

The Corporation of the County of Peterborough

Contract No. T-16-2020

Articles of Agreement

This Agreement made the _____ day of _____, 2020.

Between

The Corporation of the County of Peterborough

Herein after called the "Municipality"

and

Vendor

Herein after called the "Contractor"

In consideration of the covenants and agreements hereinafter set forth and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties agree as follows:

1. The Work

The Contractor shall:

- (a) Perform the Work required by the Contract Documents for Contract No. **T-16-2020** for Replacement of Westwood Bridge; and
- (b) Do and fulfil everything indicated by the Contract Documents; and
- (c) Complete the Work no later than **October 30, 2021**, subject with the provisions of the Contract Documents.

2. Contract Documents

The following is an exact list of the Contract Documents referred to in "# 1. The Work" of this Agreement.

- 1. This Agreement;
- 2. Tender issued by the County of Peterborough No. **T-16-2020**;
- 3. Supplementary Appendices;
- 4. Addenda No.;
- 5. Appendix A & B;
- 6. Tender offer of the Contractor;
- 7. Ontario Provincial Standards (**as stated in tender**); and
- 8. OPSS Traffic Standards.

3. Contract Price

The Contract Price is (**enter Price**) in Canadian funds, which price shall be subject to adjustments as may be required in accordance with the provisions of the Contract Documents.

4. Time Schedule

The Contractor shall perform the Services with the utmost dispatch and, subject to delays beyond its control, shall complete the Services in accordance with the Tender.

5. Payment

Unless progress payments or any alternate payment terms are specified in the contract, the Company shall submit to the County a “proper invoice” dated the first day of the calendar month which shall be received by the County by the first calendar day of the month, between the hours of 8:30 a.m. to 4:30 p.m. ET on a Business Day. If the proper invoice is received by the County after 4:30 p.m. on a Business Day or at any time on a non-Business Day, the proper invoice shall be deemed to be received by the County on the following Business Day.

Subject to the foregoing and the Construction Act, 1990, or its latest edition, the County shall make payment to Company within twenty-eight (28) calendar days of the County’s receipt of the proper invoice, unless within fourteen (14) calendar days of the County’s receipt of the proper invoice, the County issues a notice of non-payment to the Company in accordance with the Construction Act, 1990, or its latest edition. If a notice of non-payment is issued by the County, the County shall pay the Company the undisputed portion of the proper invoice within twenty-eight (28) calendar days after receiving the proper invoice.

For the purposes of this Section:

- A) a “proper invoice” shall mean a written bill or other request for payment issued by the Company for services and/or materials comprising the work performed and which contains the information set out in Section 6.1 of the Construction Act. The proper invoice shall be directed to **finance@ptbocounty.ca** of the County’s **Finance Department**, with copies sent to:
pnielsen@ptbocounty.ca
dsaccoccia@ptbocounty.ca and;
- B) a “Business Day” means any day of the week other than a Saturday, Sunday or day on which counties and municipalities in the Province of Ontario are authorized or obligated by law to close or are generally closed.

6. Rights and Remedies

- A) The duties and obligations imposed by the Contract Documents and the rights and remedies available thereunder shall be in addition to and not a limitation of any duties, obligations, rights and remedies otherwise imposed or available by law.
- B) No action or failure to act by the Municipality or the Contractor shall constitute a waiver of any right or duty afforded under the Contract, nor shall any such action

or failure to act constitute an approval of or acquiescence in any breach thereunder, except as may be specifically agreed in writing.

7. Implied Contract

No implied contract of any kind whatsoever by or on behalf of the Municipality shall arise or be implied from anything in this contract contained, nor from any position or situation of the parties at any time, if being clearly understood that the express covenants and agreements herein contained made by the Municipality shall be the only covenants and agreements upon which any right against the Municipality may be founded.

8. Warranty Period

The warranty period shall be 24 months from the date of Total Performance of the Work or such longer periods as may be specified for certain Products or work.

9. Bid Deposit

The bid deposit delivered to the Municipality with the bid documents is acknowledged to be (10% of total tendered price).

10. Performance Security Requirements

Performance Bond and Labour and Material Payment Bond, each in the amount of 100% of the total Bid price (**enter amount**) (including Harmonized Sales Tax) is required. The contract shall have a two-year maintenance period 24 months from the date of substantial completion.

11. Insurance Requirements

Public Liability and Property Damage Insurance is required, and where applicable the bidder shall carry standard automobile and non-owned automobile liability insurance Policy for the works. Coverage shall be at least \$5,000,000.00 in General Commercial Liability naming the County and participating Townships/ Municipalities as an additional insured under the policy. Additional coverage shall include:

- a) Broad Form Property/Builders Risk 1.1 times total value of construction (as per CCDC 41/OPSS); and
- b) Broad form Contractor's equipment – Coverage for contractor's construction equipment; and
- c) Auto Liability - \$5,000,000 (as per CCDD 41/OPSS); and
- d) Environmental/Pollution Liability - \$5,000,000.

All shop drawings for formwork, shoring, temporary supports, access platforms, suspended platforms, scaffolding, etc. shall bear the stamp and signature of two Professional Engineers licenced in the Province of Ontario (Design and Check Engineers) who are specialists in the applicable field. The Design Engineer shall carry a minimum of two million dollars \$2,000,000.00, Professional Liability Insurance. Proof of insurance shall be provided to the Contract Administrator prior to commencing work. The Design and Check

Engineer's will be retained by the Contractor and costs for all such work shall be included in the Contract price for the applicable item.

12. Workplace Safety Insurance Board

A valid WSIB Certificate is required.

13. Liquidated Damages

It is agreed by the parties to the Contract that in case all the work called for under the Contract is not completed by the interim and completion dates as specified, or as extended in accordance with Section GC3.06 of the General Conditions, a loss or damage will be sustained by the Authority. Since it is and will be impracticable and extremely difficult to ascertain and determine the actual loss or damage which the Authority will suffer in the event of and by reason of such delay, the parties hereto agree that the Contractor will pay to the Authority the sum of Two Thousand Five Hundred Dollars **(\$2,500.00)** as liquidated damages for each and every calendar days delay in achieving both interim completion and completion of the work beyond the dates prescribed. It is agreed that this amount is an estimate of the actual loss or damage to the Authority which will accrue during the period in excess of the prescribed date for completion.

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

14. Receipt of and Addresses for Notices

Any notices, requests, demands or other communications (a "notice") required or permitted to be given hereunder shall be in writing and delivered by hand or telecopy as follows:

The Corporation of the County of Peterborough, 470 Water Street, Peterborough, Ontario, K9H 3M3, e-mail gmurphy@ptbocounty.ca

(Enter vendor information)

or at such other address as may from time to time be designated by notice given in the manner herein provided. Such notice shall be deemed to have been given when delivered, provided that if notice is delivered by facsimile or by hand on a day other than a Working Day or after 3:00 p.m. on a Working Day, then the same shall be deemed to have been given on the next Working Day.

15. Law of the Contract

The law of the Province of Ontario shall govern the interpretation of the Contract Documents referred to in #2 of this Agreement.

16. Language of the Contract

This Agreement is drawn in English at the request of all parties hereto; ce marché est rédigé en anglais à la demande de toutes les parties.

17. Succession

The General Conditions of the Contract hereto annexed, and the other aforesaid Contract Documents, are to be read into and form part of this Agreement and the whole shall constitute the Contract between the parties and subject to law and the provisions of the Contract Documents shall inure to the benefit of and be binding upon the parties hereto, their respective heirs, legal representatives, successors and assigns.

18. Severability

Each provision of this Agreement shall be valid and enforceable to the fullest extent permitted by law. If any provision of this Agreement or the application thereof to any person or circumstance is determined to be invalid or unenforceable to any extent:

- A) The remainder of this Agreement or the application of such provision to any other person or circumstance shall not be affected thereby; and
- B) The parties shall negotiate in good faith to amend this Agreement to implement the provisions set forth.

19. Force Majeure

If either party is unable to perform its obligations under this Agreement due to the occurrence of one or more events beyond that party's reasonable control, the time for performance of such obligations shall be extended for a period of time equal to the period of the duration of such events, provided that (a) such party promptly notifies the other of: (i) the invocation of this section; (ii) the expected date of resumption; (iii) in the case of the Vendor, the details of a workaround or other contingency plan that will enable the Vendor to minimize the length of the delay; and (b) such party uses commercially reasonable efforts to give effect to that workaround or other contingency plan. This Section will not apply to the extent the event extends for greater than 30 days.

20. Termination

If the Contractor fails in the Municipality's reasonable opinion to give satisfactory service to the Municipality in accordance with the terms of this Agreement and the Tender forms and specifications attached to this Agreement, or if for any other reason the Contractor's services are no longer required, then the Municipality may terminate this Agreement on giving 60 days' notice in writing to the Contractor.

21. Termination for Non-Compliance

In the event that it should come to the attention of the Municipality that:

- 1) The Contractor has failed to comply with any terms of this Agreement; or
- 2) The Contractor has failed to comply with any terms of any applicable license, law, regulation; or

- 3) The Contractor or any employee of the Contractor has conducted themselves in an inappropriate or unbecoming manner

then the Municipality may notify the contractor in writing of the Municipality's concern, and if the matter is not corrected to the satisfaction of the Municipality within five (5) days of such notice, then the Municipality may unilaterally terminate this Agreement and the Contractor shall have no recourse against the Municipality by reason of such termination save and except for the collection of any outstanding payment obligations due to the date of termination only.

22. Arbitration and Mediation

Despite anything contained in this Agreement to the contrary, in the event that a dispute or difference arises with respect to this Agreement that cannot be resolved by negotiation between the parties and the parties agree that they do not wish to terminate this Agreement, then in such event the parties agree to use the services of an experienced, qualified mediator to attempt to resolve their dispute or difference and, failing agreement on the procedure to be followed, the mediation shall be conducted in accordance with the "Rules of Procedure for the Conduct of Mediations" of the Arbitration and Mediation Institute of Ontario.

23. Indemnity

The Contractor shall be responsible for and shall give adequate attention to the faithful prosecution and completion of all matters pursuant to this Agreement. In addition to the protection provided, the Contractor shall promptly indemnify and save harmless the Municipality from all suits and actions for damages and costs to which the Municipality might be put by reason of injury to or death of persons and damage to property resulting from negligence, breach, fault, act, omission, default, carelessness or any other cause in the performance of this work. The indemnity obtained in this Agreement shall not be prejudiced by, and shall survive, the termination of this Agreement.

In witness whereof the parties hereto have executed this Agreement under their respective corporate seals and by the hands of their proper officer's thereunto duly authorized.

Dated at _____, this _____ day of _____, 2020.

Vendor

The signatory shall have the authority to bind the corporation or company for purposes of this agreement.

	Per:		
		(signature)	(print name – title)
Witness as to Signature Or Seal Affixed Contractor		I/we have the authority to bind the Corporation or Business	

	Per:		
		(signature)	(print name – title)

Dated at Peterborough, this _____ day of _____, 2020.

The Corporation of the County of Peterborough

Warden, J. Murray Jones

Manager Legislative Services/Clerk,
Lynn Fawn