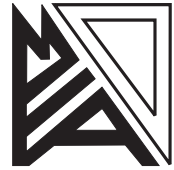




CONFIDENTIALITY AND INDEMNITY AGREEMENT



THIS AGREEMENT, made this date _____, between:

(Name)*
(Address)*
(The "Concrete Producer")

-And-

(Name)*
(Address)*
(The "Municipality")

WHEREAS the Concrete Producer intends to disclose certain Confidential Information to the Municipality for purposes of the Activity (as those terms are defined in this Agreement);

AND WHEREAS it is the intent of this Agreement to protect the proprietary rights and intellectual property of the Concrete Producer involved as the concrete supplier in projects for engineered structures tendered now or in the future by the Municipality in the Province of Ontario ("Prime Contracts").

THEREFORE, in return for the promises and mutual agreements contained in this Agreement and other good and valuable consideration (the receipt and sufficiency of which is acknowledged by each of the Parties), the Parties agree as follows:

1. DEFINITIONS. In this Agreement, unless the context otherwise requires:

"Activity" means the design, development and production of concrete by the Concrete Producer for delivery to and acceptance by the Municipality arising from and in relation to the Undertaking, Contract Number dated _____ (the "Prime Contract") relating to the intended construction of an engineered structure (the Undertaking);

"Agreement" means this confidentiality and indemnity agreement and any document signed by the Parties amending or related to this agreement;

"Confidential Information" means any and all information disclosed or otherwise made available to the Municipality by the Concrete Producer for engineered structures (current OPSS Division 9 items only) only in connection with the Activity, whether oral, written, or otherwise, and includes, without limitation:

- (i) Concrete mix design, concrete mix proportions and material sources;
- (ii) Any information ascertainable by the inspection or analysis of such information

"Parties" means, collectively, the Concrete Producer and the Municipality, and "Party" means either of the Parties;

"Product" means the Concrete supplied by the Concrete Producer to the Municipality for the purposes of the Undertaking;

"Representatives" means any one or more of the employees and staff of a Municipality.

"Undertaking" means the construction project into which the concrete supplied is to be incorporated as per this signed Confidentiality Agreement.

2. INTELLECTUAL PROPERTY

2.1 The Municipality acknowledges and confirms that any Confidential Information received by the Municipality from the Concrete Producer is and shall remain the sole and absolute property of the Concrete Producer.

2.2 The Concrete Producer acknowledges and confirms that any Confidential Information may be used by the Municipality in connection with the provisions of the Undertaking for the benefit of the Municipality and for other good and valuable public policy purposes.

3. **USE AND DISCLOSURE RESTRICTIONS.** The Municipality acknowledges and confirms that the Confidential Information is confidential and is being disclosed to the Municipality for purposes of the Activity only. Accordingly, under the terms of this Agreement, the Municipality agrees:

- (i) to maintain the Confidential Information in confidence at all times;
- (ii) to use the Confidential Information for purposes of the Activity only;
- (iii) to handle the Confidential Information with at least the same degree of care normally used to protect its own confidential information, provided that such care must always and at a minimum be reasonable in all the circumstances;
- (iv) not to use the Confidential Information for its own benefit or the financial advantage of third parties or its contractors;
- (v) not to make any copies of the Confidential Information except as necessary to carry out the Activity; and
- (vi) not to disclose the Confidential Information, in whole or in part, in its original form or by way of summary or analysis, to anyone except as explicitly provided in this Agreement or otherwise directed by the Concrete Producer in writing.

4. **EXCEPTIONS TO USE AND DISCLOSURE RESTRICTIONS.** The restrictions on use and disclosure set out in this Agreement do not apply to any part of the Confidential Information that:

- (i) is or comes into the public domain other than through a breach of this Agreement;
- (ii) is lawfully received by the Municipality from a third party, as shown by documentary evidence;
- (iii) is required by law to be disclosed, provided that the Municipality gives the Concrete Producer immediate notice of such requirement so that the Concrete Producer may seek a protective order or take other appropriate action to prevent such disclosure.

5. **DISCLOSURE**

5.1 The Municipality may disclose some or all of the Confidential Information to its Representatives who require direct access to it for purposes of performing their duties and responsibilities, provided that:

- (i) each Representative is advised by the Municipality of and agrees to be bound by the terms of this agreement;
- (ii) each Form B is clearly marked on its face as “CONFIDENTIAL”;
- (iii) each Representative receiving such Confidential Information executes a confidentiality agreement in favour of and in form satisfactory to the Concrete Producer prior to receiving such information;
- (iv) the Municipality agrees to be strictly liable for any failure in the part of its Representative to comply with the terms of this Agreement.

5.2 The Municipality may not disclose the Confidential Information to any other third parties retained by them to represent their interests in the Undertaking including but not limited to the municipal engineer of record without the prior written consent of the Concrete Producer. Such permission shall not be unreasonably withheld; however the safeguards set forth in paragraph 5.1 shall continue to apply and each such third party shall be required to execute a confidentiality agreement in favour of and in form satisfactory to the Concrete Producer and the

Municipality shall continue to be strictly liable in respect of such third party failing to comply with such agreement.

Any requests made to the municipality for release of confidential information shall be directed to the Concrete Producer for their consideration.

6. BREACH

6.1 The Municipality acknowledges that any failure on its part to comply with the confidentiality obligations set forth in this Agreement may result in financial loss and damages to the Concrete Producer and its industry in general.

6.2 In the event a breach occurring the Municipality shall:

- (i) immediately notify the Concrete Producer in writing as to the nature and circumstance of the breach or default which has occurred;
- (ii) take all necessary and proper steps to rectify the breach to the extent possible;
- (iii) take all steps possible to mitigate and/or limit the damages flowing from such breach.

7. **BEGINNING AND EXPIRY OF THE MUNICIPALITY'S OBLIGATIONS.** The Municipality's obligations under this Agreement shall take effect as of the date of this Agreement and survive until ten (10) years from such date, the completion of the Activity, whichever comes last save and except that the Municipality shall continue to be liable for any breach of its obligations occurring during the currency of the Agreement.

8. **INDEMNITY.** The Municipality agrees to indemnify and hold the Concrete Producer harmless from and against any and all loss, liability, damage, claim, cost, and expense (including legal fees) however arising, out of any breach or non-performance by the Municipality or its Representatives of any of the Municipality's obligations under this Agreement including, without limitation, the Municipality's obligations regarding the use of and safeguarding of the Confidential Information.

9. **INJUNCTION.** The Municipality acknowledges that a breach by it or any of its Representatives of any of the Municipality's obligations under this Agreement may cause irreparable harm to the Concrete Producer which may be difficult or impossible to ascertain, and that an award of damages will not be a sufficient remedy for such breach. Accordingly, the Concrete Producer will be entitled to specific performance of this Agreement and an injunction to prevent any breach or threatened breach of this Agreement. No remedy referred to in this section is exclusive but each is cumulative and in addition to any other remedy otherwise available at law or in equity, including damages.

10. GENERAL

10.1 Nothing in this Agreement shall be interpreted to:

- (i) obligate the Concrete Producer to disclose the Confidential Information or any part of it to the Municipality save and except in accordance with the requirements of the Prime Contract;
- (ii) obligate the Concrete Producer to enter into any further agreement with the Municipality; or
- (iii) grant to the Municipality any right, title, or interest in the Confidential Information or in the Concrete Producer's business, products, or operations.

10.2 The Concrete Producer shall not be obligated to make any representation or warranty, explicit or implicit, regarding the Confidential Information or its fitness for a particular use or purpose save and except in accordance with Form A .

10.3 Any communication under this Agreement is deemed to have been properly made when, in the ordinary course of delivery or transmission, it is sent to a Party at its address noted below or other address as a Party advises, in writing.

The Concrete Producer:
c/o

The Municipality:
c/o

10.4 Notwithstanding any dispute arising between the Concrete Producer and the Municipality, the Municipality must continue to honour its obligations to the Concrete Producer as set forth herein.

10.5 No delay or failure of a Party to exercise any of its rights under this Agreement operates as a waiver of such right or affects any other of that Party's rights or the exercise of those rights.

10.6 This Agreement benefits and is binding on the Parties and their respective heirs, executors, administrators, successors, and permitted assigns, as the case may be.

10.7 This Agreement is governed by and must be construed in accordance with the laws of the Province of Ontario and the laws of Canada as applicable in that Province and the Parties irrevocably submit to the non-exclusive jurisdiction of the courts of Ontario for the Interpretation and enforcement of this Agreement.

10.8 If any term of this Agreement is held to be invalid, illegal, or unenforceable, it will not affect the validity of any other terms of this Agreement.

10.9 The Municipality agrees not to assign this Agreement or any of their rights, obligations, or interests under this Agreement without the prior written consent of the other Party. Notwithstanding such consent, no assignment relieves the Municipality of any of its obligations under this Agreement.

10.10 This Agreement expresses the final agreement between the parties as to the subject matter of this Agreement. Accordingly, the Parties agree not to amend this Agreement except by and in accordance with a document signed by the Parties.

EACH OF THE PARTIES have executed this Agreement and in so doing confirm their authority and intention to bind the Party they represent.

*
Per: _____
Name: _____
Title: _____

*
Per: _____
Name: _____
Title: _____

I have authority to bind the Corporation

I have authority to bind the Municipality