

FORM OF AGREEMENT

This Agreement made on _____.

BY AND BETWEEN

MUNICIPALITY OF THE COUNTY OF KINGS, a body corporate governed by the Municipal Government Act (Nova Scotia) and having an office at 181 Coldbrook Village Park Dr., Coldbrook, NS;

(hereinafter called the "Client")

And

(hereinafter called the "Contractor")

Background

- A. The Municipality issued a Non-Binding Request for Proposals, Project Reference #23-01 Regional STP Cell #1 Desludging (NRFP) for the removal, dewatering, and disposal of sludge from Cell #1 at the Regional Sewage Treatment in New Minas, Nova Scotia (Project).
- B. The Contractor was the successful proponent under the NRFP.
- C. The Municipality wishes to engage the Contractor to provide the services as more particularly described in the NRFP for the Project.

The Client and the Contractor agree as follows:

1. THE WORK

The Contractor shall:

- a) Perform the Work required by the Contract Documents;
- b) Do and fulfil do and fulfill everything indicated by this Agreement; and
- c) Commence the work by the within two weeks of the award of the contract and attain Substantial Performance of the work as certified by the Engineer by May 30, 2022.

2. AGREEMENTS AND AMENDMENTS

The Contract supersedes all prior negotiations, representations or agreements, either written or oral relating in any manner to the work, including the bidding documents that are not expressly listed in Article 3 of the Agreement.

3. CONTRACT DOCUMENTS

The following is an exact list of the Contract Documents referred to in Article 1 of this Agreement and as defined in subsection 6 of Section 00 71 00 DEFINITIONS. This list is subject to subsequent amendments in accordance with the provisions of the Contract Documents.

- a) Standard Specifications for Municipal Services
- b) Project Documents
 - i. Non-Binding Request for Proposals, Project Reference #23-01 Regional STP Cell #1 Desludging, issued January 6, 2023, including:
 - i. Addenda ___ to ___
 - ii. Contractor's Technical Submission submitted in connection with the NRFP
 - iii. Contractor's Cost Submission submitted in connection with the NRFP
 - ii. Form of Agreement
 - iii. Supplementary Specifications
 - Section 00 60 00 – Supplementary Specifications
 - iv. Drawings
 - v. Addenda ___ to ___

4. CONTRACT PRICE

- a) The Estimated Contract Price is as set out in the Contractor's Cost Submission submitted in connection with the NRFP.
- b) The estimated Contract Price is \$_____ excluding the amount of Harmonized Sales Tax.
- c) The amounts shall be subject to adjustment as provided in the Contract Documents.
- d) The amounts shall be paid in installments based on progress of the work performed to date. Approved invoices must be received two weeks prior, to allow for processing.
- e) All amounts shall be in Canadian funds.
- f) The Contract Price is the sum of the products of the actual final quantities that are incorporated in, or made necessary by the Work, as confirmed by count and measurement, multiplied by the appropriate Unit Prices from the Tender together with any adjustments that are made in accordance with the provisions of the Contract Documents excluding the amount of Harmonized Sales Tax.

5. PAYMENT

- a) The Owner shall pay the Contractor in Canadian funds for the performance of the Contract.
- b) The Client shall make monthly payments on account to the Contractor for the Work performed, as certified by the Engineer, subject to a 10% holdback.
- c) The amount of monthly payments shall be calculated as follows:

- i. The quantity for each pay item on which actual work has been performed shall be measured.
 - ii. For each Unit Price item this quantity shall be multiplied by the applicable Unit Price as provided in the Tender Form.
 - iii. For each lump sum item, multiply the percent complete by the value of the lump sum item.
 - iv. The total value of work completed for the payment period shall be calculated by adding the total of the products for all pay items from subsection ii and iii of this Article.
 - v. The amount of the monthly payment shall be determined by deducting the 10% holdback and the total of all previous payments from the total value of such completed work as determined under subsection iv of this Article.
 - vi. To the amount calculated above, the Harmonized Sales Tax will be added.
- d) The last day of the payment period shall be the last working day of the month.
- e) Upon Substantial Performance of the Work as certified by the Engineer the Owner shall pay to the Contractor the holdback monies then due in accordance with the provisions of Section 00 72 45 - General Conditions, subsection GC5.8 - PAYMENT OF HOLDBACK UPON SUBSTANTIAL PERFORMANCE OF THE WORK.
- f) Upon the issuance of the final certificate for payment as certified by the Engineer, the Owner shall pay to the Contractor the balance of monies then due in accordance with the provision of Section 00 72 45 - General Conditions, subsection GC5.10 - FINAL PAYMENT.
- g) In the event of loss or damage occurring where payment becomes due under the property and boiler insurance policies, payment shall be made to the Contractor in accordance with the provisions of Section 00 72 45 - General Conditions, subsection GC 11.1 - INSURANCE.
- h) If the Owner fails to make payments to the Contractor as they become due under the terms of the Contract, interest shall be payable as follows:
- i. The annual interest rate applicable to the contract is three percent (3%) compounded semi-annually.
 - ii. Interest shall be calculated on the overdue balance from the due date.

6. RECEIPT OF AND ADDRESSES FOR NOTICES

- a) Notices in writing will be addressed to the recipient at the address set out below.
- b) The delivery of a Notice in Writing will be by hand, by courier, by prepaid first class mail, or by facsimile or other form of electronic communication during the transmission of which no indication of failure of receipt is communicated to the sender.
- c) A Notice in Writing delivered by one party in accordance with this Contract will be deemed to have been received by the other party on the date of delivery if delivered by hand or courier, or if sent by mail it shall be deemed to have been received five (5) working days after the date on which it was mailed.

- d) A Notice in Writing sent by facsimile or other form of electronic communication shall be deemed to have been received on the date of its transmission provided that if such day is not a Working Day or if it is received after the end of normal business hours on the date of its transmission at the place of receipt, then it shall be deemed to have been received at the opening of business at the place of receipt on the first Working Day next following the transmission thereof.
- e) An address for a party may be changed by Notice in Writing setting out the new address delivered to the other party in accordance with this Article.
 - i. The Client at:
Municipality of the County of Kings
181 Coldbrook Village Park Drive
Coldbrook, NS, B4R 1B9
 - ii. The Contractor at:

7. QUANTITIES AND MEASUREMENT

- a) The project is to be completed on a lump sum basis including all ancillary items necessary to complete the work.
- b) Measurement for progress payments shall be done on a percent complete basis for the items outlined in the Contractor's Cost Submission submitted in connection with the NRFP.

8. SUCCESSION

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

9. RIGHTS AND REMEDIES

No action or failure to act by the Client or Contractor shall constitute a waiver of any right or duty afforded any of them 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.

10. TIME

Time shall be construed as being of the essence of the Contract.

<signature page follows>

IN WITNESS WHEREOF the parties hereto have executed this Agreement under their respective corporate seals and by the hands of their duly authorized representatives.

SIGNED, SEALED AND DELIVERED
In the Presence of:

OWNER (SEAL)

Municipality of the County of Kings
Name of Owner

WITNESS

Signature

Name and Title of Person Signing

Signature

Name and Title of person Signing

Signature

Name and Title of person Signing

CONTRACTOR (SEAL)

Name of Contractor

WITNESS

Signature

Name and Title of Person Signing

Signature

Name and Title of person Signing

Signature

Name and Title of person Signing

N.B. Where legal jurisdiction, local practice or Owner or Contractor requirements calls for (a) proof of authority to execute this document, attach such proof of authority in the form of a certified copy of a resolution naming the representative(s) authorized to sign the Agreement for and on behalf of the corporation or partnership, or (b) the affixing of a corporate seal, this Agreement should be property sealed.