

This Agreement made in triplicate this day of , 2020.

Between

Corporation of the County of Elgin
(hereinafter "County")

Of The First Part

And

The Corporation of the Municipality of West Elgin
(hereinafter "Municipality")

Of The Second Part

WHEREAS, by statutory definition, the County is an upper tier municipality and, further thereto and again by statutory definition, the Municipality is a lower tier municipality, the latter being associated with the former;

AND WHEREAS, in hopes of securing favourable pricing and in particular to the benefit of the Municipality, among others, the County invited the Municipality to participate in its Request for Tender No. 2020-T16 (hereinafter "RFT") for Microsurfacing (Type 3) and surface treatment of highways;

AND WHEREAS the Municipality has submitted to the County and the County has included in its RFT the details and specifications for such work upon local highways owned by or under the jurisdiction of the Municipality;

AND WHEREAS the RFT contemplates a Contract to be executed between the successful bidder and the County for such work upon highways owned by or under the jurisdiction of the County but only the potential for a Contract to be executed between the successful bidder and the Municipality for such work upon highways owned by or under the jurisdiction of the Municipality, in which circumstances the Contracts between the County and the successful bidder and between the Municipality and the successful bidder are intended to be separate and distinct and without overlapping risk or liability amongst the parties thereto in respect of performance in relation to such Contracts;

AND WHEREAS, on the advice of legal counsel and out of an abundance of caution, the County and the Municipality have reached consensus regarding issues of potential risk and/or liability arising from the separate Contracts, and performance thereunder, as contemplated by and/or arising from the RFT and wish to reduce the terms of such consensus to writing to clearly state an intention to insulate both the County and the Municipality from any such risk and liability as arising from performance, or the lack thereof, under the Contract involving the other such municipal corporation with the successful bidder under the RFT;

NOW THEREFORE, in consideration of payment of the sum of ONE DOLLAR (\$1.00) now by the County and the Municipality each to the other and other good and valuable consideration, including but not limited to the shared participation in the RFT, the sufficiency and receipt of which consideration is hereby irrevocably acknowledged, the County and the Municipality, as the Parties hereto, hereby agree, acknowledge, and/or covenant as follows:

1. The Term of this Agreement shall commence on the date of issuance of the Request for Tender No. 2020-T16 (hereinafter "RFT") for Microsurfacing (Type 3) and Surface Treatment and end upon the later of the completion of all Works contemplated under any Contracts between the County and the successful bidder under such RFT and the

Municipality and the successful bidder under such RFT, whichever is later, and the disposition of any and all claims arising from either or both of such Contracts, including but not limited to disposition by settlement, mediation, arbitration, or trial.

2. The Municipality hereby releases and forever discharges the County, including its Warden, Councilors, elected officials, Committee Members, officers, administration, staff, servants, employees, and agents, including their respective heirs, executors, successors, and assigns, as the case may be (hereinafter collectively referred to as "Releasees"), of and from all manners of actions, actions, causes of action, suits, dues, claims, and demands (hereinafter collectively referred to as "Claims") which the Municipality had, now has, or hereinafter may have as arising from the preparation, issuance, and/or administration of the RFT by the County, including but not limited to details of Works to be undertaken on highways owned by or under the jurisdiction of the Municipality as included therein, evaluation of bids, and/or selection of a successful bidder.
3. The Municipality hereby agrees and undertakes to protect, hold harmless, and indemnify the County, including its Warden, Councilors, elected officials, Committee Members, officers, administration, staff, servants, employees, and agents, including their respective heirs, executors, successors, and assigns, as the case may be (hereinafter collectively referred to as the "Indemnified Parties"), against all losses, damages, claims, demands, and actions, including costs and expenses thereof (assessed upon the scale of as between a solicitor and a client) arising directly or indirectly and in any manner whatsoever in connection with the performance of work contemplated by the RFT upon highways owned by or under the jurisdiction of the Municipality and/or any Contract for the performance of such work between the Municipality and the successful bidder selected under the RFT.
4. The County hereby agrees and undertakes to protect, hold harmless, and indemnify the Municipality, including its Mayor, Councilors, elected officials, Committee Members, officers, administration, staff, servants, employees, and agents, including their respective heirs, executors, successors, and assigns, as the case may be (hereinafter collectively referred to as the "Indemnified Parties"), against all losses, damages, claims, demands, and actions, including costs and expenses thereof (assessed upon the scale of as between a solicitor and a client) arising directly or indirectly and in any manner whatsoever in connection with the performance of work contemplated by the RFT upon highways owned by or under the jurisdiction of the County and/or any Contract for the performance of such work between the County and the successful bidder selected under the RFT.
5. The County and the Municipality agree each with the other that, in the event that either the County or the Municipality makes claim or seeks relief under any performance or labour and material bond as contemplated by or issued and delivered pursuant to either the RFT or any Contract based thereon in circumstances in which the claiming municipal corporation requires and seeks the assistance of the other municipal corporation hereto, then that other municipal corporation, whether the County or the Municipality, will render reasonable assistance to such other municipal corporation to facilitate such claim or relief as sought under that bond.

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6. The within Agreement is binding upon the Parties hereto and their respective heirs, executors, administrators, successors, and assigns.

Dated at Central Elgin, Ontario this day of , 2020.

Corporation of the County of Elgin

Per: _____
Name: David Mennill
Position: Warden

Per: _____
Name: Julie Gonyou
Position: Chief Administrative Officer

We have authority to bind the Corporation.

Dated at , Ontario this day of , 2020.

The Corporation of the Municipality of West Elgin

Per: _____
Name: Duncan McPhail
Position: Mayor

Per: _____
Name: Magda Badura
Position: Chief Administrative Officer/Treasurer

We have authority to bind the Corporation.

Date: , 2020

CORPORATION OF THE COUNTY
OF ELGIN

and

THE CORPORATION OF THE MUNICIPALITY
OF WEST ELGIN

Release/Indemnity Agreement

Stephen H. Gibson
450 Sunset Drive
St. Thomas, ON N5R 5V1

County Solicitor