

Section C – Form of Agreement

**Daleview Road Reconstruction
Contract No. T-2020-04**



Section C - Form of Agreement Index

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Agreement Between Owner And Contractor

This Agreement is dated this _____, 2020

and is made **by and between:**

The Township of Douro-Dummer (Hereinafter called the "Owner") of the first part

and

_____. (the "Contractor")

The Owner and the Contractor agree as follows:

1. The Work

1.1 The Contractor shall provide, furnish and perform all labour, materials, products, equipment and services necessary for the complete and proper execution of the Work set out, required by, and in accordance with the Contract Documents for the Daleview Road Reconstruction located in Douro-Dummer, Ontario.

1.2 The Work includes:

- Removals of trees, guiderail, asphalt and road culverts;
- Removal and installation of new driveway culverts;
- Site grading to tie into existing ditching and driveways;
- Installation of a new 300mm diameter storm sewer system with catch basins;
- Installation of SAFENCE High tension cable barrier with terminal systems;
- Installation of a geogrid reinforced slope including a drainage tile system;
- Placement of 50mm surface treatment with concrete gutter; and,
- Street signs, topsoil and sod.

If elected, additional provisional work may include surface treatment and preparation for the following road segments:

- Daleview Road from Division road to Station 0+048
- Daleview Road from Station 1+270 to Warsaw Road

2. Contract Time

2.1 The Contractor shall:

- (a) Perform the Work required by and in accordance with the Contract Documents;
- (b) Commence the Work by July 6, 2020;
- (c) Complete the application of surface treatment by September 1st, unless otherwise approved;
- (d) Attain Substantial Performance of the Work by October 30, 2020;
- (e) All deficiencies to be completed by November 30, 2020 for project Completion and,
- (f) The Warranty shall end after a period of 12 months from the date of Substantial Performance of the Work in accordance with GC 7.16.

2.2 Time shall be deemed to be of the essence in the performance of the Contractor's obligations under this Contract.

2.3 If the time required for the performance of the work is increased or decreased, in accordance with Section GC3.06 of the General Conditions, due to alterations or changes in the Work required to be performed under the Contract, the Substantial Performance date or Completion date shall be increased or decreased as determined by the Owner.

3. Contract Documents

3.1 The Contract supersedes all prior negotiations, representations or agreements, written or oral, relating in any manner to the Work and represents the entire agreement between the parties. No alteration or amendment to this Contract, no course of conduct or dealing between the parties, and no express or implied acceptance of alterations or amendments to the Contract shall be binding unless it is in writing and signed by each party.

3.2 The Contract shall consist of only those Contract Documents listed in paragraph 3.3 of this Agreement.

3.3 The following shall comprise the Contract Documents in relation to the Contract; In case of any inconsistency or conflict between the provisions of this Agreement and the Plans or Specifications or General Conditions or Form of Tender or any other document or writing, the provisions of such documents shall take precedence and govern in the following order, namely:

- (a) this Agreement Between Owner and Contractor;
- (b) Addenda;
- (c) Special Provisions;
- (d) Contract Drawings;
- (e) Tender Submission Package dated _____, 2020;
- (f) Standard Specifications;
- (g) Standard Drawings;
- (h) General Provisions;
- (i) General Conditions, Ontario Provincial Standards for Roads and Public Works, O.P.S.S MUNI 100 November, 2019; and,
- (j) Supplemental reports (if applicable)

3.4 The intent of the Contract Documents is to include all labour, materials, products, equipment and services necessary for the performance of the Work by the Contractor in accordance with the Contract Documents. Any item of Work mentioned in the Contract Documents or reasonably inferable from the Contract Documents but not otherwise shown or described, shall be provided by the Contractor as if shown or otherwise described or inferable. Any items omitted from the Contract Documents which are reasonably necessary or inferable for the completion of the Work, or related work, shall be considered a portion of the Work and included in the scope of Work to be performed under this Contract.

3.5 Specifications, models, drawings, and any copies thereof produced by D.M. Wills Associates Limited (the "Engineer") are and shall remain the property of the Engineer, with the exception of the Owner's and Contractor's respective copies of the same. All specifications, models, and drawings shall be used by the Owner and Contractor only with respect to the Work and are not to be used for any other purpose. Such specifications, models, and drawings are not to be copied or revised in any manner without the express written consent of the Engineer.

4. Contract Price

4.1 The estimated Contract price is _____ HUNDRED and _____ THOUSAND, _____ HUNDRED and _____ DOLLARS and _____ CENTS (\$____,____.____) plus Harmonized Sales Tax (H.S.T.). The actual Contract price will be determined by multiplying the unit prices set out in the Tender by the actual quantities of Work supplied by the Contractor and certified by the Contract Administrator.

- 4.2 In the event that the Form of Tender provides for and contains a Contingency Allowance, it is understood and agreed that such Contingency Allowance is merely for the convenience of accounting by the Owner, and the Contractor is not entitled to payment thereof except for extra or additional work carried out by the Contractor as directed by the Contract Administrator and in accordance with the Contract and only to the extent of such extra or additional work.
- 4.3 The unit prices in the Tender include all taxes and duties in force or applicable during the progress of the Work, except for the H.S.T.
- 4.4 All amounts are in Canadian funds and shall be subject to the Construction Act and other adjustments as provided in the Contract Documents.
- 4.5 The Owner may withhold payments at any time in accordance with the Prompt Payment requirements as outlined in the Construction Act, if:
- (a) The Contractor has not complied with the terms of the Contract; and/or
 - (b) Liens or claims have been registered, filed or made or there is reasonable probability thereof; and/or
 - (c) The Contractor has not promptly made payments to all Subcontractors.

5. Liquidated Damages

- 5.1 It is agreed by the parties to this Contract that in the event that all of the work called for under the Contract, is not completed by the dates specified, or as extended in accordance with Section GC3.06 of the General Conditions, a loss will be sustained by the Owner. The Contractor will pay the Owner the sum of \$1,000.00, as Liquidated Damages, for each and every calendar day beyond the date prescribed in achieving Substantial Performance.
- 5.2 In the event all work items identified in the executed **Form of Substantial Performance** are not complete to the satisfaction of the Owner by the date of Completion, the Owner may invoice the Contractor for any additional consulting fees incurred after the date of Completion.
- 5.3 The Owner may deduct any amount due under this paragraph from any monies 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 Owner.
- 5.4 The Contractor shall not be assessed with liquidated damages for any delay caused by Acts of God or of the Public Enemy, Acts of the Province or of a Foreign State, Fire, Flood, Earthquake, Epidemic, Quarantine Restriction, Embargo or delays of Subcontractors due to such causes.

6. Contractor's Standard of Care

- 6.1 In performing the Work the Contractor shall exercise a standard of care, skill, judgment and diligence that would normally be exercised by an experienced, skilled and prudent contractor supplying similar services for similar projects. The Contractor acknowledges and agrees that, throughout this Contract, the Contractor's obligations, duties and responsibilities shall be interpreted in accordance with this standard. The Contractor shall exercise the same standard of due care, skill, judgment and diligence in respect of any Materials, products, Equipment, Subcontractors, suppliers, personnel or procedures which it may recommend to the Owner or utilize in performing the Work.
- 6.2 No inspection, review, approval or payment given or made by or on behalf of the Owner relieves the Contractor of its obligations under this Contract.
- 6.3 The Contractor shall be solely responsible for initiating, maintaining and supervising all safety precautions and programs in connection with the performance of the Work, and for compliance with the rules, regulations, codes and practices required by the applicable construction health and safety legislation, including all of the obligations and responsibilities of the Constructor.

7. Agreements and Amendments

- 7.1 No action or failure to act by the Owner or Contract Administrator 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 of the Contract, except as may be specifically agreed in writing.
- 7.2 Nothing contained in this Agreement shall create any contractual relationship between either the Contract Administrator or Engineer and:
- (a) The Contractor;
 - (b) A subcontractor or supplier of the Contractor;
 - (c) Any agent, employee, or representative of the Contractor, a subcontractor, or supplier of the Contractor; or
 - (d) Other persons performing any of the Work.

In addition to the above, no contractual relationship shall exist between the Owner and any of the individuals listed in (b) through (d).

8. Notice

8.1 Communications in writing between the parties shall be addressed as set out below:

The Owner: The Township of Douro-Dummer
894 South Street, P.O. Box 92
Warsaw, Ontario
K0L 3A0

The Contract Administrator: D.M. Wills Associates Limited
150 Jameson Drive,
Peterborough, Ontario
K9J 0B9

The Contractor: _____

8.2 Where any such notice, direction or other communication is given or made to the Contract Administrator, a copy thereof shall likewise be delivered to any agent of the Contract Administrator appointed in accordance with the General Conditions of this Contract and where any such notice, direction or other communication is given or made to such agent a copy thereof shall likewise be delivered to the Contract Administrator.

9. Dispute Resolution

9.1 If any party becomes aware of potential dispute or claim arising out of or relating to this Contract or the interpretation, performance breach, termination or invalidity thereof, shall provide Notice to the other parties to this Agreement within twenty-four (24) hours.

9.2 The parties shall make all reasonable efforts to resolve their dispute by following GC3.13 with amicable negotiations and agree to provide, without prejudice, frank, candid and timely disclosure of relevant facts, information and documents to facilitate these negotiations.

9.3 The dispute or claim shall be settled by final and binding arbitration in accordance with GC3.14 and the applicable arbitration laws of the Province of Ontario.

IN WITNESS WHEREOF the parties hereto have hereunto set their hands and seals the day and year first above written or caused their corporate seals to be affixed, attested by the signature of their proper officers, as the case may be.

The Township of Douro-Dummer

Per: _____
Name - Printed Title

Signature Position

Contractor

Per: _____
Name - Printed Title

Signature Position

Section D – Addenda

**Daleview Road Reconstruction
Contract No. T-2020-04**

