

Standard Terms and Conditions

Warning

Any alleged oral agreement or arrangement made by a bidder or contractor with any Department or Employee of the City will be disregarded.

General Terms

1. It is intended that all provisions of this Agreement shall be fully binding and effective between the parties, but in the event that any particular provision or provisions or a part of one is found to be void, voidable or unenforceable for any reason whatever, then the remainder of the Agreement shall be interpreted as if such provision, provisions, or part thereof, had not been included.
2. This Agreement shall be to the benefit of, and be binding on the respective administrators, successors and permitted assigns of each of the parties hereto.
3. Time shall in every respect be of the essence of this Agreement.
4. The Proponent is an independent contractor with the CITY and nothing in this Agreement shall be construed or deemed to create the relationship of employee and employer or of principal and agent between the CITY and the Proponent.
5. The Proponent is solely responsible for payments of all statutory deductions or contributions including but not limited to pension plans, unemployment insurance, income tax, workers' safety and compensation and the Ontario Income Tax.
6. This Agreement shall be interpreted and governed in accordance with the laws of Ontario and the laws of Canada as they apply in Ontario.
7. No waiver by either party of any breach of any term, condition or covenant of this Agreement shall be effective unless the waiver is in writing and signed by both parties. A waiver, with respect to a specific breach, shall not affect any rights of the parties relating to other or future breaches.
8. The failure of either party at any time to require the performance of any provision or requirement of this Agreement shall not affect the right of that party to require the subsequent performance of that provision or requirement.

9. This contract comprises the entire Agreement between the parties hereto and supersedes and shall take effect in substitution for all previous agreements and arrangements whether written or implied between the parties relating to the Services to be provided by the Proponent and all such prior agreements, arrangements and understandings shall be deemed to have been terminated by mutual consent with effect from the date of signature of this Agreement.
10. This Agreement may be signed in counterparts and each such counterpart shall constitute an original document and such counterparts, taken together, shall constitute one and the same instrument. Execution and delivery of this Agreement or a counterpart thereof by any party by fax or electronically shall constitute valid and effective execution and delivery, but each party shall retain an originally executed copy of the Agreement.

Contract

1. Each Bid or Proposal will be received with the understanding that acceptance in writing by the City of the offer to furnish all or any part of the services and/or commodities therein (Proposal) shall constitute a contract between the bidder and the City. This contract shall bind the bidder to furnish and delivery the services and/or commodities at the prices offered and in accordance with the specifications and **Terms and Conditions** and the City to take delivery of and pay for the services and/or commodities at the contract prices.
2. No alterations or variations of the terms of the contract shall be valid or binding upon the City unless authorized in writing by the Purchasing Agent.
3. The contractor shall not assign, transfer, convey, sublet or otherwise dispose of the contract or his right, title or interest therein, or its power, or execute such contract to any other person, firm, company or corporation, without the previous written consent of the City.
4. The placing in the mail to the address given in a proposal or delivery of a purchase order or notice of award to a bidder will constitute acceptance of a proposal. When so requested by the City, the contractor shall execute a formal contract with the City for the complete performance specified therein.
5. The contract may be cancelled by the City upon non-performance of the contract terms.
6. Failure of a contractor to deliver within the time specified or within reasonable time as interpreted by the City or failure to make

replacements of rejected commodities when requested, will constitute authority for the City to purchase in the open market to replace commodities rejected or not delivered. The City reserves the right to authorize immediate purchases in the open market against rejections on any contract when necessary. On all such purchases the contractor agrees to promptly reimburse the City for excess costs occasioned by such purchases. Such purchases will be deducted from the contract quantities.

7. When commodities are rejected, same must be removed by the contractor from the premises of the City within five (5) days after notification unless public health and safety require immediate action as it deems necessary. Rejected items left longer than five (5) days will be considered abandoned and the City shall have the right to dispose of them as its own property.
8. The City reserves the right to remove from eligibility to submit proposal for an indeterminate period, the name of any bidder for failure to accept a contract, or the name of any contractor for unsatisfactory performance of contract.

Contract Guarantee

The contractor hereby covenants and agrees:

- a) To perform contract in accordance with the specifications under which the contract is awarded;
- b) To save the City, its agents or employees, harmless from liability of any kind for the use of any composition, secret process, invention, article or appliance furnished or used in the performance of the contract for which the contractor is not the patentee, assignee or licensee;
- c) To guarantee its products against defective material or workmanship and to repair or replace any damage or marring occasioned in transit. This guarantee is to be in writing with the proposal stating the period of the guarantee;
- d) To furnish adequate protection from damage for all work and to repair damage of any kind for which the contractor or its workers are responsible, to the premises or equipment, to its own work or the work of other contractors;
- e) To pay for all permits, licenses and fees and to give all notices and comply with all By-laws and Regulations of the City;

- f) To carry such insurance as may be required by the City and to furnish satisfactory proof thereof when required by the City;
- g) To indemnify and save harmless the City, its agents and employees, from all suits and actions for damages and costs to which the City and its employees may be put by reason of injury or death to persons and damages to property of others as well as the City, resulting from negligence, poor workmanship and materials, as well as any cause whatsoever in the performance of the work by the contractor, the contractor's employees, sub-contractors and their employees.

If the contractor shall fail, neglect or refuse at any time to supply goods and or services to the City then the City shall be and is hereby empowered to forthwith procure such material elsewhere and to charge all costs thereby incurred to the contractor as liquidated damages and to deduct the same from the monies due or to become due, to the contractor on this or any other contract.

Inspection and Tests

- a) The inspection and testing of all commodities and workmanship to determine compliance with the specifications shall be made in the manner prescribed by the City. All costs associated with inspection and testing shall be the contractor's responsibility.
- b) Any item which, in the absolute discretion of the City, fails in any way to meet the terms of the contract is subject to rejection or to be paid for on an adjusted price basis.

Saving Clause

- a) It is understood and agreed that the contractor shall not be held liable for any losses resulting if the fulfillment of the contract shall be delayed or prevented by wars, acts of public enemies, strikes, fires, floods, acts of God, or for any cause not within the control of the contractor and which, by the exercise of reasonable diligence, the contractor is unable to prevent. Should the performance of any contract be delayed or prevented as herein set forth the contractor agrees to give immediate written notice and explanation of the cause and probable duration of any such delay.
- b) The contractor, if awarded an order or contract, agrees to protect, defend and save harmless the City against any demand for payment for the use of any patented material, process, article or device that may enter into the manufacture or construction or form a part of the

work covered either by order or contract, and the contractor further agrees to indemnify and save harmless the City from suits or actions of every nature and description brought against it for or on account of any injuries or damages received or sustained by any party or parties, by or from any of the acts of the contractor, his servants or agents.

Performance of Services

The Proponent agrees to exercise all care, skill, and diligence in performing the Services and to comply with all the terms of this Agreement.

The Proponent agrees to furnish all labour, materials, supplies, tools, and all things necessary for the proper and timely total completion of the Services.

The Proponent agrees to use only new materials and supplies of the best quality, of merchantable quality, fit for the intended purpose, and carefully installed or applied in accordance with any manufacturer's specifications and warranty requirements, in performing the Services.

The Proponent warrants that it has independently reviewed the nature of the Services, it is not relying upon any the CITY representations and it is fully qualified and able to perform the Services by the completion date.

Health and Safety

The contractor shall comply with the Regulations set out in the Ontario Occupational Health and Safety Act and the Workplace Safety and Insurance Act. The contractor shall also comply with the City of Sarnia's Safety Policy and Procedures.

Payment

The CITY agrees to pay the Proponent for the Services a total amount not greater Canadian Dollars (\$) as set out in the submission.

Following completion of each portion of the Services, the Proponent shall invoice the CITY for the performance of that portion of the Services, with documentation satisfactory to the CITY.

Upon receipt of the invoice, the CITY shall promptly determine whether the work which is the subject of the invoice is approved and the CITY shall process payment to the Proponent of the amount of the approved portion of the invoice within thirty (30) days of the date of approval of the invoice, or within twenty (20) days of approval of the invoice in the case of a Ontario Business as defined by the NNI Policy.

Where the CITY does not approve of any part of the work which is the subject of an invoice, the CITY shall promptly notify the Proponent in writing, of the reason(s) why the work was not approved; and the Proponent shall remedy the work at no additional cost to the CITY before the CITY shall be obliged to pay the unapproved portion of the invoice.

If in the opinion of the CITY the Proponent has failed to comply with or has in any way breached an obligation under this Agreement, the CITY, on having provided written notice of such breach to the Proponent, may withhold, in whole or in part, any payment due the Proponent without penalty, expense or liability; and any such hold back amount shall be withheld until the breach has been rectified to the full satisfaction of the CITY.

The CITY may, in order to discharge obligations or satisfy claims against the Proponent or a subcontractor arising out of the execution of the Services, deduct any monies claimed and owing from any amount due and payable to the Proponent under this agreement, and pay it directly to an obligee or claimant.

The CITY may set off any payment due the Proponent against any monies owed by the Proponent to the CITY.

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2. No alterations or variations of the terms of the contract shall be valid or binding upon the City unless authorized in writing by the Purchasing Agent.
3. The contractor shall not assign, transfer, convey, sublet or otherwise dispose of the contract or his right, title or interest therein, or its power, or execute such contract to any other person, firm, company or corporation, without the previous written consent of the City.
4. The placing in the mail to the address given in a proposal or delivery of a purchase order or notice of award to a bidder will constitute

acceptance of a proposal. When so requested by the City, the contractor shall execute a formal contract with the City for the complete performance specified therein.

5. The contract may be cancelled by the City upon non-performance of the contract terms.
6. Failure of a contractor to deliver within the time specified or within reasonable time as interpreted by the City or failure to make replacements of rejected commodities when requested, will constitute authority for the City to purchase in the open market to replace commodities rejected or not delivered. The City reserves the right to authorize immediate purchases in the open market against rejections on any contract when necessary. On all such purchases the contractor agrees to promptly reimburse the City for excess costs occasioned by such purchases. Such purchases will be deducted from the contract quantities.
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- b) to save the City, its agents or employees, harmless from liability of any kind for the use of any composition, secret process, invention, article or appliance furnished or used in the performance of the contract for which the contractor is not the patentee, assignee or licensee;
- c) To guarantee its products against defective material or workmanship and to repair or replace any damage or marring occasioned in transit. This guarantee is to be in writing with the proposal stating the period of the guarantee;

- d) to furnish adequate protection from damage for all work and to repair damage of any kind for which the contractor or its workers are responsible, to the premises or equipment, to its own work or the work of other contractors;
- e) to pay for all permits, licenses and fees and to give all notices and comply with all By-laws and Regulations of the City;
- f) to carry such insurance as may be required by the City and to furnish satisfactory proof thereof when required by the City;
- g) to indemnify and save harmless the City, its agents and employees, from all suits and actions for damages and costs to which the City and its employees may be put by reason of injury or death to persons and damages to property of others as well as the City, resulting from negligence, poor workmanship and materials, as well as any cause whatsoever in the performance of the work by the contractor, the contractor's employees, sub-contractors and their employees.

If the contractor shall fail, neglect or refuse at any time to supply goods and or services to the City then the City shall be and is hereby empowered to forthwith procure such material elsewhere and to charge all costs thereby incurred to the contractor as liquidated damages and to deduct the same from the monies due or to become due, to the contractor on this or any other contract.

Intellectual Property

The Proponent represents and warrants that:

- its performance of the Services and any product(s) used in performing the Services are original and owned by it or have been validly and properly licensed by the Proponent as to all necessary intellectual property rights;
- no performance of the Services or products used in performance of the Services will or do violate or infringe upon any intellectual property rights of any other person or entity; and,
- it will indemnify and save harmless the CITY from any costs, liabilities, damages or expenses, including reasonable legal fees and expenses arising, directly or indirectly, out of any proven or alleged breach of these warranties.

Title to any report, drawing, photograph, plan, specification, model, prototype, pattern, sample, design, logo, technical information, invention, method or process and all other property, work or materials which are

produced by the Proponent in performing the Services or conceived, developed or first actually reduced to practice in performing the Services, (herein called "the Intellectual Property") shall vest in the CITY and the Proponent hereby absolutely assigns to the CITY all in the Intellectual Property.

The Proponent shall ensure that its contractual relations with employees and subcontractors preserve all Intellectual Property rights for the CITY and shall cooperate with the CITY and assist it in obtaining any patent or other form of legal protection for such inventions or know-how for no additional compensation (other than the coverage of the Proponent's reasonable out of pocket expenses).

Inspection and Tests

- a) The inspection and testing of all commodities and workmanship to determine compliance with the specifications shall be made in the manner prescribed by the City. All costs associated with inspection and testing shall be the contractor's responsibility.
- b) Any item which, in the absolute discretion of the City, fails in any way to meet the terms of the contract is subject to rejection or to be paid for on an adjusted price basis.

Saving Clause

- a) It is understood and agreed that the contractor shall not be held liable for any losses resulting if the fulfillment of the contract shall be delayed or prevented by wars, acts of public enemies, strikes, fires, floods, acts of God, or for any cause not within the control of the contractor and which, by the exercise of reasonable diligence, the contractor is unable to prevent. Should the performance of any contract be delayed or prevented as herein set forth the contractor agrees to give immediate written notice and explanation of the cause and probable duration of any such delay.
- b) The contractor, if awarded an order or contract, agrees to protect, defend and save harmless the City against any demand for payment for the use of any patented material, process, article or device that may enter into the manufacture or construction or form a part of the work covered either by order or contract, and the contractor further agrees to indemnify and save harmless the City from suits or actions of every nature and description brought against it for or on account of any injuries or damages received or sustained by any party or parties, by or from any of the acts of the contractor, his servants or agents.

Bid Surety

Bid surety such as Bid Deposits, Performance Bonds etc., whenever necessary, shall be specified on each invitation to bid.

Health and Safety

The contractor shall comply with the Regulations set out in the Ontario Occupational Health and Safety Act and the Workplace Safety and Insurance Act. The contractor shall also comply with the City of Sarnia's Safety Policy and Procedures.

Workers' Safety and Insurance Board (WSIB) Clearance

For any contract requiring the services of the contractor's employees, the contractor shall submit a Certificate of Clearance from the WSIB. The contractor shall also submit an Insurance Certificate confirming the contractor's General Liability and Vehicle Insurance Coverage.

General Insurance Requirements

The Proponent will indemnify and save the CITY, its employees, and agents harmless from and against all claims, demands, losses, damages, causes of action, costs and expenses made against or incurred, suffered or sustained by the CITY at any time either before or after the expiration or termination of this agreement, where the same or any of them are based upon, arise out of or occur, directly or indirectly, by reason of any act or omission of the Proponent or of any agent, employee, officer, director or subcontractor of the Proponent pursuant to this agreement, excepting liability arising out of the independent negligent acts of the CITY.

The Proponent shall without limiting its obligations or liabilities hereto, obtain, maintain and pay for during the period of this Agreement, the following insurance:

Professional Liability Insurance with limits of not less than two million dollars (\$2,000,000) per claim, to cover claims arising out of the rendering of or failure to render any professional service under the Agreement;

Workers' Safety and Insurance Board (WSIB) coverage;

All motor vehicles, watercraft or snow craft used by the Proponent in the performance of the Agreement, regardless of ownership, shall be insured by Standard Liability Insurance in an amount not less than two million dollars

(\$2,000,000) per occurrence for bodily injury, death and damage to property; and,

Commercial General Liability insurance with limits of not less than five million dollars (\$5,000,000) inclusive per occurrence for bodily injury, death and damage to or loss of use of property. Such insurance shall include but shall not be limited to the following terms and conditions:

- Products and Completed Operations;
- Owners & Proponents Protective;
- Contractual Liability;
- Broad Form Property Damage;
- Personal Injury;
- Cross Liability and Severability of Interest;
- Medical Payments;
- Non-Owned Automobile Liability including contractual liability;
- Contingent Employers Liability;
- Employees as Additional Insureds; and,
- Underground Property Damage (in respect to any work involving ground disturbance).

The insurance policies required under this Agreement shall name the CITY, its directors, officers, employees, agents and Proponents as Additional Insureds, only with respect to the terms of this Agreement (except on Workers Compensation, motor vehicles insurance and Professional Liability insurance), with a cross liability and severability of interest clauses. Such insurance shall be primary without right of contribution from other insurances available to the CITY, and shall extend to cover the employees of the insureds hereunder.

All insurance policies shall include a provision whereby the insurers agree to provide not less than thirty (30) days' written notice to the CITY prior to any insurance policies being materially altered, cancelled, or terminated by the insurers.

The Proponent shall be responsible for any deductibles, exclusions and/or insufficiencies of coverage relating to such policies. The Proponent's liability is not capped to the amount of and scope of coverage required under the agreement.

The Proponent shall deposit with the CITY prior to commencing the work, certificate(s) of insurance evidencing the insurance required by this Agreement in a form satisfactory to the CITY and with insurance companies

satisfactory to the CITY, and shall provide evidence of continuing coverage on request.

Regulations for Construction and Service Contracts

- a) It shall be the contractor's responsibility to ensure that all workers, including owners designated as workers on the project, abide by the applicable Regulations for Construction and Service Projects as mandated by the Occupational Health & Safety Act, latest revision, as well as any other safety, environmental or transportation standards that are applicable by law or established by generally accepted industry standards. The contractor shall also comply with the City of Sarnia's Health & Safety Policies, the Ministry of the Environment (M.O.E.) and the Ministry of Transportation (M.T.O.) Regulations.
- b) The contractor agrees to indemnify the City and all third parties against any fines, claims and costs incurred by it as a result of the contractor, sub-contractor and their workers breaching the Occupational Health & Safety Act, M.O.E. and M.T.O Regulations, including costs incurred in preparing for and attending legal hearings and trials in connection therewith.
- c) The contractor shall obtain any required permits or certificates of approval and conform with all applicable Regulations, Codes and Standards such as those governed by the following:
 - American Waterworks Association
 - Canadian Standards Association
 - Ministry of the Environment
 - Ministry of Labour
 - Ministry of Transportation, Ontario
 - Ontario Building Code
 - Ontario Fire Code
 - Ontario Electrical Safety Authority
 - Technical Standards & Safety Authority
 - Underwriters' Laboratories of Canada
 - Workplace Hazardous Materials Information System
 - Local By-laws
 - Other applicable Government regulated requirements
 - Workplace Safety & Insurance Act

Interpretation

The validity and interpretation of this contract and each clause and part thereof shall be governed by the laws of the Province of Ontario.

Accessibility

The City of Sarnia is required to comply with the Accessibility for Ontarians with Disabilities Act, 2005 as amended and any associated regulations. Under this Act, every person who deals with members of the public or other third parties on behalf of the City must receive training about the provision of goods and services to persons with disabilities.

The Contractor and any subcontractor hired by the contractor for the completion of the work must be aware of these requirements and certifies that all required personnel have or will receive training prior to commencement of work under the contract.

An Accessible Customer Service Training Manual and other training resources are available online at www.sarnia.ca