



# Invitation to Tender

CITY OF KENORA

## INVITATION TO TENDER / ADVERTISEMENT

Sealed Tenders

for:

2026 City of Kenora Crack Sealing & Sidewalk Grinding Program  
(the "Project")

Tender Number: 26-CS-3117110

Will be received

by:

**City of Kenora**  
(the "City")

at:

**1 Main Street South**  
**Kenora, ON P9N 3X2**  
**Attention: Deputy Clerk**

Time and date for Tender Closing is:

11:00:00 a.m. CST/CDT on March 19, 2026  
(the "Tender Closing")

1. The work to be undertaken generally involves, but is not necessarily limited to: Asphalt pavement crack sealing, mastic repairs, and concrete sidewalk grinding (the "Work") as set out on the list of drawings and specifications described as follows: Refer to Appendix "A" and "C" of the Instructions to Tenderers
2. The Successful Bidder shall achieve substantial performance of the Work for the Project by October 30, 2026.
3. The drawings and specifications for the Project can be obtained from MERX under the name "2026 City of Kenora Crack Sealing & Sidewalk Grinding Program" or from Stefan Stiller, Project Manager, [sstillier@kenora.ca](mailto:ssillier@kenora.ca).
4. All written inquiries regarding the technical aspects of the drawings and specifications for the Work shall be submitted to Stefan Stiller, [sstillier@kenora.ca](mailto:ssillier@kenora.ca), however the bidder(s) acknowledge and agree that the CITY does not have an obligation to provide a response to any written inquiry and that it is in the sole and unfettered discretion of the CITY to provide any written response to a written inquiry. Telephone inquiries will not be replied to.
5. Submission of a tender by a Bidder gives the CITY the right to require the Bidder to execute the contract to perform the Work as set out within the tender documents. Tenders may not be withdrawn after the Tender Closing and will be irrevocable and open for acceptance by the CITY for a period of sixty (60) days following the end of the day of the Tender Closing. The Successful Bidder will be notified in writing of the award of the Tender when the CITY delivers a letter of intent to the Successful Bidder.



# **INSTRUCTIONS TO TENDERERS**

**CITY OF KENORA**

## INSTRUCTIONS TO TENDERERS

### 1 BACKGROUND

- 1.1 The City of Kenora (the "CITY") is seeking tenders for asphalt pavement crack sealing, mastic repairs, and sidewalk grinding (the "Work") as more particularly set out in Appendices "A" through "D" attached to these Instructions to Tenderers
- 1.2 The CITY will receive sealed tenders until 11:00:00 a.m. CST/CDT on March 19, 2026 ("Tender Closing"). Faxed tenders will not be accepted and will be returned to the Tenderer.

### 2 SUBMISSION OF TENDERS

- 2.1 Each Tender shall be addressed to the CITY in a sealed envelope clearly marked with the Tenderer's name, address and tender number. The sealed envelope containing the Tender shall be delivered before the Tender Closing to the CITY in accordance with the Invitation to Tender and the Instructions to Tenderers at:

**City of Kenora  
1 Main Street South  
Kenora, ON P9N 3X2  
Attention: Kelly Galbraith, Deputy Clerk**

- 2.2 In the event of a dispute or issue about whether or not a tender complies with the Instructions to Tenderers, the CITY reserves the right to retain and open a copy of the tender in question in order to seek and obtain a legal opinion in relation thereto. The opening of a tender does not in any way constitute an admission by the CITY as to the compliance, or not, of the subject tender.
- 2.3 Inquiries are permitted until **March 16<sup>th</sup> at 4:30pm CST** and are to be directed to the below City Contact via email.

Stefan Stiller, P.Eng | Project Manager | [ssiller@kenora.ca](mailto:ssiller@kenora.ca)

### 3 TENDER FORM

- 3.1 Each Tenderer shall submit a complete tender on the Tender Form which forms part of the Tender Documents with the blank spaces filled in. The tender sum must be written in words as well as figures, and must be for a sum in Canadian Dollars including all tariffs, freight, duties and taxes other than the Goods and Services Tax which must be shown as a separate amount unless otherwise specifically stipulated (hereinafter referred to as the "Tender Sum"). In the event of a discrepancy between an amount written in words and an amount written in figures, the amount written in words shall be deemed the intended amount. Tenders shall be written in English.
- 3.2 Notwithstanding the foregoing, the CITY shall be entitled to accept a Tender in such form as the CITY in its sole and unfettered discretion deems acceptable irrespective of irregularities whether of a trivial nature, or whether the Tender is noncompliant in a trivial manner.

- 3.3 The CITY shall not be obligated to accept Tenders that are unsigned, incomplete, conditional, illegible, unbalanced, obscure, contain irregularities of any kind, or contain mathematical or calculation errors of any kind. On Unit Price Tenders, if there is a discrepancy found between the unit price and the extended amount, the unit price shall be deemed to represent the intention of the Tenderer. Discrepancies between words and figures will be resolved in favour of the words. Discrepancies between the indicated sum of any figures and the correct sum thereof will be resolved in favour of the correct sum. Any discrepancies between the Tender Form and a post Tender Closing submission required by the Tender Documents will be resolved in favour of the post Tender Closing submission.
- 3.4 Tenders shall not be withdrawn, modified or clarified after being delivered in accordance with the Tender Documents unless such withdrawal, modification or clarification is made in writing and actually received by Kelly Galbraith of the CITY prior to the Tender Closing. Any withdrawal, modification or clarification of the Tender must be followed by a letter of confirmation signed and sealed in the same manner as the Tender and delivered to the address for the CITY in the Invitation to Tender within 48 hours of the Notice of the Withdrawal, Modification or Clarification.

#### **4 THE FREEDOM OF INFORMATION AND PROTECTION OF PRIVACY ACT**

- 4.1 All documents submitted to the CITY will be subject to the protection and disclosure provisions of Ontario's *Freedom of Information and Protection of Privacy Act* ("FOIP"). FOIP allows persons a right of access to records in the CITY's custody or control. It also prohibits the CITY from disclosing the Tenderer's personal or business information where disclosure would be harmful to the Tenderer's business interests or would be an unreasonable invasion of personal privacy as defined in sections 17 and 21 of FOIP. Tenderers are encouraged to identify what portions of their submissions are confidential and what harm could reasonably be expected from its disclosure. However, the CITY cannot assure Tenderers that any portion of the Tenderer's documents can be kept confidential under FOIP.

#### **5 TENDER DOCUMENTS**

- 5.1 The documents for the Tender are:
- Invitation to Tender
  - Instructions to Tenderers
  - Appendix A – Tender Form
  - Appendix B – Tender Submission Checklist
  - Appendix C – Scope and Specifications
  - Appendix D – Proposed Contract

(hereinafter collectively referred to as the "Tender Documents")

By submitting its Tender, the Tenderer acknowledges and agrees that it has received and reviewed the Tender Documents.

## **6 VARIATION IN TENDER DOCUMENTS AND NO IMPLIED OBLIGATIONS**

- 6.1 The Tenderer shall carefully examine the Tender Documents. Any errors, omissions, discrepancies or clauses requiring clarification shall be reported in writing to the CITY at least 10 calendar days prior to the Tender Closing. Where necessary the CITY shall respond to reported errors, omissions, discrepancies or clauses requiring clarification by way of Addenda.
- 6.2 Should a Tenderer fail to report any such errors, omissions, discrepancies or clauses requiring clarification at least 10 calendar days prior to the Tender Closing, the CITY shall be the sole judge as to the intent of the Tender Documents.
- 6.3 No implied obligation of any kind by or on behalf of the CITY shall arise from anything in the Tender Documents, and the express covenants and agreements contained in the Tender Documents and made by the CITY, are and shall be the only covenants and agreements that apply.
- 6.4 Without limiting the generality of Article 6.3, the Tender Documents supercede all communications, negotiations, agreements, representations and warranties either written or oral relating to the subject matter of the Tender made prior to the Tender Closing, and no changes shall be made to the Tender Documents except by written Addenda.

## **7 ADDENDA**

- 7.1 Any changes to the Tender shall be in writing in the form of Addenda. Any Addenda issued to the Tender shall form part of the Tender Documents, whether or not the receipt of same has been acknowledged by a Tenderer, and the cost for doing the work therein shall be included in the Tender Sum. Verbal representations shall not be binding on the CITY nor form part of the Tender Documents. Technical inquiries into the meaning or intent of the Tender Documents must be submitted in writing to the person identified in Article 2.3 of the Instructions to Tenderers.

## **8 TENDER**

- 8.1 Tenderers submitting Tenders shall be actively engaged in the line of work required by the Tender Documents and shall be able to refer to work of a similar nature performed by them. They shall be fully conversant with the general technical phraseology in the English language of the lines of work covered by the Tender Documents.
- 8.2 Each Tenderer shall review the Tender Documents provided by the CITY and confirm that it is in possession of a full set of Tender Documents when preparing its Tender.
- 8.3 Tenders shall be properly executed in full compliance with the following requirements:
  - 8.3.1 The signatures of persons executing the Tender must be in their respective handwriting; and

- 8.3.2 If the Tender is made by a limited company, the full name of the company shall be accurately printed immediately above the signatures of its duly authorized officers and **the corporate seal shall be affixed;**
- 8.3.3 If the Tender is made by a partnership, the firm name or business name shall be accurately printed above the signature of the firm and the Tender shall be signed by a partner or partners who have authority to sign for the partnership;
- 8.3.4 If the Tender is made by an individual carrying on business under the name other than its own, its business name together with its name shall be printed immediately above its signature or
- 8.3.5 If the Tender is made by a sole proprietor who carries on business in its own name, the proprietor shall print its name immediately below its signature.

8.4 Tenders received from agents representing principals must be accompanied by a Power of Attorney signed by the said principals showing that the agents are duly authorized to sign and submit the Tender and have full power to execute the Contract on behalf of their principals. The execution of the Contract will bind the principals and have the same effect as if it were duly signed by the principals.

## **9 TENDER DEPOSIT**

- 9.1 The Tenderer is required to submit with its Tender, a Consent of Surety and a Bid Bond in a form acceptable to the CITY, or in lieu of a Bid Bond, a Tenderer may submit, along with a Consent of Surety, a certified cheque or an irrevocable letter of credit in favour of the CITY equal to 10% of the Tender Sum as a guarantee that, if awarded the contract for the Work, the Tenderer will execute a contract within the specified time frames.
- 9.2 The Bid Bonds, certified cheques or irrevocable letters of credit of the unsuccessful Tenderers shall be returned as soon as possible after the Contract has been duly executed by the Successful Tenderer.
- 9.3 The CITY will not pay any interest on money furnished as security.
- 9.4 The Bid Bond and Consent of Surety shall be issued by a Surety Company licensed in the Province of Ontario and satisfactory to the CITY.

## **10 NOT USED**

## **11 INSURANCE**

- 11.1 The Tender shall be accompanied by a Certificate of Insurance, certifying that the insurance as required by the Contract, is in place or, if the required insurance is not in place, by a Letter of Insurability or Undertaking of Insurance in standard form from the Tenderer's Insurance Broker certifying that the required insurance will be issued to the Tenderer if the Tenderer is the Successful Tenderer.

- 11.2 The Successful Tenderer shall be required to secure and maintain at its own expense the insurance provided for in the Contract.
- 11.3 The Successful Tenderer shall provide all required insurance to the CITY no later than 10 working days after receipt of a Letter of Intent from the CITY provided in accordance with Article 16.

## **12 COMMENCEMENT AND COMPLETION OF WORK**

- 12.1 The Successful Tenderer shall commence the Work within 10 working days after receipt of the Letter of Intent from the CITY and shall complete the Work by the dates specified in the Contract.

## **13 SITE CONDITIONS**

- 13.1 The Tenderer is responsible for inspecting the site(s) of the Work and for making whatever inquiries or arrangements necessary for it to become fully informed of the nature of the site(s) of the Work, including the soil structure and topography of the site(s), and of the Work to be performed and all matters which may in any way affect the Work. Without limiting the foregoing, by the submission of its Tender, the Tenderer acknowledges that it has investigated and satisfied itself as to:
- a) the nature of the Work;
  - b) the location and all conditions relating to the location of the Work including, but not limited to, accessibility, general character, surface and sub-surface conditions, soil structure, utilities, road, uncertainties of seasonal weather and all other physical, topographical, geological and geographic conditions;
  - c) the general character, conditions, laws and restrictions applicable to the Work that might affect the performance of the Work;
  - d) all environmental risks, conditions, laws and restrictions applicable to the Work that might affect the Work; and
  - e) the magnitude of the work required to execute and complete the Work.
- 13.2 The Tenderer is fully responsible for obtaining all information required for the preparation of its Tender and for the execution of the Work. The CITY is not responsible for undertaking any investigations to assist the Tenderer. Any information, plans, drawings, shop drawings or existing equipment or facilities, photos of the original construction, reports or other documents which are not included or referred to in the Tender Documents (the "Non-Tender Information"), form no part of this Tender. The CITY and the CITY's Consultants assume no responsibility of any kind whatsoever arising from or relating to its failure to include or refer to such Non-Tender Information. Tenderers who obtain or rely upon such Non-Tender Information or other documents, do so entirely at their own risk.
- 13.3 The Tenderer's obligation to become familiar with the information described in Article 13.1 is not lessened or discharged by reason of any technical reports, including soils reports or data, test hole drilling reports or other soils information, made available or supplied in conjunction with the tendering process. Any technical reports so provided are for information only and neither the CITY nor the CITY's Consultants accept or assume any responsibility for the contents or accuracy of

such technical reports and the Tenderer agrees that the CITY, the CITY's Consultants and their representatives shall not be liable in any way to the Tenderer in respect of such technical reports. The Tenderer further agrees that it shall not rely upon any oral information provided to it by the CITY, the CITY's Consultants or their representatives.

#### **14 PRIME COST AND CONTINGENCY SUMS**

- 14.1 The Tenderer shall include in its Tender Sum any prime cost sums or contingency sums. The Harmonized Sales Tax shall be shown as a separate amount.

#### **15 PERMITS AND INSPECTIONS**

- 15.1 The Tenderer shall include in its Tender Sum the cost of permits and inspections required by any governmental or other authority having jurisdiction or as required to fully perform the Work in accordance with the Contract.

#### **16 SUCCESSFUL TENDERER**

- 16.1 Award of Contract by the CITY occurs once the Tenderer receives a Letter of Intent duly executed by a Director of the CITY after they have been duly and legally authorized by the CITY to send such Letter of Intent.
- 16.2 Following the receipt of the Letter of Intent, the Successful Tenderer shall provide the Certificate of Insurance unless previously provided.
- 16.2.1 Upon the Successful Tenderer complying with the requirements of both Articles 16.2 and 16.4, the certified cheque or Bid Bond or irrevocable letter of credit, as the case may be, shall be returned to the Successful Tenderer.
- 16.2.2 If the Successful Tenderer fails to comply with either or both of the requirements of Articles 16.2 and 16.4, the certified cheque or Bid Bond or irrevocable letter of credit, as the case may be, shall be forfeited to the CITY as compensation for damages the CITY may suffer.
- 16.3 The forfeiture of a Successful Tenderer's certified cheque or Bid Bond or irrevocable letter of credit shall not be construed as a waiver of any rights or remedies which the CITY may have against such Tenderer for loss or damages incurred or suffered in excess of the amount of such certified cheque or Bid Bond or irrevocable letter of credit.
- 16.4 Within 10 working days of receipt of the Contract from the CITY, the Successful Tenderer shall duly execute the Contract and return the Contract to the CITY.
- 16.5 Within 10 working days of receipt of a Letter of Intent in accordance with Article 16.1, the Successful Tenderer shall submit a proposed Construction Schedule showing the anticipated time of commencement and completion of each of the various operations to be performed under the Contract.

## 17. TENDER EVALUATION CRITERIA

- 17.1 Each Tender will be evaluated on the basis of the criteria listed below and the CITY will have the sole and unfettered discretion to award up to the maximum number of points for each criteria as listed below. By submitting a Tender, the Tenderer acknowledges and agrees that the CITY has, and it is hereby entitled to exercise, the sole and unfettered discretion to award the points for the evaluation of the noted criteria.
- 17.2 By submitting its Tender, each Tenderer acknowledges and agrees that it waives any right to contest in any legal proceedings, the decision of the CITY to award points in respect of the criteria noted below. The criteria and the maximum number of points for each criteria are as follows:

**1. Price** **100 points.**

**Total Points** **100 points**

## 18 WORKERS' COMPENSATION

- 18.1 Each Tenderer is to submit with its Tender, a letter of account from the Workers' Compensation Board – Ontario. This letter is to be current and not dated 14 calendar days prior to the Tender Closing.
- 18.2 The Tenderers who do not have an account with the Workers' Compensation Board- Ontario shall provide with their Tender evidence of a subcontractor or other company that will carry such coverage on their behalf.
- 18.3 If the Tenderer is performing work in any exempt industry within the meaning of the Workers Compensation Board Act (the "WCB Act") and does not carry coverage, the Tenderer acknowledges that
- 18.3.1 the CITY is subject to a deeming order under s. 14(2) of the WCB Act (the "Deeming Order"); and
- 18.3.2 the Deeming Order states that all of the Tenderer's employees, directors, proprietors, partners or employees are deemed to be CITY employees for the purposes of the WCB Act while performing work for the CITY; and
- 18.3.3 the effect of the Deeming Order is that the Tenderer's employees, directors, proprietors and partners who are injured while performing work for the CITY under the Contract, have no right to sue anyone and are limited to a claim under the WCB Act.
- 18.4 The Tenderer shall communicate the existence and effect of the Deeming Order to all of its employees, directors, proprietors, partners or employees.
- 18.5 The CITY will reject any Tender which fails to comply with the provisions set out in Article 18.

## **19 REGISTRATION**

19.1 Prior to commencing the Work, the Successful Tenderer shall obtain all authorizations required by the laws of the Province of Ontario and of the Country of Canada enabling it to carry on business to complete the Work required under the Contract. Failure to be properly authorized shall entitle the CITY to forthwith terminate the Contract without compensation.

## **20 TENDERS EXCEEDING BUDGET**

20.1 In addition to the rights contained within Article 20 herein, if the Tender Sum of every Tenderer exceeds the amount the CITY has budgeted for the Work, the CITY may reject all Tenders or attempt to negotiate a lower price with the Tenderer who, in the sole and unfettered discretion of the CITY, has submitted the most advantageous Tender.

20.2 Each Tenderer acknowledges and agrees that the CITY has the sole and unfettered discretion to employ any criteria in order to determine the Tender most advantageous to the CITY, that the CITY has no obligation to neither disclose such criteria nor employ the criteria listed outlined in Article 17 Tender Evaluation Criteria.

20.3 By submitting its Tender, each Tenderer waives its right to contest in any action, application, case or legal proceeding in any court, the decision which the CITY may pursue under Article 20.1 and 20.2 herein.

20.4 If the Tender Sum of every Tenderer exceeds the amount budgeted for the Work and the CITY negotiates with the Tenderer who has submitted the Tender considered most advantageous to the CITY:

20.4.1 All statements made by either side in the course of negotiation are without prejudice and confidential;

20.4.2 In particular, the CITY's attempt to negotiate with such Tenderer does not constitute a rejection of its Tender; and

20.4.3 The CITY will not attempt to obtain a lower price for the same work that the Tenderer originally bid on, but may attempt to obtain a lower price for an altered scope of work. In no event will the CITY be obliged to disclose the amount budgeted for the Work.

## **21 NOT USED**

## **22 CANADIAN FREE TRADE AGREEMENT**

22.1 The provisions of the Canadian Free Trade Agreement ("CFTA") apply to this Tender.

## **23 ACCEPTANCE OR REJECTION OF TENDERS**

23.1 As it is the purpose of the CITY to obtain the Tender most suitable and most advantageous to the interests of the CITY, and notwithstanding anything else contained within the Tender Documents, the CITY reserves the right, in its sole and unfettered discretion, to reject or accept any Tender, including the right to reject all Tenders. Without limiting the generality of the foregoing, any Tender which

- a) is incomplete, obscure, irregular or unrealistic;
- b) is non-compliant in a trivial/immaterial or substantial/material manner, or conditional;
- c) has erasures or corrections;
- d) omits a price on any one or more items in the Tender;
- e) fails to complete the information required in the Tender;
- f) is accompanied by an insufficient certified cheque, irrevocable letter of credit or by a Bid Bond in an unsatisfactory form,

may at the CITY's sole and unfettered discretion be rejected or accepted. Further, a Tender may be rejected or accepted on the basis of the CITY's unfettered assessment of its best interest, which includes the CITY's unfettered assessment as to a Tenderer's past work performance for the CITY or for anyone else or as to a Tenderer's financial capabilities, completion schedule, or ability to perform the Work, or the CITY's desire to reduce the number of different contractors on the location of the Work at any given time. The CITY reserves the right to negotiate after Tender Closing time with the Tenderer that the CITY deems has provided the most advantageous Tender; in no event will the CITY be required to offer any modified terms to any other Tenderer prior to entering into a Contract with the successful Tenderer and the CITY shall incur no liability to any other Tenderers as a result of such negotiation or modification.

## **24 LAW AND FORUM OF TENDER**

24.1 The law to be applied in respect of the Tender Documents and the Contract shall be the law of the Province of Ontario and all civil actions commenced in relation to the Tender Documents or Contract shall be adjudicated by the Courts of the Province of Ontario and by submitting Tenders, Tenderers are taken to have agreed to attorn to the jurisdiction of the Courts of the said Province.

## **25 ACCEPTANCE PERIOD**

25.1 The Tender shall be irrevocable and open for acceptance by the CITY for the period of time contained in the Invitation to Tender, namely, sixty (60) days following the end of the day of the Tender Closing. The time and date of the Tender Closing is as defined in the Invitation to Tender.

*Lake of the Woods*  
**KENORA**



**APPENDIX A  
TENDER FORM & UNIT PRICE  
SCHEDULES**

**CITY OF KENORA**

**TENDER FORM**

Tender Number: 26-CS-3117110  
Tender Title: 2026 City of Kenora Crack Sealing & Sidewalk Grinding Program

We, \_\_\_\_\_  
(Company)

of \_\_\_\_\_  
(Business Address)

having examined the Tender Documents as issued by: the City of Kenora (the "City"), and having visited the site(s) of where the Work is required to be undertaken; hereby offer to enter into a Contract to perform the Work required by the Tender Documents for the Tender Sum as follows:

- 1. Sidewalk Grinding & Crack Sealing Sub-Total

\_\_\_\_\_  
(Sub-Total written in words)

\_\_\_\_\_  
(Sub-Total in figures)

- 2. Ontario Harmonized Sales Tax (HST = 13%) \$ \_\_\_\_\_

- 3. Tender Sum (summation of Items 1 & 2 above)

\_\_\_\_\_  
(Tender Sum including HST written in words)

\_\_\_\_\_  
(Tender Sum including HST in figures)

in Canadian funds, which price includes any specified cash and contingency allowances and the applicable taxes in force at this date and except as may be otherwise provided in the Tender Documents. The following quantities being approximate quantities, we agree to accept final payment on actual quantities measured during and on completion of the work at the unit prices stated hereafter.

**Unit Price Schedule:**

The Unit Price Schedule shall be completed in accordance with the Tender Documents; any errors will be corrected as identified in Article 3.0.

ITEM	DESCRIPTION	EST. QTY.		UNIT PRICE	TOTAL
<b>2026 Crack Sealing &amp; Sidewalk Grinding</b>					
A.1	Mobilization/Demobilization	1	LS	\$ _____	\$ _____
A.2	10-75mm grind on standard 1.5m sidewalk	130	ea.	\$ _____	\$ _____
A.3	Asphalt Crack Cleaning & Sealing	14,500	lin. m.	\$ _____	\$ _____
A.4	Mastic Asphalt Repair	3500	kg	\$ _____	\$ _____
				<b>SUB-TOTAL</b>	\$ _____

**Declarations:**

We hereby acknowledge and declare that:

- (a) we agree to perform the Work in compliance with the required completion schedule stated in the Contract;
- (b) no person, firm or corporation other than the undersigned has any interest in this Tender or in the proposed Contract for which this Tender is made;
- (c) the Tender Security is attached to this Tender. We specifically acknowledge and agree that the Tender Security may be forfeited to the City pursuant to the terms set forth in the Instructions to Tenderers;
- (d) we hereby acknowledge and confirm that the City has the right to accept any tender or to reject any or all tenders in accordance with the Instructions to Tenderers;
- (e) this Tender is open to acceptance for a period of sixty (60) days from the date of Tender Closing.

Signatures:

Signed, sealed and submitted for and on behalf of:

Company: \_\_\_\_\_  
*(Name)*

\_\_\_\_\_  
*(Street Address or Postal Box Number)*

\_\_\_\_\_  
*(City, Province & Postal Code)*

**(Apply SEAL above)**

Signature: \_\_\_\_\_

Name & Title: \_\_\_\_\_  
*(Please Print or Type)*

Witness: \_\_\_\_\_

Dated at \_\_\_\_\_ this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_

*Lake of the Woods*  
**KENORA**



**APPENDIX B  
TENDER SUBMISSION  
CHECKLIST**

**CITY OF KENORA**

The Tender Submission Checklist is provided for the convenience of Tenderers as a summary of mandatory submission requirements. In the event of any discrepancy between the Tender Articles and the Tender Submission Checklist, the Tender Articles shall govern. The Checklist is for reference only, and the City makes no representations or warranties regarding its accuracy or completeness. By submitting a Tender, the Tenderer acknowledges and agrees that the City shall not be held liable for any errors, omissions, or discrepancies in the Checklist and expressly waives any and all claims, demands, or legal actions against the City arising from or relating to its use.

- 1) Tender Form and Unit Price Schedule – Article 3.0 – Completed in the form provided in Appendix A
- 2) Tender Deposit – Article 9.0 – Consent of Surety and Bid Bond
- 3) Insurance – Article 11.0 – Certificate of insurance or a Letter of Insurability or Undertaking of insurance. Level of insurance detailed in the proposed Contract
- 4) Workers' Compensation – Article 18.0 – Letter of account from the Workers' Compensation Board – Ontario or alternatives as listed in Article 18.0

*Lake of the Woods*  
**KENORA**



# **APPENDIX C**

# **SCOPE & SPECIFICATIONS**

**CITY OF KENORA**

## **Scope of Work**

The scope of work includes crack sealing, mastic repairs, and sidewalk grinding within the City of Kenora municipal boundary. Both are to be completed in order of highest priority to lowest priority.

### **Crack Sealing and Mastic Repairs**

Crack Sealing: Proposed locations are shown on the following map. Final locations and priorities will be determined with the successful bidder.

Mastic Repairs: Various bridges and roads within the City, exact locations to be determined with successful bidder. Mastic repairs are assumed to be 30%-50% of the contract amount.

### **Sidewalk Grinding**

Sidewalk grinding maps and locations to be provided to the successful bidder in May 2026. Locations will be further divided into three priorities of high level (larger than 20 mm), medium level (between 10 to 20 mm), and low level priority (less than 10 mm).



- Road
- 2026 Potential Crack Seal Roads
- Waterbody



**CONSTRUCTION SPECIFICATION FOR  
ROUTING AND SEALING CRACKS IN HOT MIX ASPHALT PAVEMENT**

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**341.01 SCOPE**

This specification covers the work of routing existing cracks up to 20 mm in width and cleaning and sealing routed and unrouted cracks in hot mix asphalt pavements with hot poured rubberized asphalt sealant compound.

**341.01.01 Specification Significance and Use**

This specification has been developed for use in municipal-oriented Contracts. The administration, testing, and payment policies, procedures, and practices reflected in this specification correspond to those used by many municipalities in Ontario.

Use of this specification or any other specification shall be according to the Contract Documents.

### **341.01.02 Appendices Significance and Use**

Appendices are developed for municipal use, and then, only when invoked by the Owner.

Appendices are developed for the Owner's use only.

Inclusion of an appendix as part of the Contract Documents is solely at the discretion of the Owner. Appendices are not a mandatory part of this specification and only become part of the Contract Documents as the Owner invokes them.

Invoking a particular appendix does not obligate an Owner to use all available appendices. Only invoked appendices form part of the Contract Documents.

The decision to use any appendix is determined by an Owner after considering their contract requirements and their administrative, payment, and testing procedures, policies, and practices. Depending on these considerations, an Owner may not wish to invoke some or any of the available appendices.

### **341.02 REFERENCES**

When the Contract Documents indicate that municipal-oriented specifications are to be used and there is a municipal-oriented specification of the same number as those listed below, references within this specification to an OPSS shall be deemed to mean OPSS.MUNI, unless use of a provincial-oriented specification is specified in the Contract Documents. When there is not a corresponding municipal-oriented specification, the references below shall be considered to be the OPSS listed, unless use of a provincial-oriented specification is specified in the Contract Documents.

This specification refers to the following standards, specifications, or publications:

#### **Ontario Provincial Standard Specification, Material**

OPSS 1212 Hot Poured Rubberized Asphalt Joint Sealing Compound

#### **Ministry of Transportation, Ontario, Publication**

SP-024 Manual for Condition Rating of Flexible Pavements - Distress Manifestations

### **341.04 DESIGN AND SUBMISSION REQUIREMENTS**

#### **341.04.01 Submission Requirements**

The Contract Administrator shall be provided with the following data at least five Business Days prior to placement of sealant:

- a) The sealant information from the manufacturer shall include:
  - i. Batch numbers.
  - ii. Test results shall be according to OPSS 1212 from each batch on samples that have been subjected to both one heating cycle and two heating cycles.
  - iii. Application recommendations.

- iv. Recommended heating time and temperature.
  - v. Allowable storage time and temperature after initial heating.
  - vi. Allowable reheating criteria.
  - vii. Application temperature range.
- b) Storage location of sealant pucks.

**341.05 MATERIALS**

**341.05.01 Crack Sealant**

Crack sealant shall be hot poured rubberized asphalt sealant according to OPSS 1212.

**341.06 EQUIPMENT**

**341.06.01 Router**

All routing equipment shall consist of mechanical routers capable of continually creating well-defined right-angled routs and keeping the rout centreline within 8 mm of the centre of the crack and providing a rout width of 40 to 50 mm and a depth of not less than 8 mm. For surfaces that are to be overlaid with hot mix as part of the Contract, rout geometry of 20 x 20 mm shall be used. Such capability shall be demonstrated to the Contract Administrator prior to its use.

When it cannot be demonstrated to the satisfaction of the Contract Administrator that a router is capable of maintaining the specified dimensions and shape of the rout, then as many cutters in the router's cutting head shall be adjusted or replaced as necessary, until the dimensions and shape of the rout again meets the specification requirements.

**341.06.02 Heating Kettle**

The heating kettle for joint sealant compound shall be a double boiler oil heat transfer type with built in agitator and equipped with thermometers to measure the temperature of both heat transfer oil and the sealing compound. The heating kettle shall be equipped with a spigot.

The heating kettle shall have automatic thermo controls that will prevent overheating of the sealant.

**341.06.03 Hot Compressed Air Lance**

The hot compressed air lance shall have a discharge air temperature of approximately 500 °C ± 100 °C and an air velocity greater than 1,000 m/s.

**341.07 CONSTRUCTION**

**341.07.01 General**

Cracks shall be routed, cleaned, and sealed or cleaned and sealed as specified in the Contract Documents.

The router and cutter heads shall be maintained, operated, and replaced as required to prevent the shattering of aggregate along the sides and bottom of the rout.

**341.07.02                      Crack Routing**

Cracks up to 20 mm in width shall be routed to the dimensions as specified in the Contract Documents.

All other cracks up to 20 mm in width discovered at the time of routing shall be routed with the exception of any alligator and map cracking as described in SP-024.

The routing of all transverse and skewed cracks shall be terminated within 25 mm of the pavement edge.

Two or more cracks shall not be joined by routing through uncracked pavement or routed in areas where a crack does not exist.

Cracks greater than 20 mm in width do not require routing.

**341.07.03                      Sealant Preparation**

The sealant compound shall be melted slowly with constant agitation until it is in a lump-free, free-flowing state, within the temperature range recommended by the manufacturer for application.

Temperature gauges for both the heating oil and sealant on the kettle melter shall be properly calibrated at all times.

At the start of each day, the heating kettle is to be completely empty, clean and free of any residual material, prior to it being charged. The initial charge of the kettle with sealant shall be carried out in the presence of the Contract Administrator at a location acceptable to both the Contract Administrator and the Contractor.

The temperature of the sealant shall be monitored and recorded with the applicable date and time. The temperature records shall be made available to the Contract Administrator upon request.

**341.07.04                      Cleaning of Routed and Unrouted Cracks**

Immediately prior to placing the sealant compound, all routed and unrouted cracks shall be cleaned and dried using a hot compressed air lance.

Before sealant application, all loose debris from the routing and cleaning operation shall be completely removed from the road surface. All moisture, debris, and loose fractured aggregate shall be removed from the routed and unrouted cracks immediately prior to the time the sealant compound is being placed.

**341.07.05                      Placing Sealant**

Immediately following the cleaning of routed and unrouted cracks, the sealant compound shall be placed using either a manual pouring cone filled from a spigot located on the heating kettle itself, or by using a hose and wand fitted with the proper sized tip that allows the sealant to be pumped directly from the heating kettle into the routed or unrouted crack. The tip of the cone or wand shall be placed to the bottom of the crack to ensure uniform application.

For pavements that are to be overlaid with hot mix, all routed and unrouted cracks shall be filled with sealant so that, upon complete cooling, the top of the sealant is 4 to 6 mm below the adjacent pavement surface.

For all other pavements, all routed and unrouted cracks shall be filled with sealant so that, upon complete cooling, the sealant is no more than 1 mm below the adjacent pavement surface.

A squeegee, with its bottom edge trimmed to form the specified dimensions of the finished sealant surface after cooling, shall be used to strike off the sealant after it is poured into the routed or unrouted crack. The sealant shall be struck off starting from the low side and working towards the high side of the pavement surface.

In order to maintain the sealant surface dimensions, the sealant shall be topped up and struck off again prior to being dusted.

Sealant compound damaged by construction traffic or the Contractor's operation shall be replaced.

#### **341.07.06 Sealant Dusting**

Where traffic is to be maintained during crack sealing, the surface of the sealant shall be dusted with Portland cement or alternative materials acceptable to the Contract Administrator prior to allowing traffic on the sealed areas.

#### **341.07.07 Management of Excess Material**

Management of excess material shall be according to the Contract Documents.

### **341.08 QUALITY ASSURANCE**

#### **341.08.01 Sampling and Testing Sealant**

The Contract Administrator may require a sample of the sealant puck, approximately 4 litres in volume, from one or more batches of sealant. Such samples shall be placed in properly labelled suitable containers and submitted to the Contract Administrator.

At least once each hour, the temperature of the sealant shall be independently checked by the Contract Administrator. If the Contract Administrator finds that the temperature of the sealant is not within the manufacturer's recommended range, then all of the sealant that has been placed since the last acceptable temperature verified by the Contract Administrator shall be removed. Any sealant that is rejected shall be replaced with acceptable material.

During the process of placing, the Contract Administrator may require samples of the sealant directly from the heating kettle. A minimum of three 4-litre samples shall be taken from the heating kettle spigot at points when approximately 1/4, 1/2, and 3/4 of the proposed volume has been placed on the Contract. Additional samples may be requested by the Contract Administrator. All samples shall be placed in a properly labelled triple tight metal container.

All samples submitted to the Contract Administrator shall be labelled with the following information clearly shown:

- a) Contract number.
- b) Sealant type including the manufacturer and the product designation.
- c) Manufacturer's batch number.

- d) Roadway name.
- e) Contractor and subcontractor.
- f) The station and offset in the roadway where the sample was taken.
- g) The point in the Contract at which the sample was taken (e.g., the percentage of work completed).
- h) Sampling date.
- i) Weather conditions.
- j) Persons taking the sample.

**341.08.02                      Deficiencies and Repairs**

Where a routed crack is found to be more than 10% outside the specified rout dimension, geometry, or location, it shall be considered unacceptable and corrected by additional routing.

Where the sealant subsides in the rout by more than 1 mm below the adjacent pavement surface, the surface of the sealant shall be cleaned and topped up. Where pavements are to be overlaid, if the surface of the sealant is greater than 6 mm below the adjacent pavement surface, the surface of the sealant shall be cleaned and topped up to between 4 mm and 6 mm.

Sealant shall be removed, the routed crack rerouted at the Contract Administrator's discretion, and the rout resealed, when the sealant:

- a) contains imbedded foreign material other than dusting material,
- b) contains entrapped air bubbles,
- c) has debonded or pulled away from the routed crack, or,
- d) has been excessively heated.

**341.09                              MEASUREMENT FOR PAYMENT**

**341.09.01                      Actual Measurement**

**341.09.01.01                  Routing, Cleaning, and Sealing Cracks in Hot Mix Asphalt Pavement**

Measurement for payment shall be in linear metres along the routed, cleaned, and sealed crack.

Any portion of the sealed crack where the rout migrates away from the crack shall not be included in the measurement.

**341.09.01.02                  Cleaning and Sealing Unrouted Cracks in Hot Mix Asphalt Pavement**

Measurement for payment shall be measured in linear metres along the cleaned and sealed unrouted crack.

**341.09.02 Plan Quantity Measurement**

When measurement is by Plan Quantity, such measurement is based on the units shown in the clauses under Actual Measurement.

**341.10 BASIS OF PAYMENT**

**341.10.01 Routing, Cleaning, and Sealing Cracks in Hot Mix Asphalt Pavement - Item  
Cleaning and Sealing Unrouted Cracks in Hot Mix Asphalt Pavement - Item**

Payment at the Contract price for the above tender items shall be full compensation for all labour, Equipment, and Material to do the work.

Sealant compound damaged by construction traffic or the Contractor's operation shall be replaced at no extra cost to the Owner.

Work to remove and replace sealant compound due to the sealant not being within the manufacturer's specified temperature range shall be completed at no extra cost to the Owner.

Work to remove and replace sealant compound to correct deficiencies and make repairs shall be completed at no extra cost to the Owner.

**Appendix 341-A, November 2021  
FOR USE WHILE DESIGNING MUNICIPAL CONTRACTS**

**Note:** This is a non-mandatory Commentary Appendix intended to provide information to a designer, during the design stage of a contract, on the use of the OPS specification in a municipal contract. This appendix does not form part of the standard specification. Actions and considerations discussed in this appendix are for information purposes only and do not supersede an Owner's design decisions and methodology.

**Designer Action/Considerations**

The designer should specify the following in the Contract Documents:

- The quantity of routing and sealing of cracks and the quantity of cleaning and sealing of cracks. (341.07.01)
- Rout dimensions. (341.07.01)

Consideration for cracks to be routed and sealed include:

- Transverse and skewed cracks up to 20 mm in width.
- Longitudinal cracks up to 20 mm in width that are further than 150 mm from the pavement edge.

Consideration for cracks to be sealed without routing includes longitudinal cracks in fully or partially paved shoulders, within 150 mm of the pavement edge.

The designer may specify an overfill sealant geometry for transverse and skewed cracks. If overfill is desired, the designer should specify it in the Contract Documents.

Routing and sealing is recommended for the spring and fall months when crack widths are larger and the pavement surface temperature is less than 50 °C.

The designer should identify to the Owner the need for full-time inspection of the routing and sealing operations.

A pavement condition survey is recommended to determine the extent of routing and sealing or crack cleaning and sealing required.

The designer should ensure that the Ontario Provincial Standards General Conditions of Contract and the 100 Series General Specifications are included in the Contract Documents.

**Related Ontario Provincial Standard Drawings**

OPSD 508.010            Routing and Sealing Cracks Up to 20 mm in Width in Asphalt Pavement

*Lake of the Woods*  
**KENORA**



**APPENDIX D**  
**PROPOSED CONTRACT**

**CITY OF KENORA**

THIS AGREEMENT dated the \_\_ day of \_\_\_\_\_, 20\_\_ (the "Agreement").

**BETWEEN:**

**CITY OF KENORA**  
1 Main Street South  
Kenora, ON P9N 3X2

**(NAME OF CONTRACTOR)**

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Telephone:807-467-2000  
Fax:  
Email:

Telephone: \_\_\_\_\_  
Fax: \_\_\_\_\_  
Email: \_\_\_\_\_

Attention: \_\_\_\_\_  
(the "City")

Attention: \_\_\_\_\_  
(the "Contractor")

**SERVICES AGREEMENT**

**NOW THEREFORE** this Agreement witnesses that in consideration of the premises and the covenants herein contained, the City and the Contractor covenant and agree each with the other as follows:

**Services.** The Contractor shall provide the following services (the "Services") upon the terms and conditions contained within this Agreement and in the attached Schedule.

- (a) **Commencement Date:** \_\_\_\_\_
- (b) **Completion Date: October 30, 2026** \_\_\_\_\_
- (c) **Description of Services:** Asphalt pavement crack sealing, mastic repairs, and sidewalk grinding (the "Work") as more particularly set out in Appendices "A" through "D" of the Instructions to Tenderers.
- (d) **Payment** – The City shall pay the Contractor the following amounts for the Contractor's delivery of the Services as follows, plus any applicable HST thereon (the "Payment"):  
\_\_\_\_\_  
\_\_\_\_\_

**CITY OF KENORA**

**[NAME OF CONTRACTOR]**

\_\_\_\_\_

Per: \_\_\_\_\_

Per: \_\_\_\_\_

Per: \_\_\_\_\_

Per: \_\_\_\_\_

## GENERAL TERMS & CONDITIONS

### ARTICLE I – SERVICES

**1.01 Performance of Work.** All work done in performing the Services under this Agreement shall:

- (a) commence the Services on the commencement date and complete the Services on the completion date
- (b) be performed by the Contractor, exercising the degree of care, skill and diligence normally used in performing services of a similar nature to those Services to be provided under this Agreement, and otherwise in accordance with the provisions of this Agreement .
- (c) be supervised by competent and qualified personnel;
- (d) be performed in accordance with the City's directions and to the City's satisfaction;
- (e) comply with the requirements of this Agreement; and
- (f) be documented according to the City's requirements.

All work done in performance of the Services shall be subject to such review as the City considers advisable or appropriate. Any work not meeting the requirements of this Agreement may be rejected by the City and shall require appropriate correction by the Contractor. No such review by the City shall relieve the Contractor from the performance of its obligations hereunder.

**1.02 Warranty of Contractor.** The Contractor represents and warrants to the City:

- (a) that it has sufficient skill, knowledge, expertise and resources, including qualified and competent personnel, to perform and provide the Services in accordance with the provisions of this Agreement;
- (b) that the entering into of this Agreement and the performance of the Services hereunder shall not cause the Contractor to be in breach of any obligation of confidentiality which the Contractor may owe to any third party, or otherwise cause the Contractor to be in breach of any agreement or undertaking with any third party.

**1.03 Permits and Licenses.** The Contractor shall obtain and pay for all necessary permits or licenses required in connection with providing or performing the Services.

**1.04 Provision of Supplies:** The Contractor shall be responsible for the provision of all supplies and equipment required to perform the Services.

### ARTICLE II- PERSONNEL

**2.01 No Substitution.** If specific personnel are designated by this Agreement to perform the Services or any part thereof, the Contractor shall not substitute other personnel for those designated without the prior written consent of the City. If any such personnel shall become no longer available for any reason, the Contractor shall supply a similarly experienced and skilled individual as soon as practicable subject to approval of such individual by the City.

**2.02 No Subcontractors.** The Contractor shall not engage or retain any agent, subcontractor or any other third party for purposes of providing the Services hereunder in whole or in part without the prior written consent of the City (which may be arbitrarily withheld) and on terms and conditions satisfactory the City in its sole discretion. The use of any agents, subcontractor or any other third parties by the Contractor shall in no way relieve the Contractor from its responsibility and obligation to provide the Services in accordance with the provisions of this

Agreement.

**2.03 Removal of Personnel.** The Contractor shall forthwith remove from the City's premises and from performance of the Services any officer, personnel, agent or subcontractor who is for any reason unsatisfactory to the City including, without limitation, any such person who:

- (a) is charged with and convicted of a criminal offence;
- (b) fails, in the opinion of the City or in the opinion of the Contractor, to carry out the work required in the performance of the Services in a satisfactory manner including, without limitation, causing any delays in the performance of the Services; or
- (c) removes any property not belonging to the Contractor, its officers or personnel or any agent or subcontractor, as the case may be, from the City premises without the prior written consent of the City,

Any costs or expenses associated with removal of any such officer, personnel, agent or subcontractor shall be the responsibility of the Contractor, including any necessary training costs or expenses associated with replacement persons, as determined by the City.

**2.04 Compliance with Policies.** The Contractor shall ensure that its personnel and agents and subcontractors, when using the City's premises, comply with all security, safety, emergency and access policies, procedures or regulations in effect from time to time on such premises.

**2.05 Safety.** The Contractor shall be responsible for the safety of its personnel and any agents or subcontractors, and all property of the Contractor or its personnel, agents or subcontractors while on the City premises. The City shall not be responsible for any personal property, tools or equipment that the Contractor or its personnel, agents or subcontractors may bring onto the City premises.

### ARTICLE III- PAYMENT

**3.01 Invoice.** On the first day of each calendar month following the Commencement Date, an invoice shall be submitted to the City by the Contractor in respect of Services provided during the immediately preceding month. Each invoice shall, in respect of such month:

- (a) refer to the purchase order number;
- (b) identify as separate items any tax separately chargeable to the City (in addition to the Payments) but only as specified and provided for in Special Terms & Conditions; and
- (c) identify the applicable monthly rate and a description of the Services performed in that regard.

**3.02 Payment.** Subject to the verification of each invoice by the City and all other terms and conditions of the Agreement (including, without limitation, the Services being satisfactory to the City), the City shall pay the Contractor the amount of each invoice within thirty (30) days of receipt of same.

**3.03 Excess Payments.** The City shall not pay any amount exceeding the amounts contemplated within the Special Terms & Conditions, or make any payment for any work done by the Contractor after the Completion Date, unless prior written authorization has been obtained by the Contractor from the City.

**3.04 Taxes.** All customs duties, excise taxes (including HST), federal, provincial and municipal taxes and other duties,

taxes or charges of a similar nature, and all travel and other expenses of the Contractor are included within the Payments, unless expressly stated otherwise in the Special Terms & Conditions.

**3.05 No Payment for Costs, Expenses or Damages.** The City shall not be required to make any payment to the Contractor under this Agreement for any costs, expenses, losses or damages suffered or incurred:

(a) in performing any work reasonably incidental to the performance of the Services;

(b) as a result of any delays in performing the Services from any cause whatsoever; or

(c) to remedy errors or omissions for which, in the reasonable opinion of the City, the Contractor is responsible.

**3.06 Performance upon Failure of Contractor.** Upon failure of the Contractor (including any of its subcontractors) to perform any of its obligations under this Agreement the City may, but shall not be obligated to perform or engage a third party to perform any of those obligations without prejudice to any other remedy or right it may have and the Contractor, immediately upon written demand, shall pay an amount equal to all costs and expenses incurred by the City in association therewith, plus interest on that amount from the date the cost or expense is incurred until it is paid at the rate of 1.5% per month (19.6% per annum). The City may, in its discretion, deduct any such amount, together with interest, from any payment then or thereafter due by the City to the Contractor, provided that such action shall not be deemed a waiver of any action that the City may pursue to collect any costs or expenses incurred herewith that exceed the amounts owed to the Contractor.

**3.07 Records.** The Contractor shall keep and maintain, at its principal place of business in Ontario, or at such other location as may be agreed by the City, adequate and complete records from which any fees, costs, charges or other amounts payable by the City to the Contractor may be readily and accurately determined and verified for each calendar month during the Term of this Agreement. The Contractor shall take such steps as are necessary to maintain such records in accordance with generally accepted accounting practices in Canada.

**3.08 Access to Records.** Such records shall be open to inspection by the City, or its agents, during the Contractor's regular business hours. The Contractor shall be required to retain such records for a period of seven (7) years following expiration or termination of this Agreement.

**3.09 Acceptance is Not Waiver.** The acceptance by the City, from time to time, of any statement of fees, costs, charges or other amounts delivered by the Contractor or any payment of such amounts based thereon shall not be deemed to be a waiver by the City of any of the Contractor's obligations or the City's rights under this Agreement. However, if the City has not caused an audit or inspection of the Contractor's accounting records or Services for any calendar month to commence within two (2) years of the last day of any such calendar month, the City and the Contractor agree that the accounting records and all such amounts paid for that calendar month shall have been deemed to have been made accurately and in full compliance with the

provisions of this Agreement.

#### **ARTICLE IV – TERMINATION**

**4.01 Termination for Convenience.** This Agreement may be terminated at any time, with or without cause, by either party providing written notice to the other party at least thirty (30) days prior to the termination date specified in the notice. Alternatively, the City may terminate this Agreement upon shorter notice, subject to payment of normally anticipated Payments under this Agreement during the required notice period set forth above

**4.02 Termination for Default.** Without restricting the provisions respecting termination for convenience, the City may forthwith terminate this Agreement by providing written notice of termination to the Contractor, without prejudice to any other right or remedy the City may have, if the Contractor at any time:

(a) fails to comply with any of the terms or conditions of this Agreement; or

(b) is adjudged or otherwise becomes bankrupt or insolvent, makes an assignment for the benefit of creditors, if a receiver is appointed for the property of the Contractor, or if the Contractor ceases to carry on business in the normal course;

such termination to be effective on the date such notice of termination is received.

**4.03 Payment upon Termination.** The City shall, in the event of termination of this Agreement, other than pursuant to Section 4.01(a) of this Schedule, pay to the Contractor all amounts for completed work due to the Contractor in accordance with this Agreement, less any amounts which may be owing by the Contractor to the City as provided for hereunder. The City shall have no further liability of any nature whatsoever to the Contractor for any losses or damages suffered or sustained, either directly or indirectly, by the Contractor including, without limitation, loss of profit, as a result of the termination of this Agreement.

**4.04 Survival of Obligations.** Notwithstanding the expiration or termination of this Agreement for any cause, the provisions of this Agreement regarding payment obligations, indemnities, confidentiality obligations and proprietary rights, and those provisions which are expressly or impliedly intended to survive, shall survive any such expiration or termination and shall remain in force.

#### **ARTICLE V - INDEMNITY AND INSURANCE**

**5.01 Indemnity.** Notwithstanding any other provision of this Agreement to the contrary, the Contractor shall:

(a) be liable to the City, its directors, officials, insurers, servants, agents, personnel, successors, assigns and representatives of any kind for any and all losses, costs, fees, fines, damages and expenses (including, but not limited to, costs on a solicitor and his own client full indemnity basis) which the City or such persons may pay or incur;

(b) indemnify and hold harmless the City, its councillors, officials, insurers, servants, agents, personnel, successors, assigns and representatives of any kind from and against any and all liabilities, claims, suits or actions which may

be brought or made against the City or such persons; as a result of or in connection with:

- (c) the performance of the Services; or
- (d) any breach, violation or non-performance of any covenant, condition or agreement in this Agreement set forth and contained on the part of the Contractor to be fulfilled, kept, observed or performed; or
- (e) any breach of confidentiality on the part of the Contractor or its officers or personnel, or any agent or subcontractor or their respective personnel; or
- (f) any damage to property (including loss of use thereof) or injury to person or persons, including death resulting at any time therefrom, arising out of or in consequence of the performance of the Services.

**5.02 Insurance.** The Contractor shall maintain, in full force and effect with insurers licensed in the Province of Ontario, the following insurance:

- (a) comprehensive general liability insurance in respect to the Services and operations of the Contractor for bodily injury and property damage with policy limits of not less than Five Million (\$5,000,000.00) Dollars per occurrence, with the City named as an additional insured with respect to the performance of the Services. Such policy shall include blanket contractual coverage and a cross liability clause, and shall provide for a minimum of thirty (30) days prior written notice to the City upon any cancellation or material change in coverage;
- (b) all risk insurance on any personal property, tools or equipment to be used in performing or providing the Services, to full replacement value;
- (c) standard automobile insurance providing coverage of at least Two Million (\$2,000,000.00) Dollars inclusive for bodily injury and property damage (if the Contractor is required to use a vehicle in the performance of the Services); and
- (d) coverage for such other risks against which a prudent contractor providing similar services might reasonably be expected to insure in respect of which coverage is available, as well as any other insurance of such type and amount and increased minimum insurance limits as may reasonably be required by the City.

**5.03 Placement of Insurance.** The above insurance shall be in a form and with insurers acceptable to the City.

**5.04 Waiver of Subrogation.** All policies of insurance required under this Agreement will, to the extent generally available and as applicable, provide for a waiver of subrogation.

#### **ARTICLE VI – General**

**6.01 Assignment.** The Contractor shall not assign this Agreement or any portion thereof without the prior written consent of the City, which consent may be arbitrarily withheld. Upon any transfer or assignment by the City of this Agreement, the City shall be released from its obligations hereunder. The City may assign this Agreement in whole or in part to any person in the City's sole discretion without notice to the Contractor.

**6.02 Waiver.** The failure of a party to insist in any one or

more cases upon the strict performance of any of the covenants of this Agreement or to exercise any option herein contained shall not be construed as a waiver or relinquishment for the future of such covenant or option and no waiver by the City of any provision of this Agreement shall be deemed to have been made unless expressed in writing and signed by the City.

**6.03 Statutory Reference.** Any reference to a statute shall include and shall be deemed to be a reference to such statute and to the regulations made pursuant thereto and promulgated thereunder with all amendments made thereto and in force from time to time and any final judicial decisions interpreting the same, and to any statute or regulation that may be passed which has the effect of supplementing or superseding the statute so referred to or the regulations made pursuant thereto.

**6.04 Enurement.** This Agreement shall enure to the benefit of and be binding upon the parties hereto and their respective successors, assigns or approved assigns, as the case may be.

**6.05 No Agency.** Nothing in this Agreement, nor in any acts of the City and the Contractor pursuant to this Agreement, shall be construed, implied or deemed to create an agency, partnership, joint venture or employer and employee relationship between the City and the Contractor, and neither party has the authority to bind the other to any obligation of any kind.

**6.06 Whole Agreement.** The provisions of this Agreement constitutes the entire agreement between the parties and supercedes any prior agreements, letters of intent or understanding, whether written or oral, between the parties with respect to the matters contemplated herein. No terms, conditions, warranties, promises or undertakings of any nature whatsoever, express or implied, exist between the parties with respect to this Agreement except as herein set forth. This Agreement may be amended, changed or modified only by further written agreement between the parties.

**6.07 Partial Invalidity.** If any term, condition or provision of this Agreement or the application thereof to any person or circumstance shall to any extent be invalid or unenforceable, the remainder of this Agreement or the application of such term, condition or provision to persons or circumstances other than those as to which it is held invalid or unenforceable, shall not be affected thereby and each term, condition or provision shall be separately valid and enforceable to the fullest extent permitted by law.

**6.08 Time of Essence.** Time shall be of the essence of this Agreement.

**6.09 Expiration of Time.** In any case where the time limited by this Agreement expires on a Saturday, Sunday or legal holiday in Ontario, the time limited shall be extended to and shall include the next succeeding day which is not a Saturday, Sunday or legal holiday in Ontario.

**6.10 Governing Law.** This Agreement shall be governed by the laws in force in the Province of Ontario and the courts of Province of Ontario shall have exclusive jurisdiction with respect to any dispute, matter or thing arising herefrom.