

THE CORPORATION OF THE CITY OF BURLINGTON

D1 - AGREEMENT

THIS AGREEMENT made in duplicate this ## day of ## 2021.

THE CORPORATION OF THE CITY OF BURLINGTON
(hereinafter called "the City")
OF THE FIRST PART

- and - **CONTRACTOR**
(hereinafter called "the Contractor")
OF THE SECOND PART

WITNESSETH

That the City and the Contractor in consideration of the fulfillment of their respective promises and obligations herein set forth covenant and agree with each other as follows:

ARTICLE 1

(a) A general description of the Work is:

Project Name
Contract CW-21-xx

(b) The Contractor shall, except as otherwise specifically provided, at his own expense, provide all and every kind of labour, machinery, plant, structures, roads, ways, materials, appliances, articles and things necessary for the due execution and completion of all the Work set out in this Contract, and shall forthwith, according to the instructions of the Contract Administrator, commence the Works and diligently execute the respective portions thereof, and deliver the Works complete in every particular to the City within the time specified in the Special Provisions For Contract.

ARTICLE 2

The documents listed in this Article are all part of the Contract, and the terms and provisions thereof shall be of the same force and effect as if contained in this Agreement.

In case of inconsistency or conflict between any of the documents listed below, the provisions of such documents shall take precedence in the order listed, namely:

- (1) This Agreement
- (2) Addendums 4
- (3) Special Provisions
- (4) Contract Drawings
- (5) Standard Specifications
- (6) General Conditions
- (7) Form of Tender
- (8) Information for Tenderers
- (9) Ontario Provincial Standard Specifications - Amendments
- (10) Ontario Provincial Standard Specifications and Ontario Provincial Standard Drawings

ARTICLE 3

The Contractor shall not, without the consent in writing of the City, make any assignment of any part or the whole of any monies due or to become due under the provisions of this Contract.

ARTICLE 4

The City covenants with the Contractor that the Contractor, having in all respects complied with the provisions of this Contract, will be paid for and in respect of the Work

XXXXXX 00/100 dollars (\$XXXX.00).

and subject to such additions and deductions as may properly be made under the terms hereof, subject to the provision that the City may make payments on account monthly or otherwise as may be provided in the General Conditions attached hereto.

ARTICLE 5

Where any notice, direction or other communication is required to be or may be given or made by one of the parties hereto to the other, or to the Contract Administrator or to his/her agent, it shall be deemed sufficiently given or made if mailed or delivered in writing to such party or to the Contract Administrator at the following address:

THE CITY:

The Corporation of the City of Burlington,
426 Brant Street
P.O. Box 5013
Burlington, Ontario
L7R 3Z6

THE CONTRACTOR:

DESO Construction Limited
1435 Highway 56,
Caledonia, ON,
N3W 1T1

The Contract Administrator:

City Representative,
The Corporation of the City of Burlington,
426 Brant Street, P.O. Box 5013
Burlington, Ontario
L7R 3Z6

ARTICLE 6

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

ARTICLE 7

The Contractor declares that in tendering for the Works and in entering into this Contract, he has either investigated for himself the character of the Work and all local conditions that might affect his Tender or his acceptance of the

Work, or that not having so investigated, he is willing to assume and does hereby assume all risk of conditions arising or developing in the course of the Work which might or could make the Work, or any items thereof, more expensive in character, or more onerous to fulfil, than was contemplated or known when the Tender was made or the Contract signed. The Contractor also declares that he did not and does not rely upon information furnished by any methods whatsoever by the City or its officers or employees, being aware that any information from such sources was and is approximate and speculative only and was not in any manner warranted or guaranteed by the City.

ARTICLE 8

This Contract shall apply to and be binding on the parties hereto and their successors, administrators, executors and assigns and each of them.

ARTICLE 9

The Contractor shall indemnify and save harmless the City from all losses, damages, expenses, actions, causes of action, suits, claims, demands, and costs whatsoever which may arise either directly or indirectly by reason of any failure, neglect or refusal by the Contractor to comply with this Agreement or with the provisions of the Construction Lien Act or by reason of any action brought against the City pursuant to the Construction Lien Act and arising out of the performance of this Agreement by the Contractor, his servants, employees, agents, and subcontractors or arising directly or indirectly from anything done in connection with this Agreement, whether in performance of, outside of or contrary to this Agreement and whether or not in accordance with the City's standards, including without limiting the generality of the foregoing, paying all legal costs of the City on a solicitor and client basis, which may be incurred by the City in taking any action in connection with this Agreement which it deems necessary.

The contractor agrees that the City may deduct the aforesated costs, losses, damages and expenses from any holdback, payment or other amount owing to the Contractor and in addition, in respect of any construction lien, the City may pay, discharge, vacate and obtain and register a release of all charges, claims, liens and all preserved or perfected liens made, brought or registered pursuant to the Construction Lien Act which may affect any lands owned by the City, including public highways and road allowances and the City may deduct such costs from any holdback, payment or other amount owing to the contractor.

ARTICLE 10

The Owner may withhold any money for any defects, deficiencies or work not done and use the money to correct any defects or deficiencies or complete the work. Further, the contractor is responsible for all costs of the Owner in the event the Owner retains any experts or consultant to correct the defect or deficiency or complete the work.

ARTICLE 11

Counterparts and Electronic Signatures

This Agreement may be signed by the parties in counterparts and may be delivered by electronic communication and all such counterparts, taken together, will constitute one instrument.

Documents executed, scanned and transmitted electronically and electronic signatures shall be deemed original signatures for the purposes of this Agreement and all matters related thereto, with such scanned and electronic signatures having the same legal effect as original signatures.

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

Contractor

NAME OF CORPORATION (as per Corporate Seal)

AUTHORIZED SIGNATURE OF CORPORATION

I have authority to bind the corporation.

POSITION HELD IN CORPORATION

THE CORPORATION OF THE CITY OF BURLINGTON

MAYOR, Marianne Meed Ward

CITY CLERK, Kevin Arjoon

Legal Department Appd: _____

Report:

CW-XX-XX

Signed On:

Date, 2021