

## CONSTRUCTION AGREEMENT

Contract 17066

**THIS AGREEMENT** made in triplicate this \_\_\_\_\_ day of \_\_\_\_\_, 2019.

**BETWEEN:**

**MUNICIPALITY OF BROCKTON**

\_\_\_\_\_  
(hereinafter called "the Owner")

Of the First Part

-and-

**MOOREFIELD EXCAVATING LTD.**

\_\_\_\_\_  
(hereinafter called "the Contractor")

Of the Second Part

**WITNESSETH**

That the Owner 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 general description of the work is:

Partial Removal of Truax Dam in Walkerton

The Contractor shall, for the prices set out in the Tender Form and except as otherwise specifically provided, provide at no additional cost to the Owner all and every kind of labour, machinery, plant, structures, roadways, 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 Owner within the time specified in the Contract Documents.

### **ARTICLE 2**

In the event that the Tender Form provides for and contains a Contingency Allowance, it is understood that such Contingency Allowance is merely for the convenience of accounting by the Owner, and the Contractor is not entitled to payment thereof except for extra or additional work carried out by him as directed by the Contract Administrator and in accordance with the Contract Documents and only to the extent of such extra or additional work.

### **ARTICLE 3**

In case of any inconsistency or conflict between the provisions of this Agreement and the Contract Documents, or any other document or writing, the provisions of such documents shall take precedence and govern in accordance with General Condition (GC) 2.02 (Order of Precedence) as provided in the OPS General Conditions of Contract for Roads and Public Works (November 2006).

### **ARTICLE 4**

The Contractor shall not, without consent in writing from the Owner and Contract Administrator, and without restricting in any way the provisions of sections GC 3.08 and GC 3.09 of the OPS General Conditions referred to in the previous Article, make any assignment of any part or the whole of any monies due or to become due under the provisions of this Contract.

### **ARTICLE 5**

The Owner 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 Works the sum of *Five Hundred and Sixty Five Thousand .....00/100* (\$565,000.00), excluding HST, subject to **Article 2** and subject to such additions and deductions as may properly be made under the terms hereof, subject to the provision that the Owner may make payments on account monthly or otherwise as may be provided in the OPS General Conditions attached hereto.

### **ARTICLE 6**

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 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 addresses:

The Owner: Municipality of Brockton  
100 Scott Street, PO Box 68  
Walkerton, ON N0G 2V0  
Attn: Ms. Sonya Watson  
Chief Administrative Officer

The Contractor: Moorefield Excavating Ltd.  
6297 Wellington County Road 109  
Harriston, ON N0G 1Z0  
Attn: Mr. Jerry Roubos  
President

The Contract Administrator: GSS Engineering Consultants Ltd.  
Unit 104 D, 1010 9<sup>th</sup> Ave., W.  
Owen Sound, ON, N4K 5R7  
Attn: Mr. Jeff Graham, P. Eng.

Where any such notice, direction or other communication is given or made to the Contract Administrator, a copy thereof shall likewise be delivered to any agent of the Contract Administrator appointed in accordance with the General Conditions of this Contract and where any such notice, direction or other communication is given or made to such agent, a copy thereof shall likewise be delivered to the Contract Administrator.

#### **ARTICLE 7**

A copy of Contract Documents (including Tender Form submitted by Contractor and accepted by Owner, and including any addendums issued during tendering) are hereto annexed and together with the Contract Drawings relating thereto and listed in the specifications are made part of this Agreement as fully to all intents and purposes as though recited in full herein. The Contract Documents include permits issued by the Ministry of Natural Resources and Forestry and the Saugeen Valley Conservation Authority.

#### **ARTICLE 8**

Insurance provided by the Contractor shall satisfy requirements as specified by attached **Schedule A**. A copy of acceptable insurance documents shall be provided to the Owner prior to work beginning

#### **ARTICLE 9**

The Contractor shall abide by a Risk Management Plan. At minimum, the RMP shall abide by requirements provided in the Risk Management Plan included by attached **Schedule B**.

#### **ARTICLE 10**

The Contractor shall abide by all conditions specified in the permits issued by the Ministry of Natural Resources and Forestry and the Saugeen Valley Conservation Authority for this contract. A copy of said permits are attached and form part of this Agreement.

#### **ARTICLE 11**

No implied contract of any kind whatsoever by or on behalf of the Owner shall arise or be implied by or inferred from anything in this Agreement 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 Owner shall be the only covenants and agreements upon which any right against the Owner may be founded.

#### **ARTICLE 12**

Time shall be deemed the essence of this Contract.

#### **ARTICLE 13**

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 or performance of the Work, or that not having so investigated, he

acknowledges that his responsibility under the Contract is in no way reduced or limited thereby and, in either case, he is willing to assume and does hereby assume all risk conditions arising, developing, or being revealed 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 Agreement signed. The Contractor also declares that he did not and does not rely upon information furnished by any methods whatsoever by the Owner or its officers, employees or agents, 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 Owner.

#### **ARTICLE 14**

Any representations in the Contract Documents were furnished merely for the general information for tenderers and were not in any way warranted or guaranteed by or on behalf of the Owner or the Owner's Contract Administrator (or the Contract Administrator's sub consultants) or the Contract Administrator's officers or employees, and neither the Owner nor the Contract Administrator or its officers or employees shall be liable for any negligent representations or otherwise contained in the Contract Documents.

#### **ARTICLE 15**

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

**NOTE – BALANCE OF THIS PAGE LEFT BLANK ON PURPOSE**

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

**OWNER:**

\_\_\_\_\_  
Chris Peabody, Mayor

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Sonya Watson, CAO

\_\_\_\_\_  
Signature

**CONTRACTOR:**

\_\_\_\_\_  
Jerry Roubos, President

\_\_\_\_\_  
Signature

6297 Wellington County Road 109S, Harriston, ON N0G 1Z0  
Address

Witness as to Signature of the Contractor\*

Name

\_\_\_\_\_  
Name and Title

\_\_\_\_\_  
Signature

\*Not necessary if corporate seal is affixed.

## **Schedule A**

### Insurance Requirements

Contract 17-066

Partial Removal of Truax Dam in Walkerton

May 31, 2019

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The Contractor shall provide insurance, meeting the following requirements:

#### **Commercial Liability Insurance and Automobile Insurance**

Insurance shall be Commercial Liability Insurance and Automobile Liability Insurance in the minimum amount of \$5,000,000 per Occurrence.

The Contractor must provide acceptable insurance documents to the Owner prior to beginning work.

Additional insureds to include The Municipality of Brockton, Bruce Power, GSS Engineering Consultants Ltd, Senlin Li, Weiwen Zhou, Lake Huron Fishing Club and the Saugeen Valley Conservation Authority.

#### **Contractor's Pollution Liability**

Environmental Liability Insurance subject to limits of not less than 5 Million (\$5,000,000) inclusive per claim and shall include coverage for but not limited to, bodily injury including death, property damage and remediation costs which are reasonable and necessary to investigate, neutralize, remove, remediate (including associated monitoring) or dispose of soil, surface water, groundwater or other contamination. The policy shall remain in force for twelve (12) months following completion of work. The Municipality of Brockton shall be named as an additional insured.

## **Schedule B**

### Risk Management Plan

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As per the Project Specifications, the Contractor will store all equipment out of the river each night and all equipment will be stored at a location(s) with an elevation of at least 248.0 m asl or higher. As well, all fueling of equipment (and repair of equipment) to be completed only at the storage location(s) with an elevation of at least 248.0 m asl or higher. The intent is to reduce the probability of gasoline, diesel, hydraulic fluid or lubricant being spilled or discharged into the Saugeen River or near the Saugeen River.

In addition, the refueling/repair locations referred to above will be at least 30 m away from the edge of river.

In addition, the Contractor to keep on hand a Spill Containment Kit that will contain at minimum one 25' (or longer) fuel containment boom, at least 10 fuel absorbent pads (17" x 19" by 3/8" or larger) and at least 3 fuel absorbent pillows (21" x 16" x 6" or larger).

In addition, petroleum hydraulic fluid in the main hi hoe (the hi hoe that will be used near or in the water for this contract) will be replaced with an environmentally approved, nontoxic and biodegradable hydraulic fluid. Hydraulic fluid to be as recommended by the Contractor and approved the Engineer.

A fire extinguisher appropriate for fuel or oil fire suppression shall also be kept on hand.