



TERMS AND CONDITIONS FOR CONSTRUCTION (MINOR WORKS)

Version: 2024-09

These terms apply where Vendor has submitted a quote (the “Bid”) to perform Work and has been awarded a contract incorporating these Terms and Conditions for Construction (Minor Works).

1. CONTRACT

1.1. Contract Documents. The Contract is comprised of the following documents:

- These terms and conditions;
- The Request for Proposals, Request for Quotation or Request for Tenders (“RFx”) (as applicable), including the Scope of Work, Specifications and Drawings, as amended by addenda; and
- Vendor’s Bid.

In the event of any conflict or inconsistency, or ambiguity, among the documents forming the Contract, these terms and conditions shall supersede, followed by the Township’s RFx document as amended by addenda, the Specifications and Drawings, and lastly, Vendor’s Bid. For clarity, the document first named in the foregoing list shall supersede over subsequently listed documents.

2. DEFINITIONS

2.1. All terms appearing with an initial capitalized letter are defined in Schedule A (Definitions) at the end of this document.

3. SUBCONTRACTORS AND CONTRACTOR PERSONNEL

3.1. Vendor Responsible. Vendor is ultimately accountable to the Township for the performance of Work in accordance with this Contract whether performed by Vendor, Vendor Personnel or any other persons and entities engaged by Vendor in connection with the Work. Vendor is liable to the

Township for any of the foregoing parties' failure to comply with the requirements of this Contract.

- 3.2. Subcontracting Work. Vendor may subcontract the Work to Subcontractors named in Vendor's Bid provided the Township has not rejected a proposed Subcontractor within 10 days following Contract award. Unless the Contract or the Township representative directs otherwise, Vendor may otherwise subcontract such portions of the Work as is customary in the carrying out of similar contracts. No subcontracting shall relieve Vendor from any of its obligations under the Contract or impose any liability upon the Township to a Subcontractor.
- 3.3. Unsuitable Subcontractors or Personnel. Vendor shall, upon the request of the Township representative, immediately remove any Subcontractors or Vendor Personnel from the Work or Workplace that, in the opinion of the Township representative, is incompetent or has conducted itself improperly, and Vendor shall not permit such Subcontractor or Vendor Personnel to continue to perform Work or to return to the Workplace. Where a Subcontractor or Vendor Personnel has been removed pursuant to this Section, Vendor shall be responsible for providing replacements with at least the same level of qualifications, skills and experience as soon as possible and within not more than 7 days unless otherwise agreed by the Township.

4. CONTROL AND PERFORMANCE OF WORK

- 4.1. Control of the Work. Vendor shall have total control of the Work and shall effectively direct and supervise the Work in accordance with the Contract. Vendor shall be solely responsible for construction means, methods, techniques, sequences and procedures and for co-ordinating the various parts of the Work under the Contract except as otherwise directed by the Township in writing.
- 4.2. Vendor is Constructor. Vendor is the "Constructor" under Applicable Laws, including health and safety laws. As Constructor, Vendor is responsible for notifying the applicable regulatory authorities of the construction project pursuant to Applicable Laws, as applicable.
- 4.3. Standard of Performance. Vendor shall, at all times, perform the Work in a proper, diligent and expeditious manner as is consistent with construction

industry standards and in accordance with the last the Township-approved Construction Progress Schedule.

- 4.4. Material to be New. Unless otherwise specified in the Contract, Material provided shall be new.
- 4.5. Erection and Removal of Temporary Structures. Vendor shall have sole responsibility for the design, erection, operation, maintenance and removal of temporary structures and other temporary facilities and for the construction methods used in their erection, operation, maintenance and removal.
- 4.6. Storage Locations and Operations. Except for any part of the Work that is necessarily performed away from the Workplace, Vendor shall confine Construction Equipment, storage of Material, and operations of Vendor Personnel to limits indicated by Applicable Laws, the Contract and the Township representative.
- 4.7. Clean-up of Site. Vendor shall maintain the Work and its site in a tidy condition and free from any accumulation of waste and debris and in accordance with the Township directives as may be issued by the Township representative from time to time.
- 4.8. Notice of Concealed or Unknown Conditions. If, during the performance of the Work, Vendor discovers any of the following conditions at the Workplace, Vendor shall give notice in writing to the Township of such conditions before they are disturbed as soon as possible and in no event longer than 2 working days after first observing the conditions:
 - subsurface or otherwise concealed physical conditions which existed before the commencement of the Work which differ materially from those indicated in the Contract documents; or
 - physical conditions, other than conditions due to weather, that are of a nature which differ materially from those ordinarily found to exist and generally recognized as inherent in construction activities of the character provided for in the Contract documents.

- 4.9. Claiming Concealed / Unknown Conditions. The foregoing notice must describe details of the Concealed or Unknown Conditions and anticipated impact on the scope of Work, the Cost of Work and the Construction Progress Schedule. Any adjustments to the Construction Progress Schedule must be approved by the Township representative and any adjustment to the Cost of Work must be made in the time period specified in, and in accordance with, Article 11 (Prices and Price Adjustments). For greater certainty, upon the discovery of a Concealed or Unknown Condition, unless circumstances warrant, Vendor shall not interrupt the performance of Work unless and until directed to do so by the Township representative.
- 4.10. Cooperation with other the Township Vendors or Third Parties. Where, in the opinion of the Township representative, it is necessary that other contractors or third parties be sent onto the Workplace, Vendor shall allow them access and co-operate with them in the carrying out of their duties and obligations. If the introduction of third parties onto the Workplace could not have been reasonably foreseen or anticipated by Vendor when entering into the Contract, and Vendor incurs costs as a result, claims for adjustments to the Cost of Work shall be made in accordance with Article 11 (Prices and Price Adjustments).

5. WORK ORDERS

- 5.1. Township Work Orders. The Township representative may, at any time, issue orders for Work or Material in addition to that provided for in the Specifications and Drawings, delete or otherwise modify any required Work, or Material, which may include, without limitation, deletion or changes to the dimensions, character, quantity, quality, description, location or position of the whole or any part of the Work or Material specified in the Specifications and Drawings (each a “**Work Order**”).
- 5.2. Work Order Procedure. When a change in the Work or Material is proposed or required, the Township representative will provide Vendor with a written description of the proposed change. Vendor shall promptly present, in a form acceptable to the Township representative, a method of adjustment or an amount of adjustment for the Price if any, and the adjustment in the Construction Progress Schedule, if any, for the proposed change in the Work or Material.

- 5.3. Adjustment to Bid Price. Where an adjustment to the Bid price is required as a result of any Work Order or directive, it shall be calculated in accordance with Article 11 (Prices and Price Adjustments). When the Township representative and Vendor agree to the adjustments in the Bid Price and Construction Progress Schedule or to the method to be used to determine the adjustments, such agreement shall be effective immediately and shall be recorded in the Work Order. A Work Order shall only take effect upon execution by the Township and Vendor.
- 5.4. Obligation to Comply with Work Orders. Vendor shall not perform a change in the Work or Material without a Work Order or directive from the Township representative and shall, once issued, expeditiously perform the Work in accordance with the Township Work Orders. Any failure to comply shall be deemed to be a Default.

6. TOWNSHIP CONSTRUCTION EQUIPMENT AND MATERIAL

- 6.1. Restrictions on Use of the Township-Supplied Equipment and Materials. To the extent the Township furnishes Construction Equipment and Material, such Construction Equipment and Material may only be used by Vendor in the performance of Work pursuant to this Contract and for no other purpose. Except for normal wear and tear, Vendor is liable to the Township for any loss of or damage to Material or Construction Equipment that is supplied or placed in the care, custody and control of Vendor by the Township for use in connection with the Contract, whether or not that loss or damage is attributable to causes beyond Vendor's control.

7. CONSTRUCTION PROJECT SCHEDULE

- 7.1. Vendor shall:
- submit to the Township prior to the first application for payment a Construction Project Schedule that indicates the timing of the major activities of the Work for approval by the Township;
 - perform the Work in accordance with the timelines set out in the Construction Progress Schedule last approved by the Township;
 - update the Construction Progress Schedule only as approved in writing by the Township.

8. PROJECT DELAYS

- 8.1. Shift and Overtime Work Requirements. In the event of delays or anticipated delays to the Project due to no fault of the Township, Vendor shall provide, at no additional cost to the Township, both around-the-clock shift work including overtime work on weekdays, weekends and holidays as required by the Township representative to prevent project delays and to maintain the last-approved Construction Progress Schedule, as deemed necessary to meet last-approved Project timelines. Vendor shall also provide extra Vendor Personnel and Construction Equipment deemed necessary by the Township representative at no additional cost.
- 8.2. Approved Delays. The Township representative may, upon receipt of Vendor's written request, accept to extend the time for completion of the Work if, in the opinion of the Township representative, causes that (a) could not have been reasonably anticipated at the time Vendor's tender was submitted, or (b) that are beyond the control of Vendor, have delayed completion (such extension is an **"Approved Delay"**). For greater certainty and clarity, (a) weather-related delays and any other potential interferences identified in the Contract documents are not considered a cause beyond the control of Vendor for purposes of the Contract and (b) revised milestones or completion dates appearing in an updated Construction Progress Schedule are not an Approved Delay unless a written request has first been made, and has been accepted by the Township representative, pursuant to this Section.

9. INVOICES AND PAYMENTS

- 9.1. Vendor Invoices Vendor shall, on a monthly basis or such other intervals as is agreed between Vendor and the Township representative (**"Payment Period"**), deliver to the Township representative in respect of that Payment Period a **"Proper Invoice"** which includes the following 2 items:
- 9.1.1. An invoice containing the following information:
- Vendor's name and address,
 - the date of the invoice and the payment period,
 - reference to the Contract,

- a full description of the Completed Work and Material that was delivered to the Workplace in accordance with the Contract, whether incorporated or not into the Work,
- the amount payable for the Completed Work and, as applicable, Material delivered, and the payment terms, and
- the name, title, telephone number and mailing address to whom payment is to be sent, if different than Vendor representative;

and

(1) if requested by the Township, a Statutory Declaration of Compliance in the form prescribed by the Township, signed by an authorized representative of Vendor and certified by an authorized commissioner of oaths or notary public, that attests to the following:

- up to the date of the invoice, Vendor has complied with all outstanding directives, the provisions of the Contract and Applicable Laws, including without limitation with respect to occupational health and safety; and
- up to the date of Vendor's immediately preceding invoice, Vendor has (i) paid Vendor's suppliers in full for all Materials, and (ii) Vendor has discharged all payment and other obligations to its Subcontractors and suppliers.

9.2. Notice of Non-Payment. Within not later than 21 days after receiving a Proper Invoice, where the Township disputes all or part of the invoice, the Township will issue a notice of non-payment to Vendor representative in the form and manner prescribed by Applicable Laws, specifying the amount of the invoice that the Township disputes and detailing the reasons for non-payment.

9.3. Township Payment. Subject to the provisions of this Contract, the Township shall, within 28 after receiving a Proper Invoice, pay Vendor an amount that is equal to ninety percent (90%) of the value that is indicated in the invoice, less any amount specified in a notice of non-payment, and applicable taxes.

9.4. Payment Not Acceptance of Work. A payment shall not be construed as an admission by the Township that the Work, Material or any part thereof is

complete, is satisfactory to the Township, or is in accordance with the Contract. Acceptance of Work shall only take effect upon the issuance of an Interim Certificate of Completion or Ready-for-Takeover as detailed in Article 9 (Final Certificates of Completion).

- 9.5. Release of Holdback Amounts. The holdback is due and payable 60 calendar days after Vendor's receipt of the Township's Ready-for-Takeover subject to the issuance by the Township of a notice of non-payment detailing outstanding Work or deficiencies. Where outstanding Work or deficiencies are noted, the Township shall withhold an amount from the holdback that relates to such Work or deficiencies until the Work is fully performed or remedied (as applicable) to the Township's entire satisfaction.
- 9.6. Failure to Remedy Work or Deficiencies. Should the Contractor fail to remedy the Work or deficiencies identified by the Township in a time period specified by the Township, the Contractor shall be deemed to have abandoned the Project and forfeited the balance of the holdback and the Town may terminate the Contract for Default.

10. READY FOR TAKEOVER

- 10.1. Achieving Ready-for-Takeover. The Contractor must apply to the Township for a declaration that the Work has attained Ready-for-Takeover. The prerequisites to attaining Ready-for-Takeover of the Work are limited to the following:
- The Township has certified or verified the Substantial Performance of the Work and has reached agreement with Vendor on the remaining Work to be performed, if any.
 - As applicable, evidence of compliance with the requirements of occupancy or occupancy permit as prescribed by the authorities having jurisdiction.
 - Final cleaning and waste removal to a standard acceptable to the Township at the time of applying for Ready-for-Takeover.
 - As applicable, the delivery to the Township of such operations and maintenance documents as reasonably necessary for immediate operation and maintenance, as applicable.

- As requested by the Township, the delivery of a copy of as-built drawings completed to date.
- Startup, testing required for immediate occupancy, as applicable.
- Ability to secure access to the Work has been provided to the Township, as applicable.
- Demonstration and training, if required by the Contract.

10.2. Confirmation of Ready-for-Takeover. Provided Vendor has complied with the above, to the satisfaction of the Township representative, the Township shall issue a confirmation that it agrees the Project has achieved Ready-for-Takeover on the date that all Work has been fully completed to the Township's satisfaction.

11. PRICES AND PRICE ADJUSTMENTS

11.1. Township Liability Not to Exceed Adjusted Contract Value. Except as expressly provided for in this Contract, the Township's maximum liability to Vendor for Work shall not exceed the Adjusted Contract Value.

11.2. Prices Fixed for the Term. Except as expressly set out in this Contract, the prices and the total amount set out in the Bid represents the all-inclusive prices and fees to be charged for Work and Materials, are fixed for the term of the Contract and shall not be unilaterally modified by Vendor for any reason including without limitation, in connection with changes in the cost of labour, cost of Construction Equipment or Material, or changes to the wage rates payable to Vendor Personnel, regardless of the reason for such changes.

11.3. Price Adjustment Request. The parties acknowledge that circumstances may arise during the performance of Work that warrant changes to the Bid price or that otherwise warrant an increase or decrease (together, a "**Price Adjustment**"). Where circumstances arise that may warrant a Price Adjustment, Vendor shall submit a written request and justification to the Township representative within not later than 5 days from the incident giving rise to the claim for such adjustment (a "**Price Adjustment Request**"). Where the Township accepts to consider a Price Adjustment, it shall be calculated in accordance with this Article. A failure to submit a Price

Adjustment Request within such 5 day period shall result in the permanent forfeiture of Vendor's entitlement to the associated Price Adjustment.

11.4. Calculation of Price Adjustment. Where Price Adjustment Request is made, prices shall be calculated based on unit prices specified in the Contract or a pro-rata calculation of impact on price as appropriate. Where the Township and Vendor do not agree on the Price Adjustment, then the net value of Work shall be Vendor's direct costs. Vendor shall be entitled a mark-up of 10% overhead, 5% profit, total 15% of the net value of the additional Work when performed by its own forces and 5% overhead, 5% profit, total 10% of the net value of the Work when performed by Subcontractors.

11.5. Quotes for Additional Work. Prior to commencing any additional Work, Vendor shall prepare and submit a quotation for such additional Work for approval by the Township. Quotations for additional Work shall be accompanied by itemized breakdowns of the actual direct costs together with detailed, substantiating quotations or cost vouchers from Subcontractors and suppliers. Costs not shown on the detailed quotation are not eligible to be charged as part of the Price Adjustment.

12. WARRANTIES AND WARRANTY REMEDIES

12.1. Vendor Warranties. Vendor represents, warrants and covenants as follows as of the effective date and throughout the term of the Contract:

- All Work shall be performed to the best of Vendor's ability and in an effective, timely, professional and workmanlike manner in accordance with best industry practices;
- all Accepted Work shall comply with any Specifications and Drawings and other specifications and documentation set forth in the Contract documents, as may be amended and supplemented from time to time pursuant to this Contract;
- all Work when performed by individuals, shall be performed by individuals who have employment authorization to perform the Work in accordance with Applicable Laws and who are duly qualified, trained, licensed and certified, to perform the tasks which they are assigned;

- Vendor, Work, Accepted Work and Materials shall comply with all Applicable Laws and shall not violate or contravene the terms of any contracts between Vendor and third parties;
- all Accepted Work, Work and Materials will be free and clear of all liens, encumbrances, and security interests of any kind when delivered to the Township.

12.2. Warranty Remedy – Defects in Accepted Work. In the event of a defect, fault or non-compliance with the Vendor Warranties listed in Section 12.1 (Vendor Warranties) relating to the Work or any other warranty implied by Applicable Laws (collectively, a “**Defect**”), arising within 1 year from the Work Acceptance Date, the Township may issue a warranty claim to Vendor setting out the Defect (the “**Warranty Period**”). Upon receipt of a warranty claim from the Township, Vendor shall, promptly and at Vendor’s own expense, remedy the Defect in a manner acceptable to the Township, and to the Township’s reasonable satisfaction. The foregoing remedy is in addition to any other rights and remedies otherwise available to the Township at law or pursuant to this Contract.

13. INDEMNITY

13.1. Vendor’s General Indemnity. Vendor shall indemnify, defend and hold harmless Township, its employees, the mayor, councillors, officers and agents (collectively “**Township Personnel**”) from and against any claims, demands, regulatory inquiries and related damages, losses, costs and expenses, including legal fees (collectively, “**Claims and Costs**”) arising from: (i) negligent acts or omissions; (ii) infringement or alleged infringement of third-party intellectual property rights; (iii) personal injury (including bodily injury or death) or damage to property; or (iv) breach of applicable laws as each is attributable to the acts or omissions of Vendor, its officers employees, directors, officers, Subcontractors, suppliers and other representatives. Vendor shall have no obligation pursuant to this section to the extent that the Claims and Costs arise from the negligent acts or omissions of Township Personnel.

14. INSURANCE, HEALTH AND SAFETY AND WSIB

- 14.1. Insurance. As a condition of commencing and continuing to perform any Work and throughout the term of the Contract, Vendor must have in place the insurance specified in the Contract.
- 14.2. Health and Safety Plan. As a condition of commencing and continuing to perform any Work and throughout the term of the Contract, Vendor must have completed the Township's Health and Safety package and comply with Vendor's health and safety plan and obligations.
- 14.3. WSIB Premiums. As a condition of commencing and continuing to perform any Work and throughout the term of the Contract, Vendor must have paid all required WSIB premiums and be in good standing with WSIB.

15. TERMINATION OF CONTRACT – DEFAULT

- 15.1. Termination for Performance Default. Without prejudice to the Township's rights under the Contract Security, the Township may immediately terminate the Work or the Contract, in whole or in part, by providing written notice to Vendor in the following circumstances (each a "**Performance Default**"):
- Vendor has defaulted in: (i) the diligent completion of any part of the Work within the time fixed for its completion; (ii) the performance of any material obligation of the Contract; or (iii) complying with any the Township directive; and has failed to remedy any of the foregoing defaults listed in (i)-(iii) within 3 days (or such other longer period of time as mutually agreed) of receiving notice thereof pursuant to this Section; or
 - Vendor has abandoned the Work.
- 15.2. Termination for Other Default. Without prejudice to the Township's rights under the Contract Security, the Township may terminate the Work or the Contract immediately by providing written notice to Vendor in the following circumstances (each a "**Other Default**"):
- There is evidence the Vendor is experiencing an inability to pay its debts and may need to declare bankruptcy;
 - Vendor has committed an act of bankruptcy;

- Vendor makes a general assignment for the benefit of creditors because of Vendor's insolvency; or
- If a receiver is appointed because of Vendor's insolvency.

16. TERMINATION OF CONTRACT – FOR CONVENIENCE

- 16.1. Termination for Convenience. The Township may terminate the Contract, in whole or in part, at any time and without any liability to Vendor for such termination, by giving a notice of termination for convenience in writing to Vendor.
- 16.2. Amount Payable upon Termination for Convenience. If the Contract is terminated pursuant to this Article, the Township shall pay Vendor an amount for Work actually performed, and accepted by the Township, up to the effective date of termination. Notwithstanding anything to the contrary in the Contract, Vendor shall not be entitled to any payment for costs not incurred or for Work not performed, including, without limitation, any lost profits relating to Work not performed whether the Contract prices are based on a fixed or unit price arrangement. The amount payable under this Section is the only amount payable to Vendor for termination of the Contract pursuant to this Section. Without limiting the generality of the foregoing, in no event shall the Township have any other liability to Vendor for such termination.

17. SUSPENSION OF WORK

- 17.1. Right to Suspend. Township may, when in the Township's opinion it is in the Township's interest, or the public interest to do so, require Vendor to suspend performance of the Work, in whole or in part, either for a specified or an unspecified period by giving a written notice of suspension to Vendor.
- 17.2. Obligations Upon Receipt of Notice. When a suspension notice is received by Vendor, Vendor shall suspend all operations in respect of the Work except those that, in the opinion of the Township representative, are necessary for the care and preservation of the Work, Construction Equipment and Material. Vendor shall not, during a period of suspension, remove any part of the Work, Construction Equipment or Material from its site without the consent of the Township representative.

- 17.3. Suspensions 30 Days or Less. If a period of suspension is 30 days or less, Vendor shall, upon the expiration of that period, resume the performance of the Work and Vendor is entitled to be paid the extra cost, calculated in accordance with Article 11 (Prices and Price Adjustments) of any labour, Construction Equipment and Material necessarily incurred by Vendor as a result of the suspension.
- 17.4. Suspensions Over 30 Days. If, upon the expiration of a period of suspension of more than 30 days, the Township and Vendor agree that the performance of the Work will be continued by Vendor, Vendor shall resume performance of the Work subject to any terms and conditions agreed upon by the Township and Vendor. If, upon the expiration of a period of suspension of more than 30 days, the Township and Vendor do not agree that performance of the Work will be continued by Vendor or do not agree on the terms and conditions under which Vendor will continue the Work, the initial notice of the suspension shall be treated as a notice of termination for the Township's convenience for purposes of the Contract.

18. ADDITIONAL OBLIGATIONS ON TERMINATION

- 18.1. Additional Vendor Obligations When a notice of termination is received by Vendor, Vendor shall, subject to any conditions or instructions stipulated in the notice or the Township directive, forthwith: cease all performance of Work, demobilize all Contractor Personnel and Construction Equipment and Material associated with the affected Work.
- 18.2. Obligation to Complete Portion of Work Not Terminated. Termination of part of the Work does not relieve or discharge Vendor from completing the part of the Work that is not terminated, nor does it relieve Vendor from any other obligation under the Contract.

19. CONTRACT SECURITY – FORFEITURE OR RETURN

- 19.1. Right to Security upon Default. If the Contract is terminated for Default, Vendor fails to remedy a Defect in accordance with the requirements of the Contract or Vendor is otherwise in breach of a performance obligation pursuant to the Contract and fails to remedy such breach, the Township may employ such means as the Township sees fit to have the Work completed and convert the Contract Security. To the extent held by the Township, any

balance of an amount available pursuant to the Contract Security that remains after payment of all losses, damage and claims of the Township and others shall be paid by the Township to Vendor if, in the opinion of the Township representative, it is not required for the purposes of the Contract.

- 19.2. Return of Contract Security. Within 1 year after a Ready-for-Takeover confirmation has been issued, the Township shall return to Vendor the remainder of any Contract Security unless the Contract stipulates otherwise.

20. TOWNSHIP RIGHT OF SET-OFF

- 20.1. Right of Set-Off. Without limiting any right of set-off or deduction given or implied by law or elsewhere in the Contract, the Township may set off any amount owed to the Township by Vendor under this Contract or under any current Contract against any amount payable to Vendor under this Contract. For the purposes this Section, "current Contract" means a Contract between the Township and Vendor under which Vendor has an undischarged obligation to perform or supply Work, labour or Material.

21. MISCELLANEOUS

- 21.1. Compliance with Laws. Vendor shall comply with all Applicable Laws including, without limitation, all laws concerning health and labour conditions and the protection of the environment and shall require compliance by all of its Subcontractors and suppliers at any tier. Vendor shall furnish evidence of compliance with such laws and regulations to the Township at such times as the Township may reasonably request.
- 21.2. Obligation to Deliver Statutory Declarations. Vendor shall, whenever requested to do so by the Township representative, make a statutory declaration in a form acceptable to the Township deposing to the existence and condition of any actual and potential claims against it by third parties in connection with the Work or this Contract, including potential claims by Vendor Personnel and Subcontractors.
- 21.3. No Implied Terms Applicable to the Township. No implied terms or obligations of any kind by or on behalf of the Township shall arise from anything in the Contract and the express covenants and agreements therein

contained and made by the Township are the only covenants and agreements upon which any rights against the Township are to be founded.

- 21.4. Scope of Authorization to Use the Township Premises. Vendor shall not use, or permit the use, of the Workplace for any purpose other than for the purposes of performance of the Work pursuant to the terms of the Contract. Without limiting the generality of the foregoing, Vendor shall not erect or permit the erection of any sign or advertising on the Work or its site without the prior consent of the Township representative.
- 21.5. Contract Notices. Any notice, consent, order, decision, directive or other communication (for purposes of this Section, each is a “**Notice**”) required to be given in writing to any party pursuant to the Contract shall be deemed to have been effectively given to Vendor if delivered in a form set out in this Section to Vendor’s head office or to Vendor’s representative, at the address set out in the Contract, or to the Township, if delivered to the Township’s head office or personally to the Township representative at the address in the Contract. To be valid, Notices must be delivered or communicated using one of the following means: (a) by hand, to the representative; (b) by mail, (c) courier services, (d) by email. Any such Notice shall be deemed to have been received by the recipient: (a) if delivered personally, on the day that it was delivered to the correct individual, (b) if sent by mail, on the earlier of the day it was received and the sixth day after it was mailed; (c) if couriered, on the date of delivery as evidenced by the courier’s delivery records; (d) if by email, upon written confirmation of receipt of the email by the intended recipient.
- 21.6. Amendments. No amendment or change in any of the provisions of the Contract shall have any force or effect until it is reduced to writing and signed by both parties.
- 21.7. Assignment of Contract. The Contract may not be assigned by Vendor, either in whole or in part, without the prior written consent of the Township. Any assignment made without the Township’s consent is void and of no effect and shall constitute a default of Contractor’s obligations. No assignment of the Contract shall relieve Vendor from any obligation under the Contract or impose any liability upon the Township.

- 21.8. Entire Agreement. The Contract constitutes the entire agreement between the parties with respect to the subject matter of the Contract and supersedes all communications, negotiations and agreements, either written or oral, relating to the Work that were made prior to the date of the Contract, unless they are incorporated by reference into the Contract.
- 21.9. Governing Law. The construction, interpretation and performance of the Contract are governed by the Applicable Laws of Ontario and the laws of Canada applicable therein, without regard to conflicts of laws principles. The parties expressly exclude application of the United Nations Convention on Contracts for the International Sale of Goods.
- 21.10. Survival. Vendor's obligations under the Contract as to quality, correction and warranty of the work performed by Vendor up to the time of termination or expiration shall continue after any termination, whatever the cause, or expiration of the Contract. In addition, this Article and each party's rights and obligations hereunder which by their nature are intended to survive the expiration or termination of the Contract, shall survive expiration or termination of the Contract for any reason.

Schedule “A” – DEFINITIONS

For the purposes of these Terms and Conditions, the following terms when they appear with a capitalized initial letter shall have the meanings set out below and grammatical variations of such terms shall have corresponding meanings.

- (a) **“Accepted Work”** means Work that has been accepted by the Township under a Ready-for-Takeover.
- (b) **“Adjusted Contract Value”** means the maximum estimated or fixed amount the Township has accepted in writing to pay for the Project as specified in Vendor’s Bid, whether the component prices for Work are expressed as unit fees or fixed fees, as may be adjusted by the Township-approved increases or decreases made in accordance with the terms of the Contract.
- (c) **“Applicable Laws”** means any federal, provincial, local and municipal statutes, laws, by-laws, rules, codes, ordinances, and regulations in effect from time to time and made or issued by a governmental authority having jurisdiction over a party to this Contract, which shall include a judgment of a relevant court of law, board, arbitrator or administrative agency.
- (d) **“Approved Delay”** has the meaning assigned in Section 8.2 (Approved Delays).
- (e) **“Bid Price”** means all lump sum prices, unit prices, hourly rates and any other prices and the total Project amount to be charged for the Work as specified in Vendor’s Bid.
- (f) **“Completed Work”** means Work that is completed in accordance with the standards and specifications in the Contract.
- (g) **“Concealed or Unknown Conditions”** has the meaning assigned in Section 3.8 (Concealed or Unknown Conditions).
- (h) **“Construction Equipment”** means all machinery and equipment, either operated or not operated, that is required for preparing, fabricating, conveying, erecting, or otherwise performing the Work but is not incorporated into the Work.

- (i) **"Construction Progress Schedule"** is the schedule that includes the Township-approved timelines for the Project.
- (j) **"Contract"** means the RFx document or other form of request for quotes, tenders or proposals, issued by the Township, Vendor's Bid, the award letter issued to Vendor (if any), and these terms and conditions.
- (k) **"Contract Security"** means any security guarantee, such as a performance bond, labour and material bond or security deposit, delivered by Vendor in accordance with the Contract.
- (l) **"Default"** means either a Performance Default or an Other Default as defined in Article 14 (Termination of Contract - Default).
- (m) **"Defect"** has the meaning assigned in Section 12.2 (Warranty Remedy – Defects in Accepted Work).
- (n) **"Ready-for-Takeover"** means a written certificate issued by the Township representative that confirms the Work has been substantially completed to the Township's satisfaction.
- (o) **"Material"** means all commodities, articles, machinery, equipment, fixtures and other items procured or otherwise required to be furnished by or for Vendor for incorporation into the Accepted Work, whether or not incorporated and for greater certainty, includes all licenses, rights and privileges attached such commodities, articles and items.
- (p) **"Price Adjustment Request"** has the meaning assigned in Article 11 (Prices and Price Adjustments).
- (q) **"Project"** means the totality of Work and Materials required to complete the outcomes described in the Contract documents.
- (r) **"Proper Invoice"** has the meaning assigned in Article 9 (Invoices and Payment).

- (s) **“Ready-for-Takeover”** is attained when the conditions in Article 10 have been met.
- (t) **“Township”** means the Corporation of the Township of East Garafraxa.
- (u) **“Specifications and Drawings”** means all the Township technical requirements and specifications applicable to the Work as set out in the Contract and as may be amended by express written agreement of the parties.
- (v) **“Statutory Declaration of Compliance”** has the meaning assigned in Article 9 (Invoices and Payment).
- (w) **“Subcontractor”** means an individual or entity to whom Vendor has subcontracted the whole or any part of the Work in accordance with the Contract.
- (x) **“Substantial Performance”** means when the Work is such that the improvement to be made under the Contract is ready for use or is already being used for the purposes intended; and when the improvement to be made under that contract is capable of completion or, where there is a known defect, correction, at a cost of not more than, 3 per cent of the Contract price.
- (y) **“Vendor”** means the legal entity that has entered into the Contract with the Township.
- (z) **“Vendor Personnel”** means all individuals assigned or approved by Vendor to perform Work pursuant to the Contract, and includes, without limitation, Subcontractor personnel.
- (aa) **“Warranty Period”** has the meaning assigned in Section 12.2 (Warranty Remedy - Defects in Accepted Work).
- (bb) **“Work”** means everything that is necessary to be done, furnished or delivered by Vendor to perform the Contract, including, without limitation, the provision of Construction Equipment, Materials, Vendor Personnel and other

goods, services, and deliverables, all as required to perform Vendor's obligations and to deliver the Work.

(cc) "**Work Acceptance Date**" has the meaning assigned in Article 12(Ready-for-Takeover).

(dd) "**Work Order**" has the meaning assigned in Article 4 (Work Orders).

(ee) "**Workplace**" means the specific place or physical location where erection, alteration, repair, dismantling, demolition, structural maintenance, painting, land clearing, earth moving, grading, excavating, trenching, digging, boring, drilling, blasting, or concreting is performed, as well as, the installation of any machinery or Construction Equipment, and any work or undertaking in connection with the Work.