

Indemnification Provision:

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

Insurance Provisions:

It is the responsibility of the Contractor and their Insurance Broker to review all potential operations and exposures to determine if the coverage and limits noted below are sufficient to address all insurance related exposures presented by the specifications of the Project, Work or Supply. The Contractor shall insure its undertaking, business and equipment under the following coverage so as to protect and indemnify and save harmless the **Township of Wilmot**:

a.) **General Liability Insurance:** The Contractor shall maintain liability insurance acceptable to the **Township of Wilmot** throughout the term of this Agreement from the date of commencement of work until one year from the date of substantial performance of work. Coverage shall consist of a comprehensive policy of public liability and property damage insurance, with all applicable coverage extensions/endorsements available, in an amount of not less than \$2,000,000 per occurrence. Such insurance shall name **Township of Wilmot** and any other person or party identified in the contract documents, as an additional insured with a cross liability endorsement and severability of interests provision. The policy SIR/deductible shall not exceed \$100,000 per claim (unless approved by risk management) and if the policy has an aggregate limit, the amount of the aggregate shall be double the required per occurrence limit.

b.) **Owned and Non-Owned Automobile Liability Insurance:** The Contractor shall maintain liability insurance on all Owned, Non-Owned and Leased Automobiles used in the performance of this project to a limit of \$2,000,000 per occurrence throughout the term of this Agreement from the date of commencement of work and until one year after the date of substantial performance of work.

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

It is also understood and agreed that in the event of a claim any deductible or self-insured retention under these policies of insurance shall be the sole responsibility of the Contractor and that this coverage shall preclude subrogation claims against the **Township of Wilmot** and any other person insured under the policy and be primary insurance in response to claims. Any insurance or self-insurance maintained by the **Township of Wilmot** and any other person insured under the policy shall be considered excess of the Contractor's insurance and shall not contribute with it. The minimum amount of insurance required herein shall not modify, waive or otherwise alter the Contractor's obligation to fully indemnify the **Township of Wilmot** under this Agreement.

The **Township of Wilmot** reserves the right to modify the insurance requirements as deemed suitable. If the **Township of Wilmot** requests to have the amount of insurance increased or to obtain other special insurance for this Project then the Contractor shall endeavour forthwith to obtain such increased or special insurance at the **Township of Wilmot**'s expense.

d.) **Third Party Claims Process:**

The **Township of Wilmot**'s claims process for Third Party claims is to refer the claimant directly to the Contractor and to leave the resolution of the claim with the Contractor. This applies regardless of whether or not it is an insured loss.

As the **Township of Wilmot** has a responsibility to the taxpayers, we must ensure that claimants are dealt with in a fair and efficient manner. Claims reported to the Contractor, either directly by a third party or through the **Township of Wilmot** shall be promptly investigated by the Contractor (its insurer or adjuster). The Contractor shall make contact with the third party claimant upon receipt of notice of a claim. The Contractor shall initiate an investigation of the claim immediately upon notice, and advise the third party claimant in writing (preferably by a qualified third party adjusting firm), with a copy to the **Township of Wilmot**, of its position regarding the claim upon completion of this investigation. Such investigation shall be done in a professional manor and reasonable time frame consistent with Insurance Institute of Canada practices. The Contractor shall include in their response the reasons for their position. Should this position not resolve the claim and be accepted by the third party claimant, the Contractor shall immediately report the claim to its Insurer. If the Contractor fails to follow this procedure, the **Township of Wilmot** may report such claims to the Contractor's insurer.

Nothing herein shall limit the right of the **Township of Wilmot** to investigate and resolve any such claims notwithstanding the response of the Contractor and/or its Insurer and to seek indemnification from the Contractor or to exercise any other rights under the Contract. (Costs may include but not limited to: adjusting fees, settlement awards, reasonable legal fees, administrative costs, etc.)

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