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April 1, 2025

Addendum No. 01

File Reference Number: RFP 2025 012

Title: Supply of Operator and Equipment for ONTC Culvert Program

RE: Clarifications/Questions

Please refer to the following information / clarifications:

Item 1: Part 5 - Request for Proposals Draft Agreement

Part 5 of the RFP Package has now been updated to include ONTC's Draft Agreement. Please replace Part 5 of the RFP Package with Part 5 attached to this Addendum at Appendix A.

Item 2: Part 3 - RFP Specifications Schedule 3-A-1 - Scope of Work

ONTC has now updated Part 3 - RFP Specifications - Schedule 3-A-1 - Scope of Work at section 5 under Additional Details. Please note that ONTC has removed the word "Optional" as it relates to providing the successful respondent with the actual project locations prior to mobilization. In that regard, please replace Schedule 3-A-1 - Scope of Work in the RFP package with the Schedule 3-A-1 attached to this Addendum at Appendix B.

Item 3: Will a 320 Cat Excavator with Hytracker cart be sufficient for ONTC requirements?

Answer: Yes, a 320 Cat Excavator will meet ONTC requirements.

Regards,

Nicole Laplante
Procurement Contracts Specialist
nicole.laplante@ontarionorthland.ca

Appendix A

SUPPLY OF CULVERT CREW AND EQUIPMENT

THIS AGREEMENT MADE EFFECTIVE XXX (the “Effective Date”)

BETWEEN:

ONTARIO NORTHLAND TRANSPORTATION COMMISSION

(“ONTC”)

And

XXX

(the “Contractor”)

THE PARTIES AGREE AS FOLLOWS:

INTERPRETATION

1. **Definitions.** In this Agreement,

“**Agreement**” means this agreement and all attached schedules;

“**Change Directive**” means a written instruction prepared by ONTC’s Representative and signed by ONTC directing the Contractor to proceed with a change in the Services within the general scope of the Contract Documents prior to ONTC and the Contractor agreeing upon adjustments in the Contract Price and the Contract Time.

“**Change Order**” means a written amendment to the Agreement prepared by ONTC’s Representative and signed by ONTC and the Contractor stating their agreement upon:

- (a) a change in the Services;
- (b) the method of adjustment or the amount of the adjustment in the Contract Price, if any;
and,
- (c) the extent of the adjustment in the Contract Time, if any.

“**Confidential Information**” includes information, whether oral, written, visual, electronic, or in any other form, relating in any way to this Agreement, which is identified as confidential or that would reasonably be considered as being confidential;

“**Environmental Laws**” means all applicable federal, provincial, territorial, municipal and local laws, statutes, ordinances, by-laws and regulations, judgments, decrees, common laws and principles thereof, and orders, directives and decisions rendered or issued by any governmental authority relating to Environmental Contaminants or the protection of human health, natural resources or the environment;

“**Environmental Contaminants**” means any substance, material or waste defined, regulated, listed or prohibited by Environmental Laws.

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“Equipment” means all machinery and equipment, either operated or not operated, that is required for preparing and performing the Services but is not incorporated into the Services;

“Force Majeure” means an event or a cause beyond the control of a party, which may include war, interference by civil or military authorities, civil insurrection, local or national emergency, blockade, seizure, riot, sabotage, vandalism, terrorism, adverse weather conditions which are materially more adverse than could reasonably be expected, earthquake, flood, act of God, accident, fire, nuclear or other explosion, disease, epidemic, pandemic, quarantine restriction, strike, lockout or other labour disturbance, governmental embargo, or emergency changes in the Laws to any acts, orders, legislation, regulations, directives, or government priorities of any government or other public authority; provided such event is not caused by the affected party’s negligence or failure to exercise reasonable diligence. A Force Majeure event or cause does not include an inability to pay or a lack of financial resources unless it is due to a failure of Ontario to approve the appropriation from the Consolidated Revenue Fund for the Project.

“Impact Assessment Reports” means the impact assessment reports, if any, listed in the RFP related to the *Fisheries Act*; *Navigable Waters Act*; *Lakes and Rivers Improvement Act*; heritage reviews; *Endangered Species Act and Species at Risk Act*; terrestrial resources (vegetation, wildlife, other features); socio-economic impacts and Indigenous consultations;

“Loss” or “Losses” means loss, liability, damage, cost, legal cost and disbursement whatsoever arising out of or related to the Services or this Agreement, whether in contract, tort or otherwise;

“Notice” includes notification or communication required or permitted to be given by one party to the other party under this Agreement;

“ONTC Parties” or “Contractor Parties” means the officers, directors, employees, consultants, contractors, subcontractors and agents of the party and those for whom it is responsible in law;

“Personnel” means the Contractor’s employees or subcontractors performing the Services;

“Proper Invoice” means a Contractor’s invoice which meets the requirements set out in this Agreement, including without limitation in Schedule C; and

“Services” means the supply of the Equipment and Personnel and the completion of the tasks assigned to the Contractor by ONTC as set out in Schedule A.

- 2. Construing this Agreement.** This Agreement is to be construed and interpreted with all changes in number and gender as may be required by the context. The obligations of the parties contained in this Agreement have, where applicable, the status of representations, warranties and covenants by the respective obligated party. Time is of the essence of this Agreement, including if any extension of time is permitted.

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3. **Precedence.** Subject to any contrary intention elsewhere in this Agreement, in case of any inconsistency or conflict among the Schedules and the body of this Agreement, the documents shall prevail in the following order, but only to the extent necessary to resolve the conflict or inconsistency:
 - (a) The body of this Agreement;
 - (b) Schedule A (Scope of Services);
 - (c) Schedule B (Contractor's Submission);
 - (d) Schedule C (Requirements for a Proper Invoice) and,
 - (d) Any other documents incorporated by reference in any of the foregoing, (the "Contract Documents").

PARTICULARS OF THIS AGREEMENT

4. **Retainer.** ONTC hereby retains the Contractor to perform the Services and supply the Equipment described in Schedule A. The Contractor shall complete the Services under the general direction and control of ONTC and subject to the provisions of the Contract Documents.
5. **No Exclusive Arrangement.** This is a non-exclusive arrangement. ONTC may from time to time have other suppliers of Personnel and Equipment and may directly employ Personnel previously employed by or contracted with the Contractor.
6. **Contract Price.** The rates for the Equipment and Personnel to provide the Services are set out in Schedule **[A or B]**.
7. **Disbursements.** The rates in Schedule **[A or B]** include all expenses and disbursements required to perform the Services and supply the Equipment and the Contractor shall not charge ONTC for any expenses or disbursements in excess of the rates.
8. **Term.** This Agreement shall commence on the Effective Date and shall continue until **[December 31, 2025]** unless terminated early in accordance with this Agreement (the "**Term**"). The Services shall be completed in accordance with any time periods described in Schedule A.

PERFORMANCE OF THE SERVICES

9. **Personnel.** The Contractor shall provide Personnel to complete the Services that have the qualifications stated in Schedule A. The Contractor shall be responsible for every act or omission of the Personnel in completing the Services.
10. **Personnel Expenses.** The Contractor shall be solely liable to pay all salaries, wages, overtime, bonuses, allowances, profit sharing, pensions, and other remuneration of the Personnel, including payment of costs related to employee benefits, and for the deduction and remittance of all applicable employment-related taxes, premiums, dues and other

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burdens to the appropriate governmental authorities. The Contractor shall not be entitled to claim, nor shall ONTC be obliged to pay or reimburse the Contractor, for any monies whatsoever in respect of or in connection with any such payments, save and except where expressly included in the Contract Price.

11. **Relationship.** The Contractor and its Personnel are independent contractors of ONTC and are not employees of ONTC. The Contractor and its Personnel have no power or authority to bind ONTC or to assume or create an obligation, express or implied, on ONTC's behalf, nor shall the Contractor or its Personnel represent that they have such power and authority.
12. **Living Expenses.** The Contractor shall be responsible for all living, traveling, relocation and accommodation expenses for its Personnel.
13. **Policies and Procedures.** The Services shall be performed in accordance with ONTC's policies and procedures. The Contractor shall ensure that appropriate standards of conduct and service are communicated to and understood by all Personnel.
14. **Replacing of Personnel.** The Contractor shall replace within a reasonable time, any Personnel whose removal is requested by ONTC for reasonable cause. ONTC's right to request removal of Personnel does not entitle or obligate the Contractor to terminate or breach any employment or other contractual relationship with such Personnel. The Contractor, in its sole and absolute discretion, may take such action as it deems appropriate under the circumstances. In the event that the Contractor takes any action regarding such Personnel, the Contractor shall indemnify and save ONTC harmless from all claims, damages and costs arising therefrom.
15. **Equipment.** The Contractor will supply Equipment that meets the requirements for the Equipment, is in good repair and meets all safety standards and regulations. The Contractor shall be responsible for all costs and expenses for the Equipment including, but not limited to, repair, maintenance, replacement, insurance and fuel. In the event the Equipment fails to operate correctly during the Services, the Contractor shall be responsible for all costs relating to any delay in the performance of the Services, including compensation for the Personnel and ONTC employees that are unable to work due to Equipment failure or breakdown. ONTC shall not be charged for and shall not be responsible for any costs relating to the Personnel or the Equipment if the Personnel or ONTC employees are unable to work due to Equipment failure or breakdown.
16. **Standard of Care.** The Contractor shall:
 - (a) perform the Services in accordance with all applicable laws and the Contract Documents;
 - (b) in performing the Services and its obligations under the Agreement, exercise the standard of care, skill and diligence that would normally be provided by an experienced and prudent contractor performing Services of a similar nature to the Services;
 - (c) ensure any Equipment used by the Contractor in completing the Services will be in safe working condition, will comply with all laws applicable to such Equipment and will be operated by suitably qualified and competent Personnel; and

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- (d) while being on ONTC's property, comply with ONTC's policies, including its Fit for Duty Policy,
- (the "**Standard of Care**").

17. **Vendor Performance Policy.** ONTC has a Vendor Performance Policy which requires ONTC to complete an evaluation of the Contractor's performance of its obligations under this Agreement. The performance evaluation of the Contractor for the supply of these services will be used in the assessment of the Contractor's proposals in response to future procurements. The performance evaluation may also result in the Contractor being disqualified from submitting proposals in response to future procurements in accordance with the terms of the policy. The policy can be found at <http://ontarionorthland.ca/en/requests-tenders>.
18. **Certifications and Training.** The Contractor warrants that it and its Personnel have obtained all required certifications under any governmental authority for the performance of the Services and such certifications are in good standing. The Contractor shall provide evidence of the requisite certification to ONTC upon request. The Contractor warrants that the Personnel will have completed any required training prior to commencing the performance of the Services and will provide evidence of such to ONTC upon request.
19. **Inadequate Services.** ONTC shall be the sole judge of the adequacy of the Services completed by the Personnel. If ONTC determines that any Services are not in conformity with the terms and conditions of this Agreement, including the Standard of Care, ONTC shall advise the Contractor who shall, except as otherwise provided in this Agreement, immediately correct at its own cost and expense the inadequate Services.
20. **ONTC's Representative.** ONTC's representative shall provide direction regarding the tasks required of the Personnel and the Equipment and the schedule for the completion of the Services. ONTC's representative shall inspect the Services for quality and completeness. ONTC's representative shall not be considered the supervisor of the Personnel.
21. **Health and Safety.** The Contractor shall be solely responsible for compliance with the rules, regulations and practices required by the applicable laws and shall be responsible for initiating, maintaining and supervising all safety precautions and programs in connection with the performance of the Services. While working on ONTC property, the Contractor shall comply with all ONTC's policies and directions, including its Fit for Duty Policy, to ensure the health and safety of ONTC Parties and Contractor Parties.

CHANGES

22. **Changes.** Changes of any kind to the scope of the Services shall only be made by the Contractor upon receipt of a written change order signed by an authorized member of each Party (each, a "**Change Order**") or a Change Directive (as defined below). ONTC may at any time by issuing a Change Order or Change Directive make any change in the

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Services to be completed by the Contractor. The Change Order shall specify the details of the change in scope of the Services, any agreed adjustment to the Price in respect of the change in scope of the Services and any agreed adjustment to the time for performance of the Services, whether an increase or reduction. A Change Order shall represent full payment for all costs and any adjustment to the workplan associated with the change or changes for which it was issued.

23. **Change Directive.** Prior to finalization of a Change Order, ONTC may instruct the Contractor to proceed with additional or changed Services by issuing a directive signed by an authorized member of ONTC (each, a “**Change Directive**”). Upon receipt of a Change Directive, the Contractor shall immediately proceed with the changes to the Services as identified therein. The Parties shall then seek to finalize a Change Order as soon as commercially reasonable. Prior to the finalization of the relevant Change Order, the Contractor shall be entitled to payment for pre-approved, reasonable documented costs incurred in respect of a Change Directive.
24. **Unauthorized Changes.** ONTC shall have no liability whatsoever for any claim for payment for additional Services provided or costs incurred by the Contractor which have not been authorized in advance by ONTC by way of a Change Order or a Change Directive.

ENVIRONMENTAL OBLIGATIONS

25. **Environmental.** The Contractor shall comply with all Environmental Laws in the provision of the Services. If the Contractor fails to comply with Environmental Laws relating to the provision of the Services, the Contractor shall be solely responsible for all costs, claims, fines, fees or other expenses arising from the failure by the Contractor to comply with the Environmental Laws in the provision of the Services.
26. **Impact Assessment.** The Contractor shall be responsible for:
- (a) ensuring that any potential impacts and areas of concern identified in the Contract Documents or Impact Assessment Reports, if provided, are mitigated during the Services; and,
 - (b) identifying any previously unknown impacts relating to fish, navigable waters, species at risk, vegetation, wildlife, socio-economic and heritage that arise prior to commencing the Services and during the Services.
27. **Unknown Impacts.** If the Contractor or ONTC observes or reasonably suspects the presence of any impacts described in section 26 (b) that are not mentioned or accounted for in the Contract Documents or Impact Assessment Reports, if any, and related mitigation plans,
- (a) the observing party shall immediately report the circumstances to the other party; and
 - (b) the Contractor shall immediately take reasonable steps, including stopping the Services if necessary, to ensure that any potential impacts are mitigated.

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28. **Fail to Comply.** If the Contractor fails to comply with the requirements in section 27, the Contractor shall:
- (a) be responsible for all costs incurred by ONTC and the Contractor to mitigate the damage caused due to the failure; and
 - (b) not be entitled to request a Change Order relating to the failure to comply.
29. **Environmental Contaminants.** The Contractor shall not cause or permit any Environmental Contaminants to be located, stored, disposed of, produced, processed, deposited, released, discharged or incorporated in, on or under any part of ONTC's land except as required to provide the Services. The Contractor shall remove from ONTC's land, immediately upon demand, at its cost, any Environmental Contaminants introduced thereto by the Contractor that are not required to provide the Services. If there is remediation Services required on ONTC's land or adjacent land or watercourse due to environmental contamination that occurred as a result of the Contractor's entry onto ONTC's land to provide the Services, the Contractor shall be responsible for all costs incurred to complete remediation Services on ONTC's land and adjacent land or watercourse and shall reimburse ONTC or any public authority or any third party for any reasonable costs incurred as a result of the requirement to complete the remediation Services.
30. **Ownership of Environmental Contaminants.** Notwithstanding any provision of law to the contrary, any Environmental Contaminants placed or permitted on or under ONTC's land by the Contractor in contravention of section 29 shall remain the property of the Contractor.
31. **Spills and Releases.** All spills and releases of Environmental Contaminants in the course of the Services must be immediately reported by the Contractor to ONTC and the Ministry of the Environment, Conservation & Parks ("MOECP") Spills Action Centre ("SAC"). If the ONTC Representative is not available, the Contractor shall report the incident to the MOECP SAC and the ONTC RTC at 800-558-4129 X 141.
32. **Mitigation of Spills.** The Contractor shall take immediate steps to mitigate the damage to the environment and contain the spill or release. If the Contractor does not take timely action or, if the Contractor is not available, ONTC may direct others to remedy the situation.
33. **Expenses for Spills.** If the spill or release was the fault of the Contractor, the remedial Services shall be completed at the cost of the Contractor and with no additional cost to ONTC and ONTC shall be entitled to seek reimbursements for all costs associated with the remedial Services including the cost of Services done by third parties. If the spill or release was not the fault of the Contractor, ONTC shall pay for the remedial Services.
34. **DFO Notification.** Pursuant to section 38(4) of the *Fisheries Act*, the Contractor has an obligation to notify the Department of Fisheries & Oceans ("DFO") when the Services results in the unauthorized death of fish or a harmful alteration, disruption or destruction

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("HADD") of fish habitat or where there is imminent danger that the death of fish or HADD of fish habitat could occur. The Contractor shall also notify ONTC of any such incidents. In accordance with the *Fisheries Act*, notification must be made without delay to DFO after the Contractor ensures the immediate health and safety risks are managed at the Services site. Updates to DFO may be provided at a later time, if required.

PAYMENT FOR THE SERVICES

Applications for Payment

35. The Contractor shall submit an application for payment on account monthly by email to pay.inv@ontarionorthland.ca and to the ONTC representative in accordance with the Contract Documents with all necessary backup and support requirements set out in the Contract Documents or reasonably identified by ONTC. All applications for payment must be sent to the ONTC Representative within 30 days after the end of each month.
36. Each application for payment delivered by the Contractor in accordance with section 35 shall include all the requirements for a Proper Invoice as set forth in Schedule C.
37. ONTC may, prior to the time it is required to issue payment in respect of an application for payment, request any additional information or backup from the Contractor in respect of the application for payment.
38. The Contractor shall not claim for or be entitled to payment for the correction or re-performance of any defective work, including labour and time of any Contractor Parties for such correction or re-performance.

Progress Payments

39. After receipt by the ONTC representative of an application for payment submitted by the Contractor in accordance with sections 35 to 37:
 - (a) the ONTC representative will assess whether all of the criteria for a Proper Invoice are satisfied and, if not, the ONTC representative will return the application for payment to the Contractor with reasons setting out why the application for payment is not a Proper Invoice;
 - (b) within 14 calendar days of receipt of a Proper Invoice (or on the next working day if the 14th day is not a working day), in the event that ONTC disputes the amount claimed as payable in the Proper Invoice, ONTC shall deliver to the Contractor an executed Notice of Non-Payment (Form 1.1); and
 - (c) ONTC shall make payment to the Contractor on the 28th calendar day after receipt of a Proper Invoice, unless such 28th calendar day lands on a day that is other than a working day, in which case payment shall be made on the next working day after such 28th day.

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40. Where ONTC has delivered a Notice of Non-Payment, ONTC and the Contractor shall first engage in good faith negotiations to resolve the dispute. If within 10 calendar days following the issuance of a Notice of Non-Payment, ONTC and the Contractor cannot resolve the dispute, either party may issue a notice of adjudication pursuant to the Construction Act, in which case ONTC and the Contractor will agree to submit the dispute to adjudication.
41. Without limitation, ONTC shall be entitled to deduct from or, set off against, any payment of the Contract Price and any other amounts payable by ONTC to the Contractor pursuant to the Contract and any amount expended by ONTC in exercising ONTC's rights under this Contract to perform any of the Contractor's obligations that the Contractor has failed to perform; any damages, costs or expenses (including, without limitation, reasonable legal fees and expenses) incurred by ONTC as a result of the failure of the Contractor to perform any of its obligations pursuant to the Contract; and any other amount owing from the Contractor to ONTC pursuant to the Contract.
42. The Contractor represents, warrants, and covenants to ONTC that it is familiar with its prompt payment and trust obligations under the Construction Act and will take all required steps and measures to ensure that it complies with the applicable prompt payment and trust provisions under the Construction Act including, without limitation, section 8.1 of the Construction Act. Evidence of the Contractor's compliance under this section will be made available to ONTC within 5 working days following receipt by the Contractor of a written notice making such request.

Final Completion

43. When the Services have reached final completion, the Contractor shall submit an application for final payment, including items set out in Schedule C, a complete statement of accounts, including any Change Orders applicable to the Services; a complete statement of all money that the Contractor considers to be due from ONTC arising out of or in connection with the Services, the Contract Documents or any alleged breach of the Contract, including details of how the amount claimed in the application for final payment is calculated.
44. In the event of deficiencies or delays in the Services that the Contractor fails or refuses to address upon receiving notice of same in accordance with the requirements of the Contract Documents, then ONTC may, without limiting the remedies available to it under the Contract Documents and subject to ONTC's requirement to issue a Notice of Non-Payment under the Construction Act, retain and set off as against any payments that would otherwise be owing to the Contractor, the reasonable costs of rectifying such deficiencies or delays as determined by ONTC Representative.

Payment of Holdback upon Final Completion of the Services

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45. Subject to the registration of any claims for lien or delivery of any written notices of lien and subject to the requirements of the Construction Act with respect to the release of holdback, the holdback amount is, due and payable on the 61st calendar day following the date of Final Completion of the Services.

CONFIDENTIAL INFORMATION

46. **General Confidentiality Requirements.** The Contractor shall:

- (a) ensure that all Contractor Parties comply with all the provisions of this Agreement relating to Confidential Information and the Contractor shall be responsible for any failure by any Contractor Party to do so;
- (b) use Confidential Information only for the purposes of the Services;
- (c) not copy or transcribe into another form, any Confidential Information received from ONTC except as reasonably necessary; and,
- (d) upon the termination of this Agreement, or earlier upon the request of ONTC, promptly destroy or return (as directed by ONTC) all copies of the Confidential Information disclosed to the Contractor.

47. **Keeping Confidential Information Confidential.** Except as provided in this Agreement, the Contractor shall keep confidential all Confidential Information disclosed to it by ONTC and shall protect the Confidential Information disclosed to it by ONTC, in the same manner and to the same extent that it protects its own Confidential Information. This obligation shall survive the termination of this Agreement.

48. **Disclosing Confidential Information.** The Contractor may disclose Confidential Information if:

- (a) ONTC approves;
- (b) the Contractor is required by law to disclose it, in which case it shall promptly notify ONTC so that ONTC may intervene to prevent the disclosure; or
- (c) the Confidential Information is generally and publicly available.

49. **FIPPA.** The Contractor specifically acknowledges that ONTC is subject to the *Freedom of Information and Protection of Privacy Act*, R.S.O. 1990, c. F.31, and that ONTC may be compelled by law to disclose certain information provided by the Contractor.

50. **Breach of Confidentiality.** The Contractor shall indemnify and hold harmless ONTC in respect of any claims against ONTC for the failure of the Contractor to protect the confidentiality of Confidential Information. The Contractor acknowledges and expressly agrees that any breach by it of this Agreement which does or may result in loss of confidentiality of the Confidential Information would cause ONTC irreparable harm for which damages would not be an adequate remedy. If the Contractor breaches the confidentiality provisions of this Agreement, ONTC shall have the right to seek injunctive relief against the continuing or further breach by the Contractor, without the necessity of proof of actual damages. The right to seek injunctive relief without the necessity of proof of damages shall be in addition to any other right which ONTC may have under this Agreement or otherwise

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in law or in equity. This section shall continue to bind the Contractor after the expiry or termination of this Agreement.

INDEMNITY AND LIMITATION OF LIABILITY.

51. **General Indemnity.** The Contractor shall indemnify ONTC and ONTC Parties and save them harmless from and against any and all Losses which may arise by reason of the exercise of the responsibilities and obligations contained in this Agreement by the Contractor or as a result of any breach of the terms of this Agreement by the Contractor or by any act or omission of the Contractor or Contractor Parties or those for whom the Contractor is at law responsible, including all legal costs and expenses reasonably incurred by ONTC in connection with the defence or settlement of any such claim, unless such claim or damage is caused by the negligent act or omission of ONTC or ONTC Parties. The Contractor shall, at ONTC's election, either assume the defence of every proceeding brought in respect of such Loss, or cooperate with ONTC in the defence, including providing ONTC with prompt Notice of any possible Loss and providing ONTC with all information and material relevant to the possible Loss. For the purpose of enforcement of this indemnity, ONTC is acting as agent and trustee for the ONTC Parties.
52. **Specific Indemnities.** The Contractor shall indemnify ONTC and ONTC Parties and save them harmless from and against all Losses incurred by ONTC arising from:
- (a) any decision or interpretation by any court or governmental authority that: (i) any of the Personnel is an employee of ONTC; or (ii) ONTC is liable to pay statutory contributions or deductions in respect of any of the Personnel under any Laws, including employment insurance, provincial health insurance, income tax or other employment matters;
 - (b) any health, medical disability or similar claims which the Contractor or Contractor Parties may have during or after the term of this Agreement;
 - (c) any claim against ONTC arising from the failure of the Contractor to protect the confidentiality of Confidential Information;
 - (d) safety infractions committed by the Contractor under the *Occupational Health and Safety Act* or any other laws, guidelines or public health orders regulating health and safety at the place of the Services;
 - (e) exposure to, or the presence of, Environmental Contaminants which were either brought on to the Services site by the Contractor or the Contractor mishandled or handled negligently or improperly the substances or materials; and
 - (f) any claims from adjacent landowners or other third parties regarding damage to their property due to the provision of the Services.
53. **Exception.** The Contractor shall not be liable for any Loss arising from errors or omissions in any of the information which is supplied to the Contractor by ONTC.
54. **Bodily Injury and Property Damage.** The Contractor shall make full and complete compensation for any bodily injury or death to any person and for any damage caused to

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ONTC's physical property by the Contractor's act or omission or that of the Contractor Parties.

55. **Waiver.** The Contractor waives against ONTC and ONTC Parties any claims of any kind whether directly or indirectly arising out of or connected with the existence of this Agreement or for any injury to or death of any person or for any loss of or damage to any property belonging to the Contractor or its employees, servants, agents, invitees, licensees, contractors or visitors and for any loss or damage of the Contractor unless caused by the negligent act or omission of ONTC or ONTC Parties.
56. **Limitation of Liability.** Notwithstanding any other provision of this Agreement,
- (a) Notwithstanding any other provision of this Agreement, ONTC shall not be responsible for indirect, consequential, special, incidental or contingent damages of any nature whatsoever, including loss or revenue or profit or damages resulting from interruption of service or transmission. This limitation shall apply regardless of the form of action, damage, claim, liability, cost, expense or loss, whether in contract (including fundamental breach), statute, tort (including negligence), or otherwise, and regardless of whether ONTC has been advised of the possibility of such damages;
 - (b) ONTC shall not be liable for any amounts in excess of the amount of fees payable by ONTC to the Contractor in the 12 months preceding the claim; and,
 - (c) Any express or implied reference to ONTC providing an indemnity or any other form of indebtedness or contingent liability that would directly or indirectly increase the indebtedness or contingent liabilities of ONTC, whether at the time of execution of this Agreement or at any time during the Term or Renewal Term, shall be void and of no legal effect in accordance with s.28 of the *Financial Administration Act*, R.S.O. 1990, c. F.12.
57. **Survival.** The provisions in this part "Indemnity and Limitation of Liability" shall survive the expiry or termination of this Agreement.

INSURANCE

58. **Insurance.** The Contractor shall obtain, and for as long as this Agreement is in effect, maintain, pay for and, upon request by ONTC from time to time, provide evidence, satisfactory to ONTC, of the following insurance coverages, all taken out with insurers licensed to transact insurance business in Ontario, satisfactory to ONTC:
- (a) Commercial General Liability Insurance to a limit of not less than five million dollars (\$5,000,000) inclusive per occurrence, including "Ontario Northland Transportation Commission" as an additional insured, covering bodily injury, personal injury, death and damage to property, including loss of use of such property, containing cross liability coverage and preclude subrogation claims by the insurer against ONTC and endorsed to provide ONTC with not less than thirty (30) days' notice, in advance, of any cancellation, change or amendment restricting coverage. The insurance shall not include an exclusion for working on railway property;

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- (b) Automobile Liability Insurance in respect of licensed vehicles, to a limit of not less than two million dollars (\$2,000,000) inclusive per occurrence, including bodily injury, death and damage to property, endorsed to provide ONTC with not less than thirty (30) days' notice, in advance, of any cancellation, change or amendment restricting coverage, and in the following forms: standard owner's form automobile policy providing third party liability and accident benefits insurance and covering licensed vehicles owned or operated by or on behalf of the Contractor, and standard non-owned automobile form policy including standard contractual liability endorsement;
- (c) Environmental Insurance to a limit of not less than five million dollars (\$5,000,000) to cover damages to ONTC's property and adjacent land and watercourses due to a contravention of Environmental Laws, including but not limited to the *Environmental Protection Act* and its regulations and the *Fisheries Act*; and,
- (d) Property (Contractor's Equipment) insurance for the Equipment.

59. The Contractor shall ensure that all the insurance is primary and does not call into contribution any other insurance coverage available to ONTC. The Contractor shall not do or omit to do anything which would impair or invalidate the insurance policies.

WORKERS' COMPENSATION

60. The Contractor shall ensure the Personnel are registered for workers' compensation coverage. The Contractor shall be liable for and shall indemnify and hold harmless ONTC from all workers' compensation assessments due by the Contractor in relation to the Services.

TERMINATION

61. **Early Termination.** This Agreement may be terminated early as follows:

- (a) by the mutual written agreement of the parties;
- (b) by ONTC immediately if the Contractor is in default or breach in respect of any condition or provision of this Agreement;
- (c) by ONTC, for any reason, upon not less than ten (10) days' prior written notice; or,
- (d) by the Contractor upon written notice to ONTC, where ONTC has failed to observe or perform any of its obligations under this Agreement, and such failure has not been remedied to the reasonable satisfaction of the Contractor within thirty (30) days of providing written notice to ONTC detailing the nature of such failure and requiring that such failure be remedied.

62. **Force Majeure.** Whenever and to the extent either party is unable to fulfil, or is delayed or restricted in fulfilling, any of its obligations under this Agreement by reason of Force Majeure, the time for fulfilling such obligation is extended for such reasonable time as may be required by that party to fulfil such obligation, provided that any such inability, delay or restriction does not relate to any extent to any act or omission by that party or any of its Parties or others for whom it is at law responsible, and further provided that the party

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seeking the extension submits promptly to the other party a Notice requiring the extension of time and the specific reason and expected duration of the extension.

63. **Immediate Termination.** This Agreement will terminate immediately upon:

- (a) the winding up or dissolution of the Contractor; or
- (b) subject to the provisions of the *Bankruptcy and Insolvency Act*, RSC 1985, c. B-3, the Contractor making an assignment for the benefit of its creditors, becoming bankrupt or insolvent, undergoing reorganization, making a proposal to its creditors, or otherwise becoming financially unable to perform its obligations under this Agreement.

64. **Early Termination:** If this Agreement is terminated early for any reason other than those described in section 61 (a) or (d), then:

- (a) ONTC is excused from further performance under this Agreement;
- (b) any money payable by the Contractor to ONTC is immediately due and payable;
- (c) ONTC shall not be responsible for paying any amount over and above the chargeable amounts, including payment on a pro-rated basis if applicable, incurred up to the effective date of such termination, or a later date if Services, already commenced by the Contractor, cannot reasonably be discontinued until such later date;
- (d) ONTC shall retain any rights, powers and remedies it has or may have against the Contractor; and
- (e) ONTC may enter an agreement with another person to provide Personnel and Equipment to complete the Services. The Contractor shall be liable for all costs incurred by ONTC in having the Services completed by another Contractor.

GENERAL

65. **Assignment.** Neither party may assign their respective rights and obligations under this Agreement without first obtaining the written consent of other party, provided, however, that either party may assign this Agreement to an affiliate or the successor of its business upon written notice to the other party. This Agreement shall enure to the benefit of, and be binding upon, the parties and their respective successors (including any successor by reason of amalgamation, merger or statutory arrangement of any party) and permitted assigns.

66. **Notice.** Any notice under this Agreement shall be given in writing and delivered personally or by fax, email or prepaid courier addressed as follows:

To ONTC at:

Ontario Northland Transportation Commission
555 Oak Street
North Bay ON P1B 8L3
Attention: Ryan Pelletier
T: 705-544-2292 x117
E: ryan.pelletier@ontarionorthland.ca

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With a copy to Legal Services & Corporate Governance
E: legal@ontarionorthland.ca

To the Contractor at:

XXX

Attention: XXX

T: XXX

E: XXX

or at such other address or addresses as ONTC and the Contractor may designate from time to time. The date of receipt of any such notice shall be the date of delivery.

67. **No Waiver.** No waiver by a party of any breach by the other party of any of its covenants, agreements or obligations in this Agreement shall be a waiver of any subsequent breach or the breach of any other covenants, agreements or obligations, nor shall any forbearance by a party to seek a remedy for any breach by the other party be a waiver by the party of its rights and remedies with respect to such breach or any subsequent breach.
68. **Relationship.** Nothing contained in this Agreement shall be deemed or construed by the parties nor by any third party as creating the relationship of principal and agent, landlord and tenant, or of partnership or of joint venture between the parties.
69. **Governing Law.** This Agreement shall be governed by and constituted in accordance with the laws in force in the Province of Ontario, excluding any conflict of laws principles. The Parties hereby irrevocably attorn to the exclusive jurisdiction of the courts of the Province of Ontario for any legal proceedings arising out of this Agreement or the performance of the obligations hereunder.
70. **Severability.** Should any section or part or parts of any section in this Agreement be illegal or unenforceable, it or they shall be considered separate and severable from the Agreement and the remaining provisions of this Agreement shall remain in full force and effect and shall be binding upon ONTC and the Contractor as though such section or part or parts thereof had never been included in this Agreement.
71. **Entire Agreement.** This Agreement constitutes the entire agreement and understanding of the parties and supersedes any and all prior understandings, discussions, negotiations, commitments, representations, warranties, and agreements, written or oral, express or implied between them with respect to the subject of this Agreement. No amendment, variation or change to this Agreement shall be binding unless the same shall be in writing and signed by the parties.
72. **Survival.** In addition to those provisions which are expressly stated to survive the termination or expiration of this Agreement, the provisions of this Agreement that are by their nature intended to survive termination or expiration of this Agreement shall continue

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in full force and effect subsequent to and notwithstanding termination or expiration until or unless they are satisfied.

73. **Counterparts Electronic Signatures and Electronic Delivery.** This Agreement may be executed by electronic signatures and delivered by electronic transmission and the parties may rely upon all such electronic signatures as though such electronic signatures were original signatures. This Agreement may be executed in any number of counterparts and all such counterparts shall, for all purposes, constitute one agreement binding on the parties.

[SIGNATURE PAGE FOLLOWS]

IN WITNESS WHEREOF, the parties have executed this Agreement.

**ONTARIO NORTHLAND
TRANSPORTATION COMMISSION**

Per _____

Name: Chad Evans

Title: CEO

Date _____

I have authority to bind the corporation.

XXX

Per _____

Name:

Title:

Date _____

I have authority to bind the corporation.

SCHEDULE "A"

SCOPE OF SERVICES

Summary

The Contractor shall supply qualified operator(s) and equipment to supplement ONTC's open cut culvert replacement crew for the 2025-2026 work season. The Contractor shall supply the following:

1. Operator

- CROR rules qualification preferred;
- knowledge in railway operations and construction methods; and,
- demonstrated experience in railway culvert replacements.

2. Excavator

- Caterpillar 336 or equivalent, with steel track and minimum operating weight of 25,000 kg (*Note: self-propelled, railavator systems do not meet ONTC operation requirements*);
- Capable of excavation of up to 20' depth;
- 48" general purpose digging bucket complete with wide tip teeth, hydraulic thumb and rigging hook; and
- Hydraulic articulating or tilting bucket meeting same requirements as above.

3. Other

- Hi-rail power cart (*Note: self-propelled, railavator systems do not meet ONTC operation requirements*);
- Hi-rail material box (including any misc. equipment for load securement and rigging);
- Pickup Truck (Hi-rail equipped, with fuel tender for excavator);
- Diesel plate packer (200lb class, 24") AND jumping jack compactor;
- Heavy duty swamp mat(s) for operating excavator on or near rail bed; and,
- Boom Truck (capable of transporting 20' pipe lengths to project site, preferably Hi-rail equipped).

4. Scope of Work

Supplementing a 4-person culvert and crossing crew. The work will consist of open cut pipe replacements (24-60" dia.) at depths of up to 20 feet, as well as grade crossing upgrades and replacements over the entire ONTC rail network, but primarily on the Temagami and Ramore Subdivisions (North Bay to Englehart, Englehart to Timmins).

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5. Additional Details

- 10 hours/day, 8 days on/6 days off cycle, beginning on Wednesdays. Overtime hours after 10 hours;
- Expected start date is mid to late May, with approximate duration of 20-24 weeks;
- Equipment transportation, fueling, mobilization and demobilization is Contractor's responsibility;
- May be required to transport and distribute pipe and related track materials to various project locations as indicated above **(Optional)**; and
- Actual project locations will be provided to the Successful Respondent prior to mobilization

Rates as per table below (excluding HST):

Item	Description	Rate (\$)	
Excavator (<i>please specify model and track and bucket details</i>)			/hr
Excavator Stand-by			/day
Hi-rail Power cart/Low bed (<i>please specify model</i>)			/day
Hi-Rail Material box			/day
Diesel packer/Jumping Jack			/day
Boom Truck (<i>please specify model and if hi-rail equipped</i>)			/hr
Operator Travelling			/hr
Operator Overtime (<i>after 10 hr/day</i>)			/hr
Hi-Rail Pickup Truck			/km
Room and Board			/day
Floating, mobilization/demobilization			/hr

SCHEDULE "B"

CONTRACTOR'S SUBMISSION

SCHEDULE C

**Project-Specific Requirements for a
Proper Invoice**

To satisfy the requirements for a Proper Invoice, the following criteria, as may be applicable in each case, must be included with the Contractor's application for payment:

- (a) Be in the form of a written bill, invoice, application for payment, or request for payment;
- (b) Be in writing;
- (c) Contain the Contractor's name, telephone number and mailing address and contact information of the Contractor's project manager;
- (d) Contain the title of the Project and ONTC's contract number or purchase order number under which the work was performed and the related request for qualification, tender, or request for proposal number, as applicable;
- (e) Contain the date the written bill, invoice, application for payment, or request for payment is being issued by the Contractor;
- (f) Identify the period of time in which the labour and/or materials were supplied to ONTC;
- (g) Reference to the provisions of the Agreement under which payment is being sought (e.g. progress payment / milestone, holdback, final payment, etc.);
- (h) A description, including quantities where appropriate, of the services or materials, or a portion thereof, that were supplied and form the basis of the Contractor's request for payment;
- (i) The amount the Contractor is requesting to be paid by ONTC, set out in a statement based on the rates set out in Schedule B of the Agreement, separating out any statutory or other holdbacks, set-offs and HST;
- (j) With each application for payment after the first, a Statutory Declaration, in the form prescribed by ONTC, stating that all accounts for labour, subcontracts, Materials, Construction Equipment and other indebtedness which may have been incurred by the Contractor and for which ONTC might in any way be held responsible have been paid in full up to the previous application for payment, except for amounts properly retained as a holdback or as an identified amount in dispute;
- (k) A current Workplace Safety Insurance Board clearance certificate;
- (l) If requested by ONTC, a current and valid certificate(s) of insurance for the insurance required pursuant to the Agreement;
- (m) The following statement: "Provided this Proper Invoice complies with the requirements of the Agreement and provided no Notice of Non-Payment is issued by ONTC, payment is due within 28 days from the date this Proper Invoice is received by ONTC.";
- (n) The name, title, telephone number and mailing address of the person at the place of business of the Contractor to whom payment is to be directed;

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- (o) In the case of the Contractor's application for final payment;
 - (i) Sufficient evidence that the Contractor has delivered all warranties to ONTC;
 - (ii) Sufficient evidence that the Work Site has been left in a clean and tidy condition, including evidence that any remaining Materials, tools, Construction Equipment, temporary work, and waste products and debris have been removed from the Work Site;
 - (iii) An executed, original, Full and Final Release of all claims that may arise as a result of the Work, which Full and Final Release executed by the Contractor shall be in a form approved by ONTC;
- (p) Information identifying the authority, whether in the Contract Documents or otherwise, under which the services or materials were supplied;
- (q) Any other information that is prescribed in Schedule A or identified by ONTC as required;
- (r) The amount invoiced to date;
- (s) The percentage of the Contract Price invoiced; and
- (t) The individual value of Change Orders approved during the invoice period and the cumulative value of Change Orders for the Project.

Appendix B

PART 3 – RFP SPECIFICATIONS

SCHEDULE 3-A

SCOPE OF WORK

Introduction

Ontario Northland Transportation Commission (ONTC) invites you to submit a Proposal for the supply of equipment and operator to supplement our open cut culvert replacement crew for the 2025-2026 work season. ONTC will require the following equipment:

- Operator,
 - CROR rules qualification preferred;
 - knowledge in railway operations and construction methods; and,
 - demonstrated experience in railway culvert replacements.

- Excavator
 - Caterpillar 336 or equivalent, with steel track and minimum operating weight of 25,000 kg (*Note: self-propelled, railavator systems do not meet ONTC operation requirements*);
 - Capable of excavation of up to 20' depth;
 - 48" general purpose digging bucket complete with wide tip teeth, hydraulic thumb and rigging hook; and,
 - Hydraulic articulating or tilting bucket meeting same requirements as above.

- Hi-rail power cart (*Note: self-propelled, railavator systems do not meet ONTC operation requirements*);
- Hi-rail material box (including any misc. equipment for load securement and rigging);
- Pickup Truck (Hi-rail equipped, with fuel tender for excavator);
- Diesel plate packer (200lb class, 24") AND jumping jack compactor;
- Heavy duty swamp mat(s) for operating excavator on or near rail bed; and,
- Boom Truck (capable of transporting 20' pipe lengths to project site, preferably Hi-rail equipped).

Supplementing a 4-person ONTC culvert and crossing crew, work will consist of open cut pipe replacements (24-60" dia.) at depths of up to 20 feet, as well as grade crossing upgrades and replacements over the entire ONTC rail network, but primarily on the Temagami and Ramore Subdivisions (North Bay – Englehart, Englehart - Timmins).

Details:

- 10 hours/day, 8 days on, 6 days off cycle, beginning on Wednesdays. Overtime after 10 hours;
- Expected start date is mid to late May, with approximate duration of 20-24 weeks;
- Equipment transportation, fueling, mobilization and demobilization is contractor's responsibility;
- **Optional** May be required to transport and distribute pipe and related track materials to various project locations as indicated above; and,
- Actual project locations will be provided to the Successful Respondent prior to mobilization.

Rates to be provided as per table below on Proposal Form 1 in Part 4, Request for Proposals, Form of Proposal (excluding HST).

Item	Description	Rate (\$)	
Excavator – <i>please specify model and track and bucket details</i>			/hr
Excavator Stand-by			/day
Hi-rail Power cart / Low bed – <i>please specify model</i>			/day
Hi-Rail Material box			/day
Diesel packer / Jumping Jack			/day
Boom Truck – <i>please specify model and if hi-rail equipped</i>			/hr
Operator Travelling			/hr
Operator Overtime (after 10 hr/day)			/hr
Hi-Rail Pickup Truck			/km
Room and Board			/day
Floating, mob / demob			/hr