DURHAM CATHOLIC DISTRICT SCHOOL BOARD

Learning and Living in Faith

DURHAM CATHOLIC DISTRICT SCHOOL BOARD

Appendix A

Form of Agreement

T27-01

St. Luke the Evangelist Catholic Elementary School

Eight (8) Classroom Addition

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DURHAM CATHOLIC DISTRICT SCHOOL BOARD
Learning and Living in Faith

Appendix A - Form of Agreement

1. Agreement with the Durham Catholic District School Board

Commitment to General Terms and Conditions

This agreement shall be based on and incorporate by reference, Stipulated Price Contract CCDC 2-2020 shall apply to this tender, as amended by the Supplementary General Conditions (Appendix B). The application of these conditions shall be governed in accordance with the order of precedence stipulated in the Supplementary General Conditions.

The Contractor**,** _____, agrees, and commits to supply to the Durham Catholic District School Board (the "Board" or "DCDSB") the goods and/or services as stipulated in bid document **T27-01**, including the Terms and Conditions set out in this document any and all addenda and appendices to the bid document.

I have the authority to bind the Corporation.

_____
Signature

_____
Title

_____
Date

_____
Name of the Firm

To be signed and submitted by the successful proponent.

General Terms and Conditions

1. Experience

Throughout the Contract term, in performing the services, Contractors are to each have acceptable qualifications, certifications and related business experience. The assessment of acceptable qualifications and related business experience will be based on a range of measures including as appropriate professional and technical qualifications and competence of the Contractor and all staff performing the work, the Contractor's financial resources, the equipment and other facilities available to provide the services, managerial capability, reliability, experience and reputation, personnel available, the Contractor's legal capacity to enter into contract, their solvency and any outstanding litigation, their good standing regarding the payment of taxes and any history of false representation regarding qualifications and related experience.

The Board reserves the right in its sole discretion to terminate the Contract if the Contractor, or any of their subcontractors, are deemed to be unsuitable by the Board.

2. Payment Process

Payment of invoices shall be within thirty (30) days of receipt of an invoice. Original invoices must be mailed to the Durham Catholic School Board, Accounts Payable, 652 Rossland Rd. W., Oshawa, Ontario, L1J 8M7 or email accountspayable@dcdsb.ca. Invoices must provide the purchase order number, complete description of good/services, contact name and location of the requesting department/location, the date in which the goods/services were picked up or delivered, HST registration number and complete prices in accordance with the Contract provisions.

The Contractor shall ensure all orders have a complete purchase order number prior to filling / shipping order(s) and submitting the invoice(s).

Failure to comply with these requirements may result in payment delays and return of invoice to the Contractor for proper information.

At any time during the term of the Contract including any extensions, the Board reserves the right to terminate the contract where billing errors are consistently identified and/or not resolved in a timely manner.

3. Subcontracting

All proposed subcontractors must possess the required qualifications, experience and valid licenses. The Board reserves the right in its sole discretion to terminate the Contract if any named subcontractor(s) is/are deemed to be unsuitable by the Board, do not possess a valid license or has/have an unsatisfactory health and safety record.

Contractor using subcontractors shall be responsible for quality of work and restoration of substandard work performed by subcontractors.

The Contractor shall not at any time subcontract any portion of its contract with the DCDSB nor shall it assign the contract without the written permission of the DCDSB. The successful Proponent shall not, at any time, change subcontractors approved by the DCDSB without written permission of the DCDSB.

Prior to any subcontractor commencing work, the Contractor shall ensure that each subcontractor hired by the Contractor carries the required amount of Insurance subject to the inclusive limits as noted in this Contract.

Throughout the Contract term, where requested by the Board, the Contractor shall provide proof of the required insurance from each sub-contractor. Each certificate of insurance is to be sent to the Board.

4. Health and Safety

The vendor/contractor shall obtain the permits, licenses and certificates and pay the fees required for the performance of the work which are in force subsequent to the date of bid closing.

The vendor/contractor shall give the required notices and comply with the laws, ordinances, rules, regulations, codes and orders of the authorities having jurisdiction, which are or become applicable during the performance of the work and which relate to the work, to the preservation of the public health, and to construction safety, in accordance with the Occupational Health & Safety Act.

The Board will retain the right to document all health and safety concerns regarding the Contractor's operations, and to issue warnings and/or to stop work if there are any violations by the Contractor of the Occupational Health and Safety Act; Ontario Construction Regulations, Board health and safety programs, policies, rules and requests; and/or if the Contractor creates an unacceptable health or safety hazard.

Written warnings and/or stop work orders will be issued to the Contractor using the Contractor health and safety warning/stop work order form.

5. Accessibility for Ontarians with Disabilities Act (AODA)

The Board is committed to the highest possible standards for accessibility. The Bidder must be capable of recommending and delivering, as appropriate for each service, accessible and inclusive service consistent with the Ontario Human Rights Code ("OHRC"), the Ontarians with Disabilities Act, 2001 ("ODA") and the Accessibility for Ontarians with Disabilities Act, 2005 ("AODA") and their respective regulations in order to achieve accessibility for Ontarians with disabilities.

In accordance with Ontario Regulation 429-07 made under the AODA (Accessibility Standards for Customer Service), the Board has established policies, practices and procedures governing the provision of its goods and services to persons with disabilities. These policies, practices and procedures are available for review at: www.dcdsb.ca.

Bidders are required to comply with the Board's accessibility standards, policies, practices and procedures, as same may be in effect during the terms of the Agreement and apply to the goods and services to be provided by the Bidder.

6. Code and Standards

The Contractor shall comply with all applicable industry safety standards.

7. C.S.A Approval

All electrically powered equipment, components and/or supplies to be provided under this Contract must be fully C.S.A. approved

8. Workplace Safety & Insurance Board (WSIB) requirements

All Contractors that employ workers, including a Contractor's personnel and Owners must be covered by an insurance plan under the Workplace Safety and Insurance Act, 1997. Upon award of a Contract, prior to the commencement of the work or upon a request by the Board, the Contractor must supply to the Board:

A valid clearance certificate (for Schedule 1 employers) or A letter of Good Standing (for Schedule 2 employers) indicating the Contractor has an active account with WSIB in good standing; or,

Alternatively, where appropriate, a letter from WSIB stating the Contractor is not required to register with WSIB; or,

A letter that confirms the Contractor falls under a "By-Application" industry, where WSIB confirms a Contractor (that employs workers) is exempt from coverage based on their business activity.

Prior to final payment, a Clearance Certificate must be received by the Board indicating all payments by the Contractor to WSIB in conjunction with the subject Contract have been made and that the Board will not be liable to WSIB for future payments in connection with the Contractor's fulfillment of the contract. Further WSIB Certificates of Clearance or other types of certificates shall be provided upon request.

For Independent Contractors /Owners /Operators

For Independent Contractors/Owners/Operators a letter along with an identification number from the WSIB verifying their status as an "Independent Operator" must be provided to the Board. To obtain this, Contractors must complete the form "Determining worker/Independent Operator status", issued by WSIB. (For more information, please contact your local WSIB Office and refer to this clause.)

Single Independent Contractors/Owners/Operators, where required by the Board, must also carry optional WSIB insurance coverage and must also provide a clearance certificate from WSIB verifying they have purchased the optional WSIB coverage, and indicating the Contractor has an active account with WSIB in good standing.

9. Workplace Hazardous Materials Information System (W.H.M.I.S)

The Ministry of Education and Training and the Ministry of Health provide regulations specifying which substances/products are not acceptable. If applicable, the Successful Bidder shall supply Material Safety Data Sheets providing the Board with the breakdown of components for any products used in Board facilities with every shipment.

10. Warranty

If at any time prior to one (1) year after the completion and acceptance of the work by the Board (or other warranty period specified elsewhere in the Contract documents) any part of the work becomes defective, or is deficient or fails due to defect in design, material or workmanship, or otherwise fails to meet the requirements of the Contract, then the Contractor , upon request by the Board, shall make good every such defect, deficiency or failure without cost to the Board. Failure to remedy the defect, deficiency, or failure within a reasonable timeline may result in termination of the balance of the Contract term by the Board pursuant to the Contract provisions.

All materials and equipment supplied by the Contractor are also subject to the Manufacturer’s warranty. The Contractor shall be responsible to coordinate all repairs under warranty with the Manufacturer on behalf of the Board.

The Contractor shall pay all transportation costs for parts and/or equipment both ways between the Manufacturer’s factory (or authorized repair depot), and the point of use.

The Board shall notify the Contractor of defects within two (2) business days from the time a defect is identified.

Whenever defects are identified within the warranty period, the Contractor shall replace or repair the identified defects within five (5) business days.

Coordinate the repair or replacement of any damages or defective items following installation.

11. Environmental

In support of environmental stewardship and decarbonization, the Board promotes and supports the procurement of goods and services that are environmentally friendly, energy-efficient, and contain the highest possible level of post-consumer recycled and/or recyclable content, without significantly compromising their intended use. Where possible, packaging shall be made from recycled materials.

12. Operation of Vehicles on Board Property

All vehicles, including delivery or service vehicles must not enter or leave school grounds when students are in the area unless directed by or with permission of the school and/or administrative staff.

Drivers of motor vehicles shall not operate their vehicles beyond the designated parking areas unless permission is obtained from the school principal or an authorized official to locate and

operate the vehicle elsewhere. Such vehicles shall be operated in due caution at all times while on school property.

On or near school grounds, the driver or operator must comply with the following:

(i) Speed limit must not exceed 8 km (5 miles) per hour at any time ;

(ii) Vehicles or equipment must not be operated in the school yard during recess, lunch hour or other times of outdoor activity unless directed by or with permission of the school and/or administrative staff;

(iii) When a vehicle is parked in a schoolyard, the following conditions must be met:

a) the ignition turned off;
b) the key removed;
c) the transmission placed in park (neutral if not parked);
d) the parking brake engaged; and
e) the doors locked.
f) All vehicles must have a functioning back-up alarm.

The Contractor's equipment used on the Board's sites shall be well maintained and in safe operating conditions; repairs and damages must be addressed accordingly.

13. No Smoking Policy

Contractors are advised that there is no smoking or vaping permitted within 20 meters of the schools or on Board property, and all parties must strictly adhere to this. Contractors shall be responsible for advising its employees or subcontractors.

14. Police Record Check (formerly referred to as Criminal Background Check)

The Contractor acknowledges that the Board must comply with Regulation 521/01 (Collection of Personal Information) to the Education Act with respect to a Police Record Check. In complying with this Regulation, the Contractor may be required to provide the Board (or such other entity as the Board may designate) with a Police Record Check and an Offence Declaration in a Board-approved form no later than the day the Contractor becomes a service provider at a school site of the board or commences volunteer work with the board, and every five years thereafter.

Subject to the Board's reserved rights, the Board will determine which positions meet the requirements for either a Vulnerable Sector Check (VSC) or Criminal Record and Judicial Matters Check (CRJMC) based on job duties and interactions with students, while ultimately the Police Record Check provider must be satisfied if the applicant meets the requirements.

Contractors in a position of trust or authority in relation to students will require a VSC. Contractors not in a position of trust or authority in relation to students will require a CRJMC.

The Contractor(s) shall be responsible for all costs associated with having the Police Record Check completed.

The Contractor further acknowledges and agrees that the Contract between the Board and the Contractor contains provisions of indemnification and provisions allowing the Board to terminate in the event the Contractor fails to provide the Board with a Police Record Check and an Offence Declaration. In addition, the Contract contains provisions that will allow the Board (or other entities as the Board may designate) upon review of the Police Record Check to determine that an individual will not be permitted on a school site in circumstances where direct contact with students is probable.

15. Assignment

The Contractor may not assign or sublet this Contract or any part of the Contract without the written consent of the Board.

16. Materials Produced

The Board is the sole owner of any material produced under this Contract. Any material produced under this Contract cannot be used or disclosed for any purpose other than the performance of this Contract without the written approval of the Board. “Material” includes both tangible and intangible (including intellectual) property.

17. Termination and Default

In the event of any breach of this Agreement, the Board may terminate for breach of contract or any portion thereof by providing notice in writing to the Contractor. Upon receipt of such notice, the Contractor shall perform no further work other than reasonably necessary to close out work. The Board shall not be liable to the Contractor for loss of anticipated profit, interest lost or any other damages or loss occasioned to the Contractor on the terminated portion(s) of the Contract.

If the Contractor commits any act of bankruptcy; or if a receiver is appointed on account of its insolvency or in respect of any of its property; or if the Contractor makes a general assignment for the benefit of its creditors; then, in any such case, the Board may, without notice, terminate the Contract.

Although the Board reserves the right to terminate for breach of contract, the Board may elect to notify the Contractor of default in carrying out its part of any of the terms, conditions and obligations of the Contract. In such case, the Board may give notice in writing of the default in order for the Contractor to cure any defects. Upon expiration of ten (10) business days from the date of written notice to the Contractor, the Board may terminate the Contract.

If the Board terminates the Contract, it is entitled to:

a) take possession of all of the Deliverables in progress, materials and construction equipment then at the project site (at no additional charge for the retention or use of the construction equipment), and finish work on the Deliverables by whatever means the Board may deem appropriate under the circumstances;

b) withhold any further payments to the Contractor;

c) recover all loss, damage and expense incurred by the Board by reason of the Contractor's default (which may be recovered from the performance surety held, or deducted from any monies due or becoming due to the Contractor, with any remaining balance to be paid by the Contractor to the Board).

In the event that the Contract includes Performance and Labour and Material Payment Bonds the Board shall advise the surety provider of the Contractor's default in accordance with these provisions so that the surety provider may take immediate and appropriate action to remedy the default.

Any termination of the Contract by the Board shall be without prejudice to any other rights or remedies the Board may have.

18. Indemnity

The Contractor hereby acknowledges that the remuneration for the Services is provided for under this Agreement.

1. The Contractor hereby acknowledges and agrees that it shall be solely responsible and liable to the Board for any breach of the confidentiality obligations herein by any person to whom access to the Confidential Information was provided.

2. The Contractor shall defend, indemnify and save harmless the Board and its elected officials, officers, employees and agents from and against all claims of any nature, actions, causes of action, losses, expenses, fines, costs (including legal costs), interest or damages of every nature and kind whatsoever, arising out of or allegedly attributable to the negligence, acts, errors, omissions, misfeasance, nonfeasance, fraud or willful misconduct of the Consultant/Company, its directors, officers, employees, agents, contractors and subcontractors, or any of them, in connection with or in any way related to the delivery or performance of this Contract. This indemnity shall be in addition to and not in lieu of any insurance to be provided by the Contractor in accordance with this Contract, and shall survive this Contract.

3. The Contractor covenants and agrees that they will take any and all action and will do and provide the services herein required to be provided in compliance with all laws, regulations or orders, including the order of any board or court of competent jurisdiction, rule, regulation or requirement of the Canadian Government or the Government of the Province of Ontario or any competent local government, board, commission, department or officer ("Compliance Requirements") and hereby indemnifies and holds harmless the Board from any and all claims, payments, injury or loss and for any and all legal costs (including fees and disbursements) or administrative costs incurred by the Board relating to any failure of the Contractor, their employees, agents or contractors to comply with any Compliance Requirements.

19. Free On Board (FOB) Point (Transfer of Title)

The materials and/or services shall be delivered FOB destination(s), prepaid and allowed.

20. Inspection and Non-conformance

The Board shall inspect any goods or services prior to or when delivered to determine if they meet the requirements in accordance with the specifications of the Contract. If deficiencies exist, the Board shall reserve the right to:

a) Direct the Contractor to immediately correct deficiencies or replace the goods or services provided at no additional cost to the Board,

b) Failing immediate action by the Contractor, the Board will correct the deficiencies and deduct from payment to the Contractor the total costs incurred, or

c) Where, in the opinion of the Board, it has been determined that the deficiencies are substantial and cannot be remedied through repairs or modifications to the goods or services provided, cancel the Contract pursuant to this clause.

Where goods or services are inspected and deemed by the Board not to conform to the specifications or requirements, payment of invoices will not be within thirty (30) days of receipt of invoice.

21. Contract Documents and Order of Precedence

The Contract consists of the following documents:

a) Any duly authorized amendments to the purchase order, standing agreement or Contract.

b) The purchase order, standing agreement or Contract issued to the Contractor for the required goods and/or services and all appendices or attachments incorporated therein.

c) All Addenda to the bid document.

d) Bid document issued by the Durham Catholic District School Board, including all appendices.

e) The Contractor’s bid submission.

Unless otherwise specified, these documents and portions thereof, take precedence in the order in which they are named above, notwithstanding the chronological order in which they are issued or executed.

The intent of the Contract is that the Contractor shall supply the Deliverables in a form that is fit and suitable for the Board’s intended use and complete for the intended use.

None of the terms and conditions contained in the Contractor's standard or general (printed) conditions of sale, or contained in any other form of agreement or amendment proposed by the Contractor shall be of any effect unless explicitly agreed to by the Board and specifically set forth in the Contract.

22. Standing Agreements

Where the Contract involves the provision of goods or services on an "as required" basis a standing agreement will be issued to the Contractor, who will be expected to maintain a suitable stock of materials for prompt delivery or provide the services as requested in a timely manner. Releases against this standing agreement will be made directly by authorized employees of the Board. It will be the Contractor's responsibility to ensure that individuals releasing and/or picking up material are Board employees.

23. Right to Audit

The Board reserves the right to periodically audit selected transactions to ensure compliance with the pricing terms of the Contract. The Contractor will be required to furnish, within thirty (30) days of the Board's written order, all supporting documentation requested (including but not limited to Supplier invoices, inventory costs, time sheets) for verification of the costs and labour hours billed to the Board for the selected invoices in accordance with the pricing terms of the Contract. In the event of pricing discrepancies or irregularities, the Contractor shall, within thirty (30) days of written notice from the Board, correct the subject invoices, issue payment or a credit note to the Board, and provide an explanation of the reasons for the irregularities or overcharges.

If the sample audit reveals pricing irregularities, the Board may either terminate the Contract or order a second sample audit. Should the second sample audit reveal further irregularities or overcharges, the Contractor will remain in default and the Board may terminate the Contract.

Repeated pricing discrepancies, overcharging, or failure to comply with a Board order under an audit or to issue payment or credit note within thirty (30) days of a written order by the Board will also constitute a default of the Contract.

The Contractor shall be required to maintain all supporting documentation pursuant to this Section for a period of seven (7) years after the date of the Contract completion.

24. Force Majeure

The term "Force Majeure" as used herein shall mean an act of God, strike, lockout or other industrial disturbance, act of public enemy, war, public riot, lightning, fire, storm, flood, explosion, governmental restraint or judicial restraint, provided that any such restraint does not result from any action or failure to act by the Contractor or the

Board, and any other cause, whether of the kind specifically enumerated above or otherwise, which is not and could not reasonably be in the control of such party.

If either party is rendered unable, wholly or in part, by Force Majeure to carry out its obligations hereunder, the obligations of such party, so far as they are affected by such Force Majeure, shall be suspended without liability during, but no longer than, the continuance of such Force Majeure. The party rendered unable to carry out its obligations by Force Majeure shall use all reasonable diligence to remedy or overcome such Force Majeure as quickly as possible, provided that such requirement shall not require the settlement of strikes, lockouts or other labour difficulties by such party contrary to its wishes.