsible.

104 SCOPE OF WORK

104-1 Estimated Quantities

The estimated quantities set forth in the Tender are approximate only. If the quantity of work to be done and 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. Notwithstanding the Contractor is responsible for the line and grade control. Any quantities above the tendered quantities must be subject to verification by the Contract Administrator.

The Contract contains no separate item for excavation of shale or rock. These materials will not be classified and no extra payment will be considered regardless of the method used for excavation.

104-2 Changes and Alterations

The Contract Administrator 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 Contract Administrator or by reason of incorrect written information supplied by the Corporation, 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 104-1 and not otherwise.

104-3 Extra Work

Where the Contract Administrator directs or otherwise authorizes the Contractor in writing to undertake work in addition to that provided for in the Contract and for which the Contract Administrator 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.

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 time and material basis as provided in sub-section 109-5.

104-4 Cleaning Up Before Acceptance

Before any work will be accepted by the Corporation, the Contractor shall make such replacements of improper materials and such corrections of faulty workmanship as have been directed by the Contract Administrator and do such trimming and disposal of rubbish and surplus materials as to leave the work neat and presentable.

105 CONTROL OF THE WORK

105-1 Contract Administrator's Authority

The Contract Administrator may supervise and direct all work to the extent of ensuring the fulfillment of the Contract and the completion 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 Contract, and determine all questions relating to the said work and the construction thereof. The Contract Administrator 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 Contractor shall at all times and at his own expense, furnish all reasonable aid and assistance required by the Contract Administrator or any Inspector for the proper inspection and examination of the work or any part thereof. 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 and they shall be made in writing at the request of the Contractor.

Notwithstanding any inspection that the Corporation might carry out, the failure of the Contract Administrator 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 of such defective work or material and except as otherwise provided herein the Contractor shall be and remain liable for such defective work or material and any loss, costs, charges or expenses in connection therewith.

105-2 Claims and Negotiations

Where the Contractor wishes to submit a claim or to request a negotiation, the Contractor shall give notice to the Contract Administrator within 7 days of the date of commencement of that specific portion of the Tender Item or other work out of which the claim or request for negotiation arises. The Contractor shall submit claims not later than 30 days after the date of his receipt of the final payment certificate (which is the final detailed statement) for the entire work, identifying the item or items in respect of which the claim arises, state the grounds upon which the claim is made, and submit the records maintained by the Contractor under subsection 109-7 which support such claim. The Corporation may require the Contractor to submit such further and other particulars as the Corporation might require to assess the claim and the Contractor shall submit the information within 30 days thereof.

105-3 Right of the Contract Administrator to Modify Methods and Equipment

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

The Contractor shall be required to change his method of operation, sequence of operation or type of equipment when the Contractor's method of operation causes erosion or other adverse environmental effects contrary to the Environmental Protection Act RSO 1990 and amendments thereto.

105-4 Plans and Working Drawings

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

The work related to the working Drawings shall not proceed until such Drawings have been approved by the Contract Administrator. One copy of the approved drawings shall be available at the site at all times. Such approval by the Contract Administrator shall not relieve the Contractor from any responsibility for the adequacy or soundness of such working Drawings or for the work they represent.

105-5 Construction Layout

The Contract Administrator will provide the initial horizontal reference points and a temporary or permanent vertical geodetic bench mark for the Contractor.

The Contractor shall provide at his own expense a qualified person who will establish all the necessary layout and grades using the above supplied information and the Contract Drawings. The Contractor is responsible to ensure that the layout is done as per the approved Contract Drawings.

105-6 Right of Entry

The Contractor shall co-operate with other Contractors, utility companies, the Region and the Corporation and they shall be allowed free access to their work at all times. The Contract Administrator reserves the right to alter the method of operations on this Contract to avoid interference with other work.

The Contractor shall be responsible for obtaining up-to-date information on the schedule for utility relocation construction. In the event that all utilities requiring relocation have not been relocated prior to the time when the Contractor commences work, he will be required to co-operate with the utility owner and work around the utilities such that the existing services are protected until such time as they can be removed from the line of construction. No claims for extra payment will be allowed for this requirement.

105-7 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 site during working hours, as his agent, a competent superintendent or foreman capable of reading and thoroughly understanding the Plans and Specifications and of adequately communicating with the

Contract Administrator and his representatives, and thoroughly experienced in the type of work being performed, who shall receive instructions from the Contract Administrator or his authorized representatives. Such superintendence shall be furnished irrespective of the amount of work sublet and shall include the supervision and direction of all Subcontractors.

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

The Contractor, by executing the Contract unequivocally acknowledges that he is the Constructor within the meaning of the Occupational Health and Safety Act, 1990 and amendments thereto.

105-8 Damage by Vehicles and Other Equipment

If at any time, in the opinion of the Contract Administrator, damage is being done or is likely to be done to any highway or any improvement therein, other than such portions as are part of the work, by the Contractor's equipment, the Contractor shall, on the direction of the Contract Administrator and at the Contractor's own expense make changes in or substitutions for such equipment or shall alter loadings or shall in some other manner remove the cause of such damage and make good the damage so caused, to the satisfaction of the Contract Administrator.

105-9 Inspector's Field Office and Temporary Buildings

The Contractor shall be required to provide for the sole use of the City Inspector a field office completely sealed off from the rest of the trailer or shack by means of a partition or wall that has a door complete with lock and key.

It shall also be the responsibility of the Contractor to keep this portion of the trailer clean and locked at all times. A key is to be given only to the Inspector for his own use, which will be returned after completion of the Contract.

This area of the trailer or building which is to be provided for City Inspectors as a field office shall be in good condition having a minimum size of 2.4 m x 2.4 m with wall space to hang up drawings, proper windows or openings for ventilation, a table having a minimum size of .9 m x 1.5 m with shelves and/or drawers, proper benches or chairs, adequate lighting and telephone which shall be maintained by the Contractor at his expense for the duration of the Contract.

The Inspector's field office shall be maintained at a temperature of 22 degrees C., by using a safe and approved heating device and/or air conditioner. The field office shall be moved where and when the Inspector or Contract Administrator directs. In addition, he shall furnish and maintain satisfactory weather-tight structures with raised floors as

may be required to adequately protect those materials stored on the site which might be damaged by the weather.

The location proposed for temporary buildings used for construction purposes and the type of the buildings must be approved by the Contract Administrator before erection work commences.

Temporary buildings must be kept clean and free from nuisance so they will not become a danger to adjoining properties or form grounds for complaints from property owners adjacent to the works.

The costs for the supply and maintenance of this field office and storage structures shall be as per contract item.

105-10 Construction Power and Water

The Contractor shall make all arrangements and pay all charges for supplying and maintaining electrical power and water required for his work at the sites. The Contractor shall make all necessary applications, obtain required permits and pay all fees and charges for such service and its use.

The Contractor shall furnish all wiring, lamps, switches, fuses, receptacles, etc., as may be required for his work. Temporary power and light circuits shall be thoroughly insulated and waterproof.

105-11 Surface and Ground Water

The Contractor shall so far as is practicable maintain the work site and keep it 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 shall be the responsibility of the Contractor, and shall be of such a manner as to control the discharge of sediment into creeks or the storm sewer.

106 CONTROL OF MATERIALS

106-1 Supply of Materials

All materials necessary for the proper completion of the work, except those listed as being supplied by the Corporation, shall be supplied by the Contractor. The City of Burlington will carry out the necessary tests to approve materials that are supplied, however; if the Contractor/supplier continually request further testing due to material failing to meet specification, additional testing shall be done at the Contractor's expense using City testing rates. The Contract prices for the appropriate tender items shall be deemed to include full compensation for the supply of such materials.

106-2 Source of Supply and Quality of Materials

All materials supplied by the Contractor shall conform to the requirements of the Specifications and be approved by the Contract Administrator prior to use in the work. Where required by the Contract Administrator, the Contractor shall furnish a complete written statement of the origin, composition and manufacture of any materials to be supplied by him and shall furnish samples thereof for testing purposes. The Contractor shall not change the source of supply of materials without the written authorization of the Contract Administrator.

Approval of any materials by the Contract Administrator 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.

The Corporation may carry out on the supplier's premises, such inspection, sampling and testing as may be required before materials can be approved. In order to make such inspection and testing possible, the Contractor shall notify the Contract Administrator of his sources of supply, at least three weeks in advance of the material shipping dates and shall arrange with suppliers for the Corporation representatives to have free access to such parts of the Plant as concern the manufacture or production of the materials ordered.

106-3 Defective Materials Affecting Work

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

106-4 Salvage or Surplus Materials

All materials such as catch basins and manhole frames and covers, hydrants, valves, valve boxes, valve covers or any other material that the Contract Administrator designates, shall be delivered to the City of Burlington Yard at Harvester Road and Cumberland Avenue at 3330 Harvester Road in Burlington or the Regional Municipality of Halton Works Yard at 2316 South Service Road in Oakville.

The cost of delivery to the Works Yard of any items designated by the Contract Administrator shall be included in the removals or relocation items in this Contract.

106-5 Material

Whenever any material is specified in the Specifications or on the Drawings by patent or proprietary name or by the name of the manufacturer, such specification shall be considered as used for the purpose of describing the material desired and the degree

of excellence required and shall be considered as if followed by the words "or approved equivalent" whether or not such words appear.

During the progress of the work, the Contractor may offer material with equal or better qualities and performance in substitution for those specified which it considers will be in the City's interest to accept. Any such offer shall be made in writing to the City for its consideration sufficiently in advance of the time at which the Contractor wishes to order the said material for use in the work, so that no delay in the construction schedule shall occur. The Contractor shall include, in duplicate with his offer and at his own expense, complete data and samples which, together with any other data the City may require, will enable the City to assess the acceptability of the said material. The use of any material so offered will be permitted only after written acceptance of the Contractor's offer by the City. Such acceptance by the City shall not relieve the Contractor from full responsibility for the efficiency, sufficiency, quality and performance of the substitute material.

When the equivalent material necessitates changes to or co-ordination with any other portion of the work, the data submitted shall include drawings and details showing all such changes, and the Contractor shall perform these changes at his own expense as part of any acceptance of the substitute material.

If the approved equivalent material is of less value to the City or involves less cost to Contractor than the material specified, an adjustment shall be made in favour of the City on the basis of the prices stated in the written acceptance. In no case shall payment in excess of the prices entered in the Schedule of Items & Prices of the Tender be made because of substitution of any material in place of another under the provisions of this Clause.

Unless specifically provided otherwise, all references in the Contract to CSA standards, ASTM designations, OPS drawings and specifications, or other codes or Standards shall refer to the current edition of the publication at the date of submission of the proposal. Unless specified elsewhere in the Contract, materials incorporated into the work shall be new and of the most suitable grades of their respective kinds for their intended use.

106-6 Storage of Machinery and Materials

The Contractor shall be governed by the direction of the Contract Administrator in all matters connected with or concerning the storage of machinery, materials and supplies within the proposed works and shall at his own cost and expense, shift or remove such machinery, materials and supplies immediately upon notice to do so from the Contract Administrator.

106-7 Approvals : Disposal of Materials

All excess materials gained from construction activities on City Projects by the

Contractor immediately becomes the property of the Contractor, the moment at which the removal of said material occurs, unless otherwise stipulated in the Contract Documents.

The Contractor is to advise the City in writing as to where all surplus material removed from site will be dumped.

Should it be necessary, the Contractor is responsible for obtaining and submitting all necessary approvals from the local Conservation Authority, Niagara Escarpment Commission, and the City of Burlington before commencement of work.

107 LEGAL RELATIONS AND RESPONSIBILITY

107-1 Contractor's Responsibility for Damages

The Contractor, his agents and all workmen and persons employed by him or under his control, including Subcontractors, 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 claimable in respect of any injury to persons or to lands, buildings, structures, utilities, survey markers, fences, livestock, trees, crops, roads, ways, ditches, drains and watercourses, whether natural or artificial, or property of whatever description and in respect of any infringement of any right, privilege or easement whatever occasioned in the carrying on of the work or any part thereof, 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 Subcontractors, 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 Corporation of the City of Burlington and the Regional Municipality of Halton from and against all claims, demands, loss, costs, damages, actions, suits 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.

Wherever 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 Contract Administrator.

Notwithstanding the indemnity provisions contained in this section, where in the opinion of the Contract Administrator 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 Contract Administrator, following notice in writing to the Contractor of his intention so to do, 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 or has paid adequate compensation for such damage, injury or infringement, provided, however, that the Corporation will not withhold such monies where in the opinion of the Contract Administrator 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.

Where the Contractor uses privately owned lands for pits or waste disposal areas, the Contractor shall provide the Contract Administrator with a release signed by or on behalf of the owner of each pit or waste disposal area used by the Contractor.

107-2 Provision of a Road Throughout the Work

Where a roadway is affected by construction, the highway must be kept open to traffic, and the Contractor shall, except as otherwise provided in this sub-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 under construction, or on detours within or adjacent to the right-of-way.

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 or on public roads outside the limits of the Contract.

Where the Contract provides for or the Contract Administrator requires detours at specific locations, payment for the construction of the detours and if required, for the subsequent removal of the detours will be made at the Contract prices appropriate to such work and the Corporation will arrange for the acquisition of lands required for such detours.

The cost of supplying all labour, equipment and material required to maintain in a satisfactory condition for traffic, a road through the work including any detours constructed in accordance with the Contract or with the approval of the Contract Administrator, shall be paid by the Corporation at the Contract prices appropriate to such work or where there are no such prices, at negotiated prices. Notwithstanding the foregoing, the cost of blading required to maintain the surface of such roads and detours shall be deemed to be included in the prices bid for the various tender items and no additional payment will be made.

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, when directed by the Contract Administrator, open and place the highway and detours in a passable, safe and satisfactory condition for public travel and the highway shall not again be closed to traffic, or traffic therein be obstructed, without written authority of the Contract Administrator.

Where the Contractor constructs a detour which is not specifically provided for in the Contract, or required by the Contract Administrator, the construction of the detour and if required, 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 Contract Administrator. Removal shall be carried out as directed and at the discretion of the Contract Administrator and shall consist of the disposal, leveling and trimming of the excavated material and such restorative measures as may be required.

Where, with the written approval of the Contract Administrator, the road is closed and the traffic diverted entirely off the road allowance to any other public roads, the Contractor shall at his own expense, supply and erect barricades, lights, including flashing lights, and such other protection as may reasonably be required by the Contract Administrator at all points where traffic might enter on that portion of the road so closed to traffic. The Contractor, when required by the Contract Administrator, shall supply watchmen 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 signs and lights and maintain such approved detours over other public roads which may be used during the said closure of the road, as directed by the Contract Administrator.

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 Corporation.

107-3 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 Contract Administrator.

Arrangements shall be made by the Corporation with the Railway Company for the Contractor's employees to enter on the lands of the Railway Company in order to carry out the work. The Contractor shall carry out the work subject to whatever conditions the Railway Company may consider necessary for the protection of its traffic.

Before any work is commenced, the Contractor shall give the Contract Administrator, at least 7 days prior notice in writing, of arrangements that will be made with the Railway Company to appoint flaggers and to provide protection according to Railway Company requirements.

The Contractor shall provide and pay for all protection and flagging that may be

required by the Railway Company.

107-4 Protection Against Royalties or Patented Inventions

The Contractor shall indemnify and save harmless the Corporation and the Regional Municipality of Halton 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 done or material furnished by him under the Contract.

107-5 Licenses and Permits

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

107-6 Notice to the Owner

Any notice to be given to the Corporation shall be in writing and shall be directed to the Contract Administrator.

107-7 Mail Boxes

The Contractor shall at his own expense, carefully remove and satisfactorily replace private and/or public mail boxes which must be removed in order to carry out the work. In doing this work, the Contractor shall co-ordinate with the residents and/or the local office of Canada Post.

107-8 Road Restoration Over Conduits, Trench Cuts, Etc., (Prior to Placing Final Lifts of Asphalt)

All trenches crossing the existing road surface which are not to be reconstructed shall be restored within 24 hours of backfilling to the requirements of the standard specifications. The cost for this restoration shall be included in the cost of construction. The minimum restoration, unless otherwise indicated, shall be a cold mix asphalt patch placed on it before night time of the same day. A permanent restoration shall be done at a later date.

107-9 Tree Removal and Maintenance

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 follow City of Burlington Standard SS12. Excavated material shall not be placed in contact with any tree.

The Contractor shall be responsible for any damage done to the trees by his workmen, trucks or equipment.

The Contractor is specifically referred to the requirements of the City of Burlington Tree By-law, By-law 68-2013.

107-10 Pole Relocation and Installations

All existing services that may interfere with the construction will be relocated by the various utility companies. The Contractor shall co-operate with the utilities at all times. The City will not be responsible for any delays in construction resulting from interference with utility relocations.

The Contractor shall exercise extreme caution when working near existing utilities, whether above or below ground and damage of any nature or from any cause shall be the complete responsibility of the Contractor. The Contractor shall also be responsible for notifying the various utilities and arranging for proper stakeouts. The bracing of any poles, if necessary, shall be done by the Contractor, at his expense.

107-11 Location of Existing Utilities

It is understood and agreed that the Contractor is solely responsible for and assumes all liability for the support and protection of sewers, pipes, conduits, tracks, or other structures owned by the owner, utilities private companies, or individuals enjoying special franchise or occupying any portion of the streets, or ways on or below or above the surface.

The Contractor shall examine carefully the location of the Work and make special inquiry of the Companies or individuals owning, controlling or operating said pipes, conduits, tracks and other structures, and determine to his own satisfaction the character, size, position and lengths of such pipes, conduits, tracks and structures and inspect the public records of the various Departments having cognisance and control of pipes, conduits and sewers, and make further personal inspection and investigation as he may deem proper to determine the correctness of the information so obtained. It is understood and agreed, that the Owner does not insure the accuracy of such reports or information and the Contractor shall not make any claim against the Owner for damages or extra Work caused or occasioned by his relying upon such records, reports, or information, either as a whole or in part.

107-12 Protection of Existing Utilities

The Contractor shall use the utmost care and precaution during construction to protect at all times all present utility services from injury. If at any time such services shall be damaged during the progress of the Work, the Contractor shall repair same with all possible dispatch satisfactory to the Contract Administrator, without extra compensation.

107-13 Notification to all Utility Services

Before starting any excavations for this Contract, the Contractor shall notify all owners of underground services that are located in the vicinity of the work. These shall include Bell Canada, Burlington Hydro Electric Commission, Union Gas Company, Regional Municipality of Halton (for water and sanitary sewers), Oil Pipe Line Companies, Canadian Railway Companies (for buried signal cable), City of Burlington (for storm sewers), and all other owners who may have underground services along the line of the work. The Contractor shall request in writing that the owners of all underground services locate, stake and clearly mark in the field all services which are located on or near the line of the proposed work. A copy of each such letter shall be presented to the Contract Administrator.

Ontario One Call

Telephone: 1-800-400-2255

107-14 Maintaining Access to Work, Traffic, Detour and Warning Signs, Sign Relocations and Project Sign Boards

The Contractor shall, at all times, carry on the work in a manner that will create the least interference with traffic, consistent with the faithful performance of the work.

The contractor shall provide access for the garbage and recycling trucks. If the trucks do not have proper access, the contractor shall collect the garbage, bulk waste and recycling and dispose of it himself, or make arrangements to have them picked up in one area. The cost shall be included in the cost of construction.

The Contract Administrator may, at any time and for any purpose, enter upon the work and the premises used by the Contractor and the Contractor shall provide proper and safe facilities therefore, by means of ladders, or otherwise, to secure such convenient access to all parts of the work, as may be required.

The cost for vehicular control shall be included in the cost of construction. If necessary to maintain traffic, the Contractor shall work on only one side of the street at a time.

One lane of traffic for local access shall be maintained at all times on all streets. Pedestrian (and vehicular if possible), access shall also be maintained to all private properties at all times.

The Contractor will inform all affected property owners 24 hours in advance of any access interruptions that may occur while working in front or in the vicinity of their property.

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 an unsatisfactory condition upon being so directed in writing, the Contract Administrator 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. The Corporation may deduct from any monies due or to become due to the Contractor on any account any cost or expense incurred by the Corporation under this paragraph. No act or failure to act on the part of the Contract Administrator under this paragraph shall relieve the Contractor from his responsibilities under the Contract.

The City will supply and erect all necessary detour signs on the detour route only.

The Contractor must notify the City in advance as specified below when requiring a detour or when interrupting traffic signals.

1. When cutting loop detectors in intersections - 48 hour advance notice must be given.
2. For traffic signal relocations or interruptions - 7 days advance notice must be given.
3. Detours on secondary road - 48 hour advance notice must be given.
4. Detours on main roads - 7 days advance notice must be given.

The above specified advance notices are required so that the Contract Administrator will have time to proceed with the necessary arrangements.

The cost for the above mentioned shall be included in the cost of construction.

Sign relocations if required will be done by the City of Burlington at no extra cost to the Contractor. The Contractor must give 7 days advance notice to the Contract Administrator when requiring sign relocations.

If a safety infraction is noticed by City staff, a "Notice of Safety Infraction" may be issued to the Contractor that may result in an immediate job shut-down until the issue is resolved to the City's satisfaction.

107-15 Pay Duty Police Officers

The Contractor may request from the City the services of Pay Duty Police Officers where such requests can be justified. As a guideline, pay duty officers may be requested for the following reasons:

- Whenever there is a need to direct or stop two (2) lanes of traffic flowing in the same direction or opposite directions,

- At high volume intersections,
- For signal transfers, or
- As mutually agreed upon by all parties.

The Contractor shall notify the City in advance when pay duty officers are required for traffic control in addition to the M.T.O.'s Uniform Traffic Control Manual. The Contractor shall be responsible for contacting and scheduling for services. The contractor shall be compensated for actual costs incurred where mutually agreed upon in advance.

The City reserves the right to reject requests made by the Contractor should there be insufficient justification. Where the Contractor elects to contract the services of pay duty officers, all costs associated shall be their responsibility. No payment shall be made by the City for services where not mutually agreed upon in advance.

The Contractor shall note that no payment shall be made without the receipt from the pay duty officers. Payment shall be made based on the hourly rate as identified by the Halton Regional Police Service in accordance with their Service Policy and five percent (5%) markup for administration.

107-16 Mud and Dust Control and Street Maintenance

The Contractor, during the progress of the work, shall keep the 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 Corporation or public property without permission of the Contract Administrator and shall remove same without delay when and as directed by the Contract Administrator.

The Contractor shall clean and maintain the cleanliness of adjacent streets and the property occupied by him from waste materials or refuse resulting from his operations to the satisfaction of the Contract Administrator.

Whenever and wherever any work is closed, suspended or stopped for the winter, all material of every description shall be removed from the streets, foot-walks, and boulevards, provided always there shall be no stoppage of work without the approval, in writing, of the Contract Administrator.

Trucks hauling excavated material, construction materials or other loose materials from or to the site shall have their loads trimmed and tarped before leaving the site and their bodies shall be tight in order that no spillage of their loads will occur.

The Contractor's truck and equipment operations on all streets shall be governed by all local traffic ordinances and regulations of the local Fire, Police and Roads Parks Maintenance, and Works Departments.

Dust shall be controlled by the regular application of calcium chloride or water to the offending areas, in such quantities and at such times as the Contract Administrator may direct.

The Contractor shall be responsible for all dirt, debris and mud that is tracked onto the roadways from vehicles entering or leaving the job site. He shall upon request from the Contract Administrator, immediately proceed with cleanup operations at his expense. If after repeated requests, or if in the opinion of the Contract Administrator, the Contractor has not or cannot sufficiently remove the mud and debris from the road or maintain proper street cleanliness, the Corporation will proceed with the necessary cleanup at the Contractor's expense and at a minimum rate of \$300.00 per hour, or any rate set by City Council in accordance with the current by-law.

107-17 Interruptions to Services

If it is necessary to make connections to or alter existing services or public utilities under this Contract, or if any interruption of existing pipes or conduits should occur, the Contractor shall inform the Owner of said services or utilities at the proper time. The Contractor shall not interrupt any services or open any existing valve, and shall not make connections to them unless the necessary shutoff of valves or disconnections have been made by the owner of the respective utility or service. The cost of labour, plant, overhead and materials to the owner for shutting, disconnecting, or reinstating services or utilities shall be at the Contractor's expense if necessitated by accidental or improper methods of construction by the Contractor.

107-17 First Aid

The Contractor shall provide and maintain at each main point of operation a completely equipped first aid kit in a clean, orderly condition, which shall be readily accessible at all times to all his employees and the Contract Administrator or his staff. The Contractor shall designate certain employees who are properly instructed to be in charge of first aid. At least one such employee shall be available to render first aid at all times that work is being carried on.

A telephone call list for summoning aid, such as doctors, ambulances, pulmotor and rescue squads from outside sources shall be conspicuously posted.

107-18 Government Regulations

The Contractor shall comply with all provisions of the rules, regulations and orders of Federal, Provincial and Municipal Government agencies applicable to the work under the Contract. The Contractor shall co-operate with the City in promptly furnishing any information that may be required by such governmental agencies. It shall be the obligation of the Contractor to keep himself informed of these governmental rules, regulations and orders and the Contractor shall make the requirements of this article a part of any subcontract he may enter into.

107-19 Working Areas

The Contractor's working areas shall be as shown on the Drawings, unless other arrangements satisfactory to the Contract Administrator is made by the Contractor.

The area utilized for construction shall be the minimum possible consistent with efficient operations. Insofar as possible, streets, driveways and sidewalks shall be kept open or obstructed only as far as the Contract Administrator will allow. All local by-laws regarding traffic regulations and road blocks shall be observed.

Should the Contractor desire or need more space than shown on the Drawings, or specified, the Contractor shall obtain such space on private property at no additional cost to the City by agreement with the owner thereof.

Any necessary shaft sites shall be sturdily fenced. Gates shall be provided for access to the shafts, and the gates shall be kept securely locked at all times that work is not in progress.

The working areas used by the Contractor shall be restored to their original conditions, and all excavated or stockpiled materials shall be completely removed.

107-20 Protection of Structures and Property, Etc.

The Contractor shall at his own cost and expense, and in a manner approved by the Contract Administrator, sustain in their places and protect from direct or indirect injury, all utility services whether public or private over or under ground, sidewalks, curbs, pavements, buildings, bridges, walls, fences, trees, hedges, ornamental shrubs, and all other structures or property in the vicinity of the Work, or which appear within the excavation trench or tunnel and he shall assume all costs and expenses for direct or indirect damage which may be occasioned by injury to any of them, whether such obstructions have or have not been shown on the Contract Drawings.

107-21 Noise Levels

Noise levels shall be controlled in accordance with local By-laws and the Occupational Health and Safety Act.

All internal combustion engines shall be equipped with original equipment in proper working order to minimize noise levels in the project area.

For compressors and pumps operated beyond normal working hours, special measures for noise attenuation will be required.

107-22 Private Lands

The Contractor shall not enter upon or occupy with men, tools, equipment or materials

of any nature, any lands outside of the public streets and roadways and the rights-of-ways or easements shown on the plans, except after consent has been received by him from the proper parties, a certified copy of which consent shall be furnished to the Contract Administrator.

107-23 Environmental Considerations

The contractor shall be fully familiar and comply with all applicable environmental acts, regulations municipal by-laws and permits (Conservation Halton, Niagara Escarpment Commission, etc.) as they pertain to environmental requirements.

Refueling and Maintenance Areas:

The Contractor shall undertake a detailed review of the proposed route of construction to plan access routes and fuelling areas. Suitable fuelling and maintenance areas shall be established and approved by the Contract Administrator. Refuelling and maintenance of equipment shall not be undertaken in or adjacent to water courses.

The exception to this fuelling location requirement shall be diesel generators, cranes or backhoes which may be fuelled at other than the designated fuelling areas. However, no fuelling of backhoes shall be carried out within thirty metres (30 m) of any water course. This requirement may be relaxed at the discretion of the Contract Administrator if non-spill fuelling equipment is used.

The Contractor shall prepare a contingency plan and have available the means for the interception and rapid clean up and disposal of any spillage to land and/or water. Any spill causing impairment to the natural environment, as defined by current legislation, must be reported immediately by the Contractor to the Halton Region Emergency Spill Response Team at (905) 825-6000 during business hours, and at (905) 878-8113 after hours. The Halton Region Emergency Spill Response Team will then inform the Ministry of Environment and Energy as required.

108 PROSECUTION AND PROGRESS

108-1 Liquidated Damages, Completion Date

(1) Time

Time shall be of the essence in this Agreement.

(2) Progress of the Work and Time for Completion

The Contractor shall complete this Contract in its entirety as specified in

the Special Provisions. All dates specified include for poor weather (rain, heat, smog, etc.) days.

If the time limit specified in the Special Provisions 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 therefore.

If the Contractor is delayed in the completion of the Work,

- (a) by reason of changes or alterations made by the City;
 - (b) by reason of any breach of Contract or prevention by the Corporation, or other Contractor of the Corporation or any employee of any one of them;
 - (c) by reason of delay by the Corporation in issuing instructions or information or in delivering materials;
 - (d) by any other act or neglect of the Corporation or any other Contractor of the Corporation or any employee of any one of them;
 - (e) for any cause beyond the reasonable control of the Contractor;
- or
- (f) by Acts of God, or of the Public Enemy, Acts of the Province or of any Foreign State, fire, floods, epidemics, quarantine restrictions, embargoes or delays of Subcontractors due to such causes;

The time of completion shall be extended in writing at any time on such terms and for such period as shall be determined by the Contract Administrator, and notwithstanding such extensions, time shall continue to be deemed of the essence of this Contract.

An application by the Contractor for an extension of time as herein provided shall be made to the Corporation in writing on the form prescribed at least fifteen days prior to the date of completion fixed by the Contract. All bonds or other surety furnished to the Corporation 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 Corporation 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 Corporation whatsoever under this Contract, and all of such rights shall continue in full force and effect after the time limited in this Contract for the completion of the Work and whenever in this Contract power and authority is given to the Corporation or the Contract Administrator 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 this Contract for the completion of the Work but also in the event of the same happening after the time so limited in the case of the Contractor being permitted to proceed with the execution of the Work under an extension of time granted by the Contract Administrator.

(3) 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 by the date(s) set in the Contract (such date as Interim Completion, Milestone Dates, Total Completion, etc), damage will be sustained by the Corporation, and that it is and will be impracticable and extremely difficult to ascertain and determine the actual damage which the Corporation will sustain in the event of and by reason of such delay and the parties hereto agree that the Contractor will pay to the Corporation the sum of \$900.00 (Nine Hundred Dollars) per day for liquidated damages for each and every calendar days delay in finishing the Work beyond the date of completion prescribed and it is agreed that this amount is an estimate of actual damage to the Corporation which will accrue during the period in excess of the prescribed date of completion.

The City may deduct any amount under this Section from any monies that may be due or payable to the Contractor on any account whatsoever.

The provisions of this Section respecting payment of liquidated damages apply only in the case where the Contractor completes the Work called for under the Contract after the date of completion specified herein.

The liquidated damages payable under this Section are in addition to and without prejudice to any other right, remedy, action or other alternative that may be available to the City in law or in equity.

108-2 Assignment, Subletting and Renting

The Contractor shall not assign, transfer or sublet the whole or any portion of the Contract, or the whole or any portion of the work to be performed under the Contract, without the consent in writing of the Contract Administrator, 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 Contract Administrator, provided that any consent so given shall not under any circumstances relieve the Contractor of liabilities and obligations assumed by him under the Contract.

108-3 Non-Fulfillment of the Contract

If the Contractor fails or neglects to commence or to prosecute the work diligently and at a rate of progress that in the opinion of the Contract Administrator will ensure the entire completion or completion to the interim date(s)/set dates in the Form of Tender of it within the time limited therefore under the Contract, or should the Contractor become bankrupt or insolvent, commit any act of insolvency, abandon the work, not show up as per his schedule on the site without adequate notification and by consent of the City or fail to observe and perform any of the provisions of this Contract, of which the Contract Administrator shall be the sole judge, or should the Contractor default in the completion of the work within the time or extended time limited therefore under the Contract, then in any of such cases, the Contract Administrator may notify him to discontinue all work under the Contract, and the Corporation may then employ such means as it may deem necessary to complete the work, and in such a case the Contractor shall have no claim for further payment in respect of work performed and no claim against the Corporation for any loss or damage caused by or resulting from the work being taken out of the control of the Contractor but the Contractor shall be chargeable with and shall remain liable for all loss, damage, expense or cost which may be suffered by the Corporation by reason of such default, bankruptcy, insolvency or act of insolvency. The Contractor will also be charged the liquidated damages amount for any days where the site is left "abandoned" or with inadequate personal without prior notification and approval from the Contract Administrator. If the said loss, damage, expense or cost exceeds the sum which would have been payable under the Contract, if the same had been completed by the said Contractor, the Contractor or his Surety, where applicable, shall pay the amount of such excess to the Corporation, and such amount or portion thereof may be deducted from any monies due or to become due to the Contractor.

108-4 Suspension of Work

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

108-5 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 reasonably 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.

108-6 Labour Disputes

Except to the extent that relief is granted under subsection 108-2, 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 Corporation and the Regional Municipality of Halton to meet its obligations under the Contract.

108-7 Character and Employment of Workers

The Contractor shall employ only orderly, competent and skilful workers to do the work. Whenever the Contract Administrator shall inform him in writing that any worker on the work is, in the opinion of the Contract Administrator, incompetent, unfaithful or disorderly, such worker shall be discharged from the work and shall not again be employed on the work without the consent in writing of the Contract Administrator.

108-8 Notices by the Contractor

Before work is carried out which may affect any department or agency of government or any person, partnership or Corporation including a Municipal Corporation or any Board or Commission thereof, and in addition to such notices of the commencement of specified operations as are prescribed elsewhere in the Contract, the Contractor shall give at least 48 hours advance notice of the date of commencement of such work, to the person, partnership, Corporation, Board or Commission so affected.

The Contractor shall post prominently and maintain on the site of the work and wherever else the Contract Administrator 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.

108-9 Obstructions

The Contractor assumes all the risks and responsibilities arising out of any obstruction on or under the highway right-of-way and any traffic conditions caused by such obstruction including traffic conditions on any highway or road giving access to the Contract area and he shall not make any claim against the Corporation for any loss, damage or expense occasioned thereby.

108-10 Construction Schedule

Within one week of tender award the Contractor shall submit a detailed schedule for City approval. The schedule shall clearly identify task durations and completion dates for all construction activity. The Contract Administrator may require the Contractor to revise the proposed schedule at any time.

108-11 Normal Work Week, Sunday and Holidays

If the Contractor chooses to work beyond the normal work week, Monday to Friday, excluding holidays, 7:00 a.m. to 6:00 p.m., then he will be responsible for the inspection costs that are carried out by the City on weekdays after six o'clock (6:00) p.m. or on Saturdays, Sundays and holidays. The charges for City inspection costs will be calculated in accordance with the Union contract and shall include their vehicle charges, overtime premium, fringe benefits, plus 25% administration fees.

No work will be permitted between 12:01am Sunday to 6:59am Monday, except in the case of emergency, and then only with the written permission of the Contract Administrator and to such extent as he may judge to be necessary.

The Contractor shall refrain from work on days which are legal holidays in Ontario. In case he desires to work on any such holiday, he shall notify the Contract Administrator in writing at least four (4) days in advance of such holiday that he desires to work, stating those places where said Work will be conducted. If the Contractor fails to give such notice in advance of any holiday, such failure shall be considered as an indication that no work requiring the presence of an Contract Administrator or Inspector is to be done by the Contractor on such a holiday.

The Contract Administrator may, in writing, require the Contractor to cease or limit his operations under the Contract, on any day or days if the operations are of such a nature, or if the work is so located, or if the traffic is of such a volume that the Contract Administrator deems it necessary or expedient so to do.

108-12 Liens

The Contractor and his Surety, executors, administrators, successors and assigns (if assignment is approved as herein provided) and any and all other parties in any way concerned, shall fully relieve and indemnify the City and all its officers, servants and employees from any and all liability or expenses in respect to any claim which may be made for a lien or charge at law or in equity or to any claim or liability or to any attempted attachment for debt, garnishee, process or otherwise. The City shall not in any case be liable to any greater extent than the amount owing by it to the Contractor, his executors, administrators, successors and assigns, pursuant to this Contract.

The City shall be entitled to retain, in addition to any other holdbacks, funds up to

150% of the amount of any lien or charge at law including but not limited to construction liens notwithstanding that security may have been posted or deposited in court or elsewhere related to said lien or charge. The City will release said funds after deduction of costs incurred by the City pursuant to said lien or charge when the City Solicitor is satisfied that there is no further liability to the City in respect of said lien or charge.

108-13 Contractor Performance Report

Following Substantial Performance, the Contract Administrator will prepare a report on the performance of the General Contractor. The report will rate performance in various categories including: organization, quality of work, public relations, supervisory staff, safety practices, clean up and time for completion. A copy of the completed report will be provided to the contractor.

Performance ratings will be used by the City in analyzing future bids by the Contractor. Copies of the report may be provided to other Owners or their agents.

A Contractor who scores a failing grade (<30) on their Performance Review will not be eligible to have any City Project Awarded to them as either a General Contractor or a Sub Contractor. This will last for a period up to 2 years from the date of the Total Completion of the Failed Project. Any bid submission made during the two year period will be returned, unopened to the Contractor. A grade between 30 and 35 will put the Contractor on Probation for 2 years.

- a) At the outset of a project, the City shall institute a performance evaluation process in all contracts.
- b) The performance evaluation shall rate the performance of the Contractor on standard criteria adopted from time to time. The General Contractor shall be responsible for the performance of his Sub Contractors and will be evaluated as such. A copy of the Performance Evaluations and introductory letter shall be provided to the Contractor in advance of the contract, and shall remain constant for the duration of the contract. Performance issues must be noted in writing with a copy to the Contractor and a copy to the departmental project file. Performance issues must also be noted in any site meeting or project meeting minutes.
- c) The performance evaluation shall determine whether a Contractor will:
 - i) be allowed to bid for future contracts with the City of Burlington;
 - ii) be placed on a probationary list for a period of two years during which time it shall be permitted to bid for the City of Burlington as a General Contractor only for projects of a limited valued as determined by Staff at notice of probation. During this probationary period, the Contractor will not be able to

- bid as a Sub Contractor and must adhere to any and all conditions of their probation;
- iii) be suspended from bidding on any contracts with the City of Burlington for a period of two years, followed by a one-year probationary period after reinstatement.
 - d) No bid will be accepted from any contractor during the term of the suspension. Any bid submitted by the Contractor will be returned, unopened to the address on the bid envelope. If the Contractor is listed as a Sub Contractor on another bid, the City will notify the General Contractor that they will be unable to accept the submitted bid unless another Sub Contractor is identified. It is the suspended Contractor's responsibility to notify any General Contractors of their suspension with the City of Burlington.
 - e) The Contractor may request a debriefing meeting to discuss the evaluation within thirty (30) calendar days following delivery of the evaluation. The request outlining any comments or concerns with the Performance Review rankings should be sent in writing to the Manager of the Project/Client Department for review. Only the comments and rankings of the Contractor Performance Review will be open for discussion. Any changes to the evaluation form and weighing criteria will not be entertained. If the Contractor remains unsatisfied with the outcome of the debriefing meeting, they can request in writing to the Manager of Design and Construction and Manager of Purchasing, a further review by the City of Burlington Review Committee.
 - f) The Review Committee will hear from both City staff and the Contractor at a time and place appointed in writing by the Committee. The Committee shall be comprised of the Manger of Design and Construction or Manager of Purchasing and 2 Directors or their designate. A quorum of the Review Committee shall be two of the three members. The decision of the Review Committee shall be in writing and final and provided to City Staff and the Contractor.
 - g) Bids will not be accepted by the Contractor for work in the City of Burlington as a General or Sub Contractor during the review process.
 - h) In reaching a decision, Staff shall be entitled to rely upon the evaluation criteria determined in advance of the project and the results of prior performance evaluations relating to other contracts performed by the same contractor or consultant.
 - i) The results of any Performance Evaluation may be disclosed to other Municipalities or government bodies upon request.

109 PAYMENT

109-1 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.

No advance payments shall be made to the Contractor, and no payment shall be made for material stored on site.

Interest Payments - The City will not pay any interest on either of the holdbacks retained during construction or the one year maintenance period.

109-2 Prices and Payments

Within forty days from the commencement of the work on a date to be determined by the owner and monthly thereafter, an estimate in writing will be made by the Contract Administrator of the amount of work done and material furnished and of the value thereof according to the terms of the Contract. 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 preceding estimate was made. Two copies of each estimate will be delivered to the Contractor by the Contract Administrator. The Contractor shall present to the Corporation one copy of the estimate certified by him to be correct in the manner prescribed by the Corporation.

Within thirty (30) days of the receipt of one copy of the estimate, certified as aforesaid and upon its approval by the Contract Administrator, the Corporation subject to Section 107-1 shall pay to the Contractor, 88% (10% Construction Lien holdback plus 2% maintenance holdback) of such tendered contracts valued up to \$4, 000,000 and 89% (10% Construction Lien holdback plus 1% maintenance holdback) of such tendered contracts valued over \$4, 000,001.

- (1) Contractor's claim for Substantial Performance;
- (2) A release by the Contractor releasing the City from all further claims relating to the Contract for work done to date;
- (3) A Statutory Declaration that all liabilities incurred by him and his Subcontractors in carrying out the Contract have been paid and that there are no liens, garnishments, attachments or other claims relating to the Work (Exhibit 'A' includes a copy of the Construction Lien Act advertisement);
- (4) A clearance certificate from the WSIB;

- (5) If permitted by the Contract Administrator, a written undertaking to complete any outstanding Work expeditiously during the period of maintenance and to discharge all unfulfilled obligations under the Contract.

The remaining maintenance holdback will be retained for one year from the date of Total Completion and then released provided that all outstanding matters have been resolved to the satisfaction of the Contract Administrator.

109-3 Certificate of Substantial Performance

The Contract Administrator may issue a Certificate of Substantial Performance setting out the date of substantial completion of the Work when, in the opinion of the Contract Administrator, the Works have been substantially completed to his satisfaction and are ready for use for the purpose intended.

109-4 Certificate of Total Completion

The Contract Administrator shall establish, and shall so certify in writing, the date of Total Completion of the Work when, in the opinion of the Contract Administrator, the Works, with the exception of those arising from the provisions of Clause 109-11 have been totally completed to his satisfaction.

The Contractor will then be requested to submit the following:

- (1) Contractor's final claim;
- (2) A release by the Contractor releasing the City from all further claims relating to the Contract;
- (3) A Statutory Declaration that all liabilities incurred by him and his Subcontractors in carrying out the Contract have been paid and that there are no liens, garnishments, attachments or other claims relating to the Work;
- (4) A clearance certificate from the WSIB;

109-5 Payment for Extra Work on a Time and Material Basis

For the purposes of this section,

"Cost of Labour" means the amount of wages, salary and payroll burden paid or incurred directly by the Contractor to or in respect of labour and supervision 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 entire work or any wages, salary or payroll burden for which the

Contractor is compensated by any payment made by the Corporation for equipment.

"Payroll Burden" means the payments in respect of Worker's Compensation, vacation pay, unemployment insurance, public liability and property damage insurance, sickness and accident insurance, pension fund and such other welfare and benefit payments as form part of the Contractor's normal labour costs and shall include any cost or expense as the Contract Administrator 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 Rate" means the rate for unit of equipment as listed in OPSS Form 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 Corporation, using the same principles as used in determining the 127 rates.

"Rented Equipment" means equipment that is rented or leased on an ad hoc basis from a person, firm or Corporation that is not an associate or affiliate of the lessee as defined by the Securities Act, R.S.O. 1990, but does not include equipment under a rental purchase agreement, a lease purchase agreement or under a lease or rental 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 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 tasks and during which time the unit is in a fully operable condition.

"Standby Time" means any period of time which is not considered working time and which together with the working time does not exceed 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 Contract Administrator pursuant to Section 104-3 and paid for on a time and material basis. Such work may be supervised by the Contract Administrator and shall be carried out by an equipment and labour force and in such a manner as the Contract Administrator 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 Contract Administrator and reporting the labour and equipment employed and the material used on each extra work project, shall be reconciled and signed by the Contractor's representative each day.

Except where there is agreement to the contrary prior to the commencement of the work, 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 allowances will be made in respect of such work.

The Corporation will pay the Contractor for labour and supervision employed on each extra work project, at the rate of 115% of the cost of labour.

The Corporation will pay the Contractor for material used on each extra work project, 115% of the cost of material.

The Corporation will pay the Contractor for the working time of equipment other than rented equipment on the basis of 127 Rates, with a cost adjustment as follows:

- a) Where the cost based on 127 rates of all non rented equipment used on the extra work project is \$5,000.00 or less, there will be no adjustment.
- b) Where the cost based on 127 rates of all non rented equipment used on the extra work project is greater than \$5,000.00 but less than \$10,000.00, the Corporation will pay the Contractor \$5,000.00 plus 90% of the portion in excess of \$5,000.00.
- c) Where the cost based on 127 rates of all non rented equipment used on the extra work project is greater than \$10,000.00, the Corporation will pay the Contractor \$9,500.00 plus 80% of the portion in excess of \$10,000.00.

The Corporation will pay the Contractor for the working time of rented equipment used on the extra work project at 105% of the rental rates up to a maximum of the 127 rates.

Where the Contractor makes use of operated rented equipment, the Corporation will pay the Contractor for the working time of operated rented equipment, used on the extra work project at 105% of the operated equipment invoice price approved by the Contract Administrator prior to the work being carried out.

The Corporation will pay the Contractor for the standby time of equipment other than rented equipment at one third the 127 Rate. In addition, the Corporation 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 Corporation will pay the Contractor for the standby time of rented equipment and for the downtime of rented equipment which has been idled by the circumstances giving rise to the extra work project, at 35% of the 127 rate. In addition, the Corporation 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, the Contract Administrator may require rented equipment idled by the circumstances giving rise to the extra work project, to be returned to the lessor until the work requiring the equipment can be resumed, in which case, the Corporation 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 Corporation 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 Contract Administrator.

Where the Contractor arranges for the extra work on a time and material basis, to be carried out by others, and has received approval prior to the commencement of the work, the Corporation shall pay the Contractor 105% of the compensation as herein 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, or in respect of any compensation for rented equipment.

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.

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.

109-6 Measurement of Quantities

Measurement of quantities shall be done as stipulated in the Special Provisions or in the Standard Specifications.

109-7 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 there from 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.

The Corporation 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 Corporation 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 there from, for

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

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

109-8 Province of Ontario Sales Tax

The provisions of the PST have been harmonized and are now part of 109-9.

109-9 Goods and Services Tax

The total contract amount shall be inclusive of all government sales taxes, customs, duties and excise taxes with respect to the Contract and shall be paid by the Contractor unless otherwise provided for by statute.

The Harmonized Sales Tax shall be shown as a separate total on the summary page and not included in each separate item of the Contract.

The total proposal price is to include the Harmonized Sales Tax. The City will pay all amounts of the Harmonized Sales Tax in respect of the project, as required under statute, provided that the following conditions are met:

- (a) All invoices and progress billings issued to the City contain adequate information and supporting documentation as specified in the HST legislation and prescribed regulations thereof, for purposes of obtaining input tax credits and/or tax rebates in respect of the HST paid or payable for the City. Specifically, the Contractor must provide his HST registration number and must separately disclose the amount of HST payable on each billing, or progress payment.
- (b) The Contractor shall make available any other information for which the City may require in respect of supporting HST input credit claims or rebates.

109-10 Changes to Government Taxes

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

Claims for compensation for additional tax cost shall be submitted by the Contractor to the Contract Administrator. Such claims for additional tax costs shall be submitted not later than thirty 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 Contract Administrator a statement of such benefits. This statement shall be submitted not later than thirty days after the date of acceptance of the work.

The Contract Administrator reserves the right to recover or to make deductions at any time 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.

109-11 Guaranteed Maintenance

The Contractor guarantees and warrants that with ordinary wear and tear the said Work shall for a period of 12 months from the date of Total Completion, remain in such condition as will meet with the approval of the Contract Administrator, and that he will, upon being required by the Contract Administrator, make good in a manner satisfactory to the Contract Administrator any imperfections therein due to materials used in the construction thereof or workmanship. The decision of the Contract Administrator as to the nature, extent and cause of such imperfections and the necessity for remedying the same shall be final.

Should the Contractor fail to comply with the directions of the Contract Administrator, the latter may, after giving the Contractor twelve (12) hours' written notice, perform the necessary Work, provided that in the event of an emergency, of which the Contract Administrator shall be the sole judge, the Contract Administrator may forthwith without notice, perform the necessary Work and the cost of such Work will be done at the Contractor's expense.

If the Contract Administrator notifies the Contractor in writing of imperfections prior to the termination of the guaranteed maintenance period, the Contractor shall make good the imperfections as specified above notwithstanding that the Work of making good may commence after or extend beyond the end of the twelve months' period.

109-12 Monies Due to the City

All monies payable to the City by the Contractor under any stipulation herein or to the Workers' Compensation Board, may be retained out of any monies then due, or which may become due, from the said City to the Contractor under this or any other contract with the City or otherwise howsoever, or may be recovered from the Contractor or his Surety jointly or severally in any court of competent jurisdiction, as a debt due to the City and the City shall have full power to withhold any estimate or certificate if circumstances arise which may indicate to them the advisability of so doing, though the

sum to be retained may be unascertained.

110 HEALTH AND SAFETY

110-1 The Occupational Health and Safety Act

The Tenderer is specifically referred to the provisions of The Occupational Health and Safety Act, 1990, as amended, and the regulations thereto, both of which may be applicable to this Contract.

The Contract is deemed to be an individual "project" for the purposes of the Occupational Health and Safety Act, 1990, and amendments thereto, and the regulations made hereunder, and the Contractor to whom the contract is awarded shall be deemed to be the "constructor", as defined in the Act, of the "project" and shall carry out all obligations and shall bear all the responsibility of the constructor as set out in the said Act and Regulations.

110-2 Workplace Hazardous Materials Information System (WHMIS)

The Contractor is required to comply with all WHMIS regulations, requirements and amendments in completion of the work formed under this Contract. The Contractor will adequately train and instruct his workers in accordance with WHMIS requirements and will, upon request, provide satisfactory evidence to this effect. The Contractor will supply the Contract Administrator with a list of hazardous materials to be used and Material Safety Data Sheets (M505) for them. The Contractor will indemnify the City and the Region from any cost the City incurs as a result of his failure to comply with WHMIS.

110-3 Provincial Smog Alert

A provincial smog alert may be issued by the Ministry of the Environment at any time from the end of April through to mid-September when the AQI (Air Quality Index) reaches 50 or greater.

When there is a smog alert, the City of Burlington (Contract Administrator) will notify the General Contractor by 4:00 p.m. On the second day of the smog alert, all hot mix asphalt work is to be stopped unless otherwise directed by the Contract Administrator. This may be in effect until the smog alert has been lifted.

There will be no additional compensation for this down time.