SECTION 10: DRAFT FORM OF AGREEMENT

THIS AGREEMENT made on the_____ day of _____ **2019**.

B E T W E E N:

Hereinafter called the **"Contractor",**

of the **FIRST PART;**

- and -

Niagara College,

Hereinafter called the **"Owner",**

of the **SECOND PART.**

WHEREAS the Owner has awarded to the Contractor the contract for the Parking Lot Reconstruction Project, Niagara College 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 therefore, a copy of which is hereto annexed, which said tender has been accepted by the Owner;

NOW THEREFORE THIS AGREEMENT WITNESSETH that the Contractor and the Owner 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 Owner to execute and perform the whole of the work and furnish all the labour, tools, appliances, transportation and materials for the Parking Lot Reconstruction Project, Niagara College 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 after the date of completion of the contract in accordance with the Contract Documents 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, provisoes 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.

2. The Contractor further covenants and agrees with the Owner 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 within 10 days.

(c) That the Contractor has examined the site of the work and has satisfied themselves 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 Owner for 50% of the tender price;

(e) To provide a Labour and Material payment bond for 50% 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 Owner on or before the execution of this agreement the policies of insurance in accordance with the following provisions in the contract documents:

(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 Owner 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 Owner, its officers, servants and agents, and from all loss, costs, charges, damages, liens and expenses which may be paid, sustained or incurred by the Owner, 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 therefore;

(i) To pay to the Owner, 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 Owner 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 Owner 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 Owner, 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;

(j) And the Contractor hereby authorizes and empowers the Owner or its Solicitor for the time being, to defend, settle or compromise any of such actions, suits, claims, liens, executions or demands as the Owner or its said Solicitor may deem expedient, and also hereby agrees to ratify and confirm all the acts of the Owner or its Solicitor in that behalf, and to pay to the Owner on demand all reasonable costs of defending, settling, or compromising any such actions, suits, claims, liens, executions or demands as the Owner 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 Owner 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 Owner to any such action, claim or suit.

3. The Owner 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, but subject to the holdbacks, deductions and liquidated damages, specified in the following provisions of the contract documents:

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:

1. Appendix B - Ontario Provincial Standards for Roads and Public Works - General Conditions of the Contract
2. Appendix C - Niagara Peninsula Standard Contract Document - Special Provisions - General
3. Appendix D - Niagara Peninsula Standard Contract Document - Special Provisions - Contract
4. Appendix E - Niagara College Parking Lot Reconstruction Drawings
5. Schedule 2 – Schedule of OPSS and OPSD
6. Ontario Provincial Standards Specifications (OPSS)
7. Supplementary General Conditions of the Contract including, but without limitation, Section GC 9.0 of the Bid Form
8. Schedule of Drawing – Parking Lot Reconstruction
9. Supplementary Special Provisions – Special Provisions, and
10. Any Addenda issued during the Tendering process.

all of the above herein referred to as the "contract documents, including the **Bid Form** including **Appendix A – Bid Form** of the Contractor dated**:** _____

(b) That the work as hereinbefore set forth shall be performed and completed to the satisfaction of the Engineer for the Owner;

(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 Owner; 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.

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