

FORM OF CONTRACT AGREEMENT

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I N D E X

	DESCRIPTION	PAGE
1.	AGREEMENT BETWEEN OWNER AND CONTRACTOR	FA - 1
2.	CERTIFICATE OF INSURANCE - CONTRACTOR	FA - 7

AGREEMENT BETWEEN OWNER AND CONTRACTOR

THIS AGREEMENT made in quadruplicate the _____ day of _____, 2019.

B E T W E E N :

Hereinafter called the '**CONTRACTOR**',

of the **FIRST PART**;

- and -

THE CORPORATION OF THE CITY OF NIAGARA FALLS

Hereinafter called the '**CORPORATION**',

of the **SECOND PART**.

WHEREAS the Corporation has awarded to the Contractor the contract for all labour, materials and equipment necessary for the completion of crack sealing on various local, collector and arterial streets and other City facilities in the City of Niagara Falls, in accordance with the drawings, specifications, general conditions of the contract and other documents and papers listed in paragraph 4 of this Agreement (all of such drawings, specifications, general conditions of the contract and other documents and papers herein referred to as the 'contract documents'), copies of which are hereto attached, the Contractor having put in a tender therefor, a copy of which is hereto annexed, which said tender has been accepted by the Council of the Corporation;

NOW THEREFORE THIS AGREEMENT WITNESSETH that the Contractor and the Corporation hereby mutually covenant and agree each with the other with respect to the said work as follows:

1. The Contractor covenants and agrees with the Corporation to execute and perform the whole of the work and furnish all the labour, materials and equipment necessary for the completion of crack sealing on various local, collector and arterial streets and

other City facilities in the City of Niagara Falls together with all other works and appurtenances as specified in the contract documents and tender with due expedition and in a thoroughly workmanlike manner in strict accordance with the provisions of this Agreement and the said contract documents and tender and thereafter to maintain the work for a period of one year from the date of completion of the contract in accordance with paragraph GC7.16 of the Ontario Provincial Standards General conditions of the Niagara Peninsula Standard Contract Document and that in the execution and performance of the said work the Contractor will carry out, perform, observe, fulfil and abide by all the covenants, agreements, stipulations, provisos and conditions mentioned and contained in the said contract documents and tender to be carried out, performed, observed and fulfilled by the Contractor to the same extent and as fully as if each of them was set out and specifically repeated in this Agreement. The Corporation shall, at its discretion, reduce or increase the scope of the crack sealing contract in accordance with the approved budgeted amount for the work. There shall be no compensation to the Contractor for any reduction in the contract value and scope. Subject to budgetary approvals and provided both the Corporation and the Contractor agree, this contract will be extended to include work performed in 2020 and 2021. The Contractor will hold all unit prices for each year the contract is extended. Should either party not agree to extend the contract for 2020 and 2021, the contract will expire upon completion of the work in each subsequent year. The Contractor is required to submit new bonding and insurance documentation at the start of each year for which the contract is extended. No work may commence until this documentation is received and approved by the Corporation.

2. The Contractor further covenants and agrees with the Corporation as follows:
 - (a) The said contract documents and tender are intended to cover and provide for first class completed work in all respects and everything necessary to carry out this intent and which may reasonably be implied from the said contract documents and tender shall be done by the Contractor although not particularly referred to therein;

- (b) To commence work by June 3, 2019 or as otherwise advised upon notification from the Director of Municipal Works or his duly authorized representative and to proceed continuously to complete all of the work within (number) working days and in accordance with paragraph GC1.06 of the Ontario Provincial Standards General Conditions of Contract within the Niagara Peninsula Standard Contract Document. The Contractor further agrees to pay to the Corporation the sum as specified in the Special Instructions to Bidders for liquidated damages for each and every working days' delay in finishing the work in excess of the number of the working days taken beyond the completion date and as set out in G16 of the Special Provisions – General, of the Niagara Peninsula Standard Contract Document.
- (c) That the Contractor has examined the site of the work and has satisfied self as to the working conditions, the nature and kind of work to be done, the special risks associated therewith and as to any and all matters which may be necessary in order to form a proper conception of the conditions under which the work will require to be performed;
- (d) To provide a performance bond for the full and due performance of the work provided for herein at the unit prices as specified and for the maintenance of the said work for a period of one year after acceptance thereof, payable to the Corporation for 100% of the tender price;
- (e) To provide a labour and material payment bond for 100% of the tender price on all labour and material purchased by the Contractor and used in the performance of the work;
- (f) To deliver to the Corporation on or before the execution of this Agreement the policies of insurance in accordance with the following provisions in the contract documents: Paragraph GC6.03 of the Ontario Provincial Standards General Conditions of Contract within the Niagara Peninsula Standard Contract Document;

- (g) To provide evidence that all the Contractor's employees are covered by the provisions of the *Workplace Safety and Insurance Act* and to pay all assessments in respect thereof;
- (h) To indemnify and keep indemnified and save harmless the Corporation and each of its officers, servants and agents from and against all actions, suits, claims, executions and demands which may be brought against or made upon the Corporation, its officers, servants and agents, and from all loss, costs, charges, damages, liens and expenses which may be paid, sustained or incurred by the Corporation, its officers, servants and agents by reason of or on account or in consequence of the execution and performance of the said work or of the non-execution or imperfect execution thereof or of the supply or non-supply of plant or material therefor;
- (i) To pay to the Corporation, and to such officer, servant, or agent thereof, on demand, any loss, costs, damages or expenses which may be paid, sustained or incurred by the Corporation or any of its officers, servants or agents in consequence of any such action, suit, claim, lien, execution or demand, and any moneys paid or payable by the Corporation or any of its officers, servants, or agents in settlement or in discharge thereof, or on account thereof, and that in default of such payment all such loss, costs, damages and expenses, and any moneys so paid or payable by the Corporation, its officers, servants or agents, and also any moneys payable by the Contractor under any of the terms and conditions of this contract may be deducted from any moneys of the Contractor then remaining in the possession of the Corporation on account of this or any other contract or may be recovered from the Contractor or the Surety or Sureties named in the said Bonds in any court of competent jurisdiction as moneys paid at their request or from any insurer under a Contract of Insurance;
- (j) And the Contractor hereby authorizes and empowers the Corporation or its Solicitor for the time being, to defend, settle or compromise any of such actions, suits, claims, liens, executions or demands as the Corporation or its said Solicitor may deem expedient, and also hereby agrees to ratify and

confirm all the acts of the Corporation or its Solicitor in that behalf, and to pay to the Corporation on demand all reasonable costs of defending, settling, or compromising any such actions, suits, claims, liens, executions or demands as the Corporation may deem it expedient to defend, settle or compromise, and that in default of such payment the same may be deducted from any moneys payable by the Corporation to the Contractor on any account whatever. Provided, however, that the Contractor may at the expense of the Contractor, take charge of and conduct the defence in the name of the Corporation to any such action, claim or suit.

3. The Corporation covenants and agrees with the Contractor to make payments for the due and proper execution of the work at the times and in the manner specified in the provisions of the Contract Documents, but subject to the holdbacks, deductions and liquidated damages, specified in paragraphs 5 and 6 of the Special Instructions to Bidders, and in accordance with paragraph GC8.02 of the Ontario Provincial Standards General Conditions of Contract within the Niagara Peninsula Standard Contract Document.

4. It is mutually understood and agreed between the parties hereto as follows:
 - (a) That the documents and papers set forth below shall form part of this Agreement, namely:
 - i. Special Instructions to Bidders;
 - ii. Instructions to Bidders;
 - iii. Form of Tender;
 - iv. Agreement to Bond;
 - v. Irrevocable Letter of Credit;
 - vi. Form of contract Agreement;
 - vii. Certificate of Insurance – Contractor;
 - viii. Contract Drawings: N/A;
 - ix. City of Niagara Falls Standard Drawings: N/A;
 - x. Ontario Provincial Standard Specifications (OPSSs) as set forth in the Contract Documents;
 - xi. Ontario Provincial Standard Drawings (OPSDs) as set forth in the Contract Documents;
 - xii. Special Provisions – General Supplementary;
 - xiii. Special Provisions – Contract Items Supplementary;

- xiv. General Conditions of the Contract Supplementary;
- xv. Appendix "B" – Information for Contractors performing work on the Niagara Falls Drinking Water System;
- xvi. Appendix "C" – Record of Review;
- xvii. Appendix "D" – Disability and Human Rights Training Pamphlet; and

NIAGARA PENINSULA STANDARD CONTRACT DOCUMENT

- i. Foreword Revision List;
- ii. Guidelines;
- iii. Sample Tender Package, including Title Page, Table of Contents, Special Instructions to Bidders, Form of Tender, Form of Agreement, Schedule of Drawings, Geotechnical Report;
- iv. Instructions to Bidders;
- v. Special Provisions General;
- vi. Special Provisions Contract Items;
- vii. Standard Drawings – including OPSD;
- viii. Supplementary General Conditions; and
- ix. Ontario Provincial Standards General Conditions.

all of the above herein referred to as the 'Contract Documents', and Tender Submission of the Contractor dated _____, 2019.

- (b) That the work as hereinbefore set forth shall be performed and completed to the satisfaction of the Director of Municipal Works for the Corporation;
- (c) That this Agreement shall extend to and be binding upon and ensure to the benefit of the heirs, executors, administrators, successors and assigns of the Contractor and the successors and assigns of the Corporation; and
- (d) That the word 'Contractor' wherever used in this Agreement and the documents listed in clause (a) hereof, shall, where the context or the party or parties hereto so require, be construed as if the plural had been used and the rest of the sentence shall be construed as if all other changes thereby rendered necessary had been made.

IN WITNESS WHEREOF the parties hereto have hereunto affixed their corporate seals duly attested by the hands of the proper signing Officers in that behalf and the said signing Officers certify that they have authority to bind their Corporation.

(NAME OF CONTRACTOR)

Per:

Name: _____

Title: _____

Per:

Name: _____

Title: _____

**THE CORPORATION OF THE
CITY OF NIAGARA FALLS**

Per:

James M. Diodati, Mayor

Bill Matson, City Clerk

CERTIFICATE OF INSURANCE - CONTRACTOR

(As it relates to Special Provisions - General G1 and General Condition GC6.0 of the Niagara Peninsula Standard Contract Document)

This form must be completed and signed by your insurer or insurance broker.

Note:

1. Proof of insurance will be accepted on this form only (with no amendments).
2. Insurance company must be licensed to operate in Canada.

This is to certify that the Insured, named below, is insured as described below.

Insured: Name & Address:	Telephone Number:
	Fax Number:

Location and nature of operation or contract to which this Certificate applies:

Type of Insurance	Company & Policy #	Policy Dates		Limits of Liability/Amounts
		Effective	Expiry	
Section 1 - Primary Commercial General Liability (Occurrence Basis)				Bodily Injury & Property Damage \$ _____ Inclusive \$ _____ Aggregate \$ _____ Deductible
Section 2 Excess/Umbrella				\$ _____ Inclusive
Section 3 Automobile Liability				Bodily Injury & Property Damage \$ _____ Inclusive

- Section 4**
Additional Insured as required by contract:
1. The Corporation of the City of Niagara Falls
 2. Other:

Section 5: If Applicable Under the Terms of the Contract:

Other Policy(ies)	Insurer's Name	Policy Number	Policy Period		Limits of Coverage
			Effective	Expiry	
Builder's Risk					\$
Environmental Impairment Liability					\$
Asbestos Abatement					\$
Mold Remediation					\$
Other					\$

PROVISIONS / AMENDMENTS / ENDORSEMENTS:

- A. No exclusions for damage or loss from the removal or weakening of support of any property, building or land whether such support be natural or otherwise or from blasting or vibration from pile driving or caisson work. *(Delete and initial if not applicable.)*
- B. Commercial General Liability Insurance is extended to include the following coverage: Cross Liability and Severability of Interest Clause, Premises and Operations Liability, Blanket Contractual Liability, Products / Completed Operations, Personal Injury, Broad Form Property Damage, Owners & Contractors Protective, Contingent Employers Liability and Non-Owned Automobile Liability.
- C. With respect to the Commercial General Liability Insurance, THE CORPORATION OF THE CITY OF NIAGARA FALLS, its officers and/or officials, employees and volunteers (and "other" entities as outlined in Section 4 above) have been added as Additional Insureds but only with respect to liability arising out of the operations of the Named Insured.
- D. The Commercial General Liability Insurance Policy(ies) identified above shall protect each Insured in the same manner and to the same extent as though a separate policy has been issued to each, but shall not increase the Limits of Liability as identified above beyond the amount or amounts for which the company would be liable if there had been only one Insured. Any failure to comply with any provision of the insurance policy by the Named Insured shall not affect coverage provided to The Corporation of the City of Niagara Falls.
- E. The policy(ies) identified above shall apply as primary insurance and not excess to any other insurance available to THE CORPORATION OF THE CITY OF NIAGARA FALLS.
- F. If cancelled or changed to reduce the coverage as outlined on this Certificate, during the period of coverage as stated herein, thirty (30) days (ten (10) days if cancellation is due to non-payment of premium) prior written notice by registered mail will be given by the Insurer(s) to:

THE CORPORATION OF THE CITY OF NIAGARA FALLS
LEGAL SERVICES
4310 QUEEN STREET, P.O. BOX 1023
NIAGARA FALLS, ONTARIO L2E 6X5

This certificate is executed and issued to the aforesaid Corporation of the City of Niagara Falls, the day and date herein written below.

Name of insurance company or broker (completing form):	Telephone number:
Address:	Fax number:
Name of authorized representative or official (please print):	Signature of authorized representative or official: Date (year, month, day)