

THE REGIONAL MUNICIPALITY OF NIAGARA

REQUEST FOR PROPOSAL

ARCHAEOLOGICAL IMPACT ASSESSMENT STUDY

WAINFLEET SERVICING

PROPOSAL NUMBER 2008-RFP-75

ISSUE DATE: TUESDAY, DECEMBER 16TH, 2008

CLOSING LOCATION:

**OFFICE OF THE REGIONAL CLERK
THE REGIONAL MUNICIPALITY OF NIAGARA
2201 ST. DAVID'S ROAD
THOROLD, ONTARIO, L2V 4T7**

CLOSING DATE AND TIME:

**TUESDAY, JANUARY 20TH, 2009
2:00 P.M. LOCAL TIME**

BID IRREGULARITIES

RESPONSES FOR ADMINISTERING IRREGULARITIES CONTAINED IN BIDS

<u>IRREGULARITY</u>	<u>RESPONSE</u>
1. Late Bids	Automatic rejection; not read publicly and returned unopened to the bidder.
2. Unsealed Envelopes	Automatic rejection
3. Insufficient Financial Security (e.g. No or insufficient bid deposit) (if requested)	Automatic rejection
4. Failure to insert the name of the bonding company in the space provided for in the Form of Tender (if requested)	Automatic rejection
5. Failure to provide a letter of agreement to bond where required (if requested)	Automatic rejection
6. Incomplete, illegible or obscure Bids or Bids which contain additions not called for, erasures, overwriting (not initialled), errors or irregularities of any kind	48 Hours to rectify situation
7. Documents in which all necessary Addenda have not been acknowledged	48 Hours to confirm Bid to the satisfaction of Purchasing Services
8. Failure to attend mandatory site visit (if requested)	Automatic rejection
9. Bids received on documents other than those provided by the Region	Automatic rejection
10. Failure to insert the Bidder's business name in the spaces provided in the Form of Tender	Automatic rejection
11. Failure to include signature of the person authorized to bind the Bidder in the space provided in the Form of Tender	48-Hours to rectify situation
12. Qualified bids (bids qualified or restricted by an attached statement)	Automatic rejection
13. Bids containing minor obvious clerical errors	48-hours to correct and initial errors.
14. Bids completed and/or signed in erasable medium	Automatic rejection

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(ALL BEING PART OF THIS REQUEST FOR PROPOSAL)

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1. **Background**

i) **Class Environmental Assessment Study**

In January 2003, Niagara Region in collaboration with Wainfleet Township agreed to jointly undertake a Class Environmental Assessment (EA) for the Lakeshore Area of Wainfleet Township. The purpose of the EA was to develop servicing solutions that would address environmental and public health issues related to failing septic systems and contaminated drinking water supplies potentially affecting Wainfleet Lakeshore area residents.

In July 2005, after following the prescribed provincial requirements set out in the Environmental Assessment Act, the Region/Township filed a Notice of Completion for the Wainfleet Water and Wastewater Servicing Project Class EA. An electronic copy of the ESR is included with this Request for Proposals. The required documentation was submitted to the Ministry of the Environment. The EA servicing solution includes the following:

- Wastewater - Extend a municipal wastewater trunk system from Port Colborne and construct a local sewage collection system in the Lakeshore Area of Wainfleet Township, and
- Water - Extend a municipal water supply from the existing system in Port Colborne and construct a local distribution system in the Lakeshore Area of Wainfleet Township.

This servicing solution is referred to as the “Project” in this Request for Proposal.

In September 2006, the Minister of the Environment, having given careful consideration to issues raised during the Environment Assessment (EA) process, rendered a decision to allow the Region/Township to proceed with the project. This decision was made following a thorough Ministry review of the legislative requirements; technical documentation and public input that took place over a 14-month period (see Appendix “B” for the Minister’s Decision).

In rendering the decision, the Minister imposed fifteen conditions on the proponent. These issues relate to the project cost evaluation used to compare alternatives, the social impact of the project, potential effects to the natural environment within the proposed right-of-way, identification of possible areas of archaeological potential within the proposed right of way and consultation with the public. These topics form the basis of the Minister’s conditions on the project, as summarized below:

- Cost Evaluation And Sharing Plan - A cost evaluation/sharing plan must be prepared for the project. The plan will include detailed cost estimates based on the most up-to-date information available; various cost-sharing scenarios between the Province, Region, Township and benefiting property owners; and contingency measures to be followed if external funds are not secured.
- Social Impact Assessment - In addition to information previously provided in the Class EA documents, the Minister requires that a social impact assessment be prepared. This must address the financial impacts of the cost-sharing scenarios and determine if benefiting property owners would be caused long-term hardship as a result of the Project.

1. **Background (Continued)**

- Natural Resource Impact Assessment - As part of the project's detailed design, the Minister requires that a site-specific Archaeological assessment be undertaken that builds upon the ecological investigations completed as part of the Class EA submission. This will focus on the proposed facility alignment and pumping station sites and evaluate potential construction impacts and mitigation. This condition includes a commitment by the proponent to follow an environmental monitoring program during and after construction.
- Archaeological Impact Assessment - The Minister requires the preparation of a Stage 1 Archaeological Assessment (and a Stage 2, if required) along the proposed infrastructure right-of-way to determine if the project will impact areas of archaeological potential. If evidence of archaeological resources is encountered, further work may be warranted in accordance with provincial regulations.
- Public Consultation - The Minister requires that the public continue to be consulted through to completion of project construction. At a minimum, this includes one public open house to present the findings of the above-noted studies, solicitation of public comment into the findings of these reports, and filing of the reports for public review.
- Report on How Provincial Conditions Were Satisfied – Along with copies of the aforementioned reports, the Region will be required to advise the MOE as to how these conditions were fulfilled.

This assignment is specific to Conditions 4 to 7, Archaeological Assessment. The condition reads as follows (in its entirety):

“4. The Region and/or Township shall prepare a Stage 1 and, if required, a Stage 2 Archaeological Assessment of the preferred alignment and pumping station and other associated infrastructure 30 days prior to the commencement of construction to determine whether the Project will impact areas of archaeological potential in accordance with the guidelines of the Ministry of Culture. If areas of archaeological potential are identified that will be affected by the Project, then the Region and/or Township shall carry out a field assessment by a licensed archaeologist to identify the presence of any intact archaeological sites.

5. The Region and/or Township shall ensure immediate contact with the office of the Regulatory and Operations Group of the Ministry of Culture if deeply buried archaeological remains are encountered during construction activities and land development.

6. The Region and/or Township shall ensure immediate contact with the Ministry of Culture and the Registrar or Deputy Registrar of the Cemeteries Regulation Unit of the Ministry of Government Services if human remains are encountered during construction activities and land development.

1. **Background (Continued)**

7. The Region and/or Township shall provide the Six Nations of the Grand River First Nation and the Mississaugas of New Credit First Nations as well as such potentially affected aboriginal communities as may be warranted by the findings of the Stage 1 and, if required, Stage 2 Archaeological Assessments with:

- a) A copy of the Archaeological Assessment prepared under Condition 4 and the field assessment, if any, undertaken for the purpose of identifying an intact archaeological site; and
- b) The notices, if any, provided under Conditions 5 and 6.”

A full copy of the Minister’s letter of decision is attached as Appendix “B” to this RFP.

The scope of this assignment is to complete the Stage 1 Archaeological Assessment, to complete the consultation with aboriginal communities, and to provide recommendations on whether a Stage 2 Archaeological Assessment is required, in accordance with the Minister’s Decision. The detailed work program can be found in Section III – Scope of Work.

ii) **Post Approval Work**

Since the Minister’s decision on the Environmental Study Report, Niagara Region and the Township of Wainfleet have completed the following:

- a) Technical Review Workshop, April 2007 – at the direction of Regional Council, this workshop was held to evaluate alternative technologies. This was a follow-up workshop to the Value Analysis Workshop held during the EA process (refer to ESR for details on Value Analysis Workshop). The preferred option of centralized services as determined by the EA process remains the technical solution. Alternative technologies such as small bore gravity sewers or small bore low pressure sewers are being considered as part of the detailed design.
- b) Enhanced Conceptual Design – this report was completed by Hydromantis (November 2007) following the Technical Review Workshop. A copy of this report is available for viewing through Niagara Region. Consultants reviewing this document are advised that this document addresses wastewater collection only; consultants are to refer to the Environmental Study Report for the water distribution solution.
- c) Staff report PWA 147-2007 – Regional Council endorsed the municipal service option as the solution to be carried forward, subject to certain directions to be completed and reported back to Regional Council.
- d) Staff Report PWA173-2007 – Project Development Structure to Manage the Implementation of the Wainfleet Servicing Project.

1. **Background (Continued)**

- e) Township of Wainfleet New Official Plan – The Township is completing a new Official Plan that will address the Lakeshore Area. The following is an extract from the RFP for the new Official Plan:

“All of the Township, including the lakeshore area, is not serviced by municipal water and wastewater services. Historic planning practices and the lack of comprehensive long-range growth strategies have resulted in over development on undersized lots in the lakeshore community that has, in part, led to documented groundwater contamination and pollution problems.

In an effort to address the environmental and health risk issues associated with this problem, the Region of Niagara has initiated a Servicing Plan for the Lakeshore Road area that may result in the installation of municipal sewer and water along Lakeshore Road. However, should municipal services be provided, there is a concern that pressure for significant additional development may occur.

Accordingly, it is important to fashion a proper relationship between protecting the unique character of the area and its natural resources while recognizing that the installation of municipal services will increase the potential for the further development. Accordingly, Township Council has requested the preparation of a Special Policy Area for the Lakeshore Community (to be part of the Official Plan) to guide the overall development of the area.”

1. **Purpose**

It is the intention of the Regional Municipality of Niagara (the Region) to retain a qualified Consulting Firm for the Archaeological Impact Assessment Study for Wainfleet Servicing as detailed herein.

2. **Date & Place for Receiving Proposals**

All submissions must be sealed and be received by the office of the Regional Clerk, The Regional Municipality of Niagara, Campbell West Building, 2201 St. David's Road, Thorold, Ontario no later than 2 p.m. local time, **Tuesday, January 20th, 2009.**

Submissions received after this deadline will not be accepted and will be returned unopened to the proponent. Please note that proponents are solely responsible to ensure that their submissions are received by the office of the Regional Clerk on or before the deadline. The Regional Clerk will not accept any submission after this deadline notwithstanding the reason for its late receipt.

Please also note that, in the event of any question regarding the timely receipt of any submission, the time on the clock designated by the Regional Clerk will absolutely prevail over any other time piece regardless of any discrepancies between the time on the Regional Clerk's designated clock and actual time.

Bids will be opened for **REGISTRATION OF BIDS RECEIVED** only, at a public meeting at 2:15 p.m. local time, **Tuesday, January 20th, 2009.**

NO FURTHER INFORMATION WILL BE MADE AVAILABLE AT THIS TIME.

3. **Form of Proposal**

Proposals shall be submitted in two (2) envelopes addressed to The Regional Clerk, at the address noted above, which clearly identifies the document(s) enclosed as a proposal gives note of the proposal number and the name and address of the proponent.

Proposals must be submitted on the attached "Form of Proposal" and enclosed in an envelope addressed to the Regional Clerk at the address noted above, which clearly identifies the document(s) enclosed as a proposal, gives note of the proposal number and the name and address of the proponent.

The Form of Proposal is to be submitted in envelope "A".

The Region bears no responsibility for any proposal(s) which are lost, misplaced or are not considered as a result of failure to use these envelopes.

Proponents will be allowed to attach descriptive literature for the sole purpose of amplifying the bid. Adjustments by fax or letter to a proposal already submitted will not be considered. The Proposal Form must be properly completed and witnessed in the spaces provided on the Form and signed by the proponent or responsible official of the firm bidding.

3. **Form of Proposal (Continued)**

Catalogues, brochures and bulky documents will be submitted under separate cover and must be clearly identified as being supplementary documents for this Request for Proposal.

4. **Documentation**

Five (5) sets of documents are required for each proposal. At least one set must carry original signatures and be marked as “MASTER”. Additional sets may be photocopied and marked as “DUPLICATE”.

5. **Proposal-Envelope “A”**

In addition to the Form of Proposal (Page 28), the proponent shall provide a brief proposal, **either** in text or tabular format, maximum ten (10) pages not including covering letter, resumes and company credentials. The minimum acceptable font size is 12. The proposal to undertake this assignment shall include a clear outline, including the following general items, in a brief Letter of proposal to undertake this assignment. The proposal should include items listed hereunder, but also include other considerations based on the proponent’s understanding of the project.

- The proponent’s interest in carrying out the project and an understanding of the objective(s) of this project.
- The proponent’s proposed methodology for carrying out the work.
- A detailed work plan and a weekly project schedule which will identify all major components of this project and their anticipated start and completion dates. The work plan shall address the tasks outlined in the Scope of Work.
- A description of the consulting team, the lead persons, and the relevant experience and qualifications of each individual **along with an estimate of the percentage of time each key member will dedicate to this project (the individual’s hours divided by total project hours)**.
- Identification of all sub-proponents, their qualifications and experience, as well as their specific role in the project.
- Commitment (time and resources) expected to be provided by Niagara Region.
- Disclosure of any perceived conflict of interest.

Note: Proponents shall not include any details of man-hours except in the sealed cost envelope.

6. Proposal Cost-Envelope “B”

- Fill out the costs for the tasks in the worksheet titled Summary of Proposal Cost provided in Appendix A and include in Cost-Envelope “B”.
- Disbursement costs which may include mileage, telephone charges, printing and reproductions, fax charges, courier services, and computer services etc.;
- Compliance with the Niagara Region’s insurance requirements, as indicated in Clause 20 of this section;
- A fee schedule indicating a per diem rate or hourly rate for each proponent and sub-proponent staff on the project team for the entire project duration;

No invoice for services rendered will be honoured if that invoice puts the total cost of the job over the upset limit set out in the agreement. If additional costs are to be incurred over the upset limit, the proponent shall obtain written authorization from Niagara Region to proceed with these additional costs prior to the additional charges being incurred. Further, Niagara Region will not honour any work that was not authorized in accordance with Niagara Regional policy. Verbal authorization, regardless of the source, will not be honoured in considering invoices. Any invoice received, that does not meet the above requirements, will be returned unpaid and no late payment charges can be claimed.

7. Additional Recommendations

Proponents are encouraged to submit any value added recommendations for consideration by the Region.

In the event that a prepared proposal does not precisely and entirely meet the requirements of this Request for Proposal, Niagara Region reserves the right to enter into negotiations with the selected proponent(s) to arrive at a mutually satisfactory arrangement with respect to any modifications to the proposal.

8. Compliance

Alternative proposals may be considered, however, any deviations to the Region's RFP document must be clearly defined and are subject to acceptance or rejection by the Region in its discretion. Absence of comment will be assumed to indicate full compliance. Proponents are encouraged to offer comments that clarify the content and intent of their proposal.

9. Joint Proposals

In the event that a joint proposal is submitted on behalf of two or more companies, the name and role of each partner in the joint proposal must be clearly identified and the document signed by an authorized officer of each company.

If a joint proposal is to be considered it will be necessary for one of the companies listed in the document to be named as the prime contractor and to accept responsibility for the level and quality of service provided and coordinate services as required by Niagara Region.

10. Withdrawal of Proposal

A proposal may be withdrawn unopened after it has been deposited, if such request is received in writing by the Clerk prior to the time specified for the opening of proposals.

11. Clarification

It will be the proponent's responsibility to clarify any details in question before submitting a bid. All official correspondence should be directed to and will be issued by Kelly Hecimovich, Purchasing Agent, The Regional Municipality of Niagara, Campbell West Building, 2201 St. David's Road, Thorold, Ontario, L2V 4T7, Telephone 905-685-4225 ext 3470, Fax: 905-682-8521, E-mail: Kelly.hecimovich@niagararegion.ca.. Any questions must be received in writing no later than Wednesday, January 14th, 2009.

The Regional Municipality of Niagara bears no responsibility for any oral communication, instruction or suggestions.

12. Acceptance or Rejection of Proposals

The Regional Municipality of Niagara reserves the right in its total discretion to accept or reject any or all proposals for any reason whatever, and to accept or reject any proposal if considered best for the interests of The Regional Municipality of Niagara. The lowest or any proposal will not necessarily be accepted. All documentation is subject to review by staff for mathematical accuracies and compliance with the specifications and terms and conditions.

13. Informal Proposals

Proposals which are incomplete, conditional or obscure, or which contain additives not called for, erasures, alterations or irregularities of any kind may be rejected as informal. The Regional Municipality of Niagara reserves the right to waive informalities at its discretion.

14. Proposal Expiry Date

Proponents hereby acknowledge that offers contained within their proposal shall remain open for acceptance by Niagara Region for a period of not less than ninety (90) days from the closing date established for proposals.

15. Announcement

No announcement concerning the successful proposal will be made until a complete report is prepared and approved by The Regional Municipality of Niagara.

16. Progress Payments

Payments will be made on a monthly basis.

17. Billing

Invoicing addresses and other billing information will be supplied to the successful proponent.

18. Intent of Scope of Work

It is the intent of the attached scope of work to describe specific details of services required. It is the responsibility of the successful proponent to supply any service not described in the scope of work but which may be reasonably implied to discharge the scope of work covered in this Request for proposal.

19. Sales Taxes

Prices quoted will be Federal Goods and Services Tax and Provincial Sales Tax extra where applicable.

20. Liability Insurance Policy

The proponent and all sub-proponents shall purchase and maintain at all times during the term of this Agreement, or as otherwise set out in this Agreement, the insurance coverage listed below:

(a) Comprehensive General Liability Insurance

Commercial General Liability insurance insuring the proponent and covering all Services as described in the Agreement. The policy will be extended to include bodily injury and property damage, personal and advertising injury, products and completed operations, blanket contractual, a severability of interest and cross liability clause to a limit of not less than FIVE MILLION DOLLARS (\$5,000,000) per occurrence. A commercial general liability policy that has an aggregate limit will be acceptable except under the products and completed operation extension. The policy shall be endorsed to include the Owner as an additional insured. The policy shall include a cross liability clause written as follows:

The insurance as is afforded by this policy shall apply in respect to any claim or action brought against anyone insured by any other insured. The coverage shall apply in the same manner and to the same extent as though a separate policy had been issued to each insured. Any breach of a condition of this policy by any insured shall not affect the protection given by this policy to the owner.

20. Liability Insurance Policy

a) Non-owned Automobile to a limit of no less than TWO MILLION DOLLARS (\$2,000,000).

b) Automobile Insurance

Automobile Insurance (OAP1) for both owned and leased vehicles with inclusive limits of not less than TWO MILLION DOLLARS (\$2,000,000).

c) Other Insurance

Any other type (e.g. Environmental), form or as otherwise may be required from time to time as identified at any time by either party.

All policies of insurance shall: (a) be written with an insurer licensed to do business in Ontario; (b) be non-contributing with, and will apply only as primary and not excess to any other insurance or self-insurance available to the proponent; and (c) contain an undertaking by the insurers to notify the Owner in writing not less than thirty (30) days before any material change in risk or cancellation of coverage.

If coverage under the Errors and Omissions policy is cancelled within the two (2) year period after the termination or expiration of this Agreement, the proponent shall provide the Owner with notice within ninety (90) days of cancellation and shall be required to purchase an extended reporting endorsement to confirm that coverage is maintained.

Certificates of insurance originally signed by authorized insurance representatives, or if required by the Owner, certified copies of all the above-mentioned policies, shall be delivered to the Owner prior to the commencement of the Services. All subsequent policy renewals and certificates of insurance thereafter, during the time that this Agreement is in force, shall be forwarded to the Owner within sixty (60) days of their renewal date.

21. Failure to Perform

Failure to comply with all terms and conditions of this proposal, and failure to supply all documentation as required herein, within the specified time period, shall be just cause for cancellation of the award. Niagara Region shall then have the right to award to any other proponent, or call new proposals.

22. Disqualification of Proponents

If more than one proposal is received from an individual, firm, partnership, corporation or association under the same or different names all such proposals will be rejected. Any evidence of collusion between proponents will be sufficient to reject all proposals so affected.

23. Error and Correction

The Regional Municipality of Niagara reserves the right in its total discretion to make all necessary corrections to any proposal which contains mathematical errors and may refer to the unit price in making such corrections.

24. Firm Prices

Prices proposed are to be in Canadian Funds, and to include all necessary labour, material and equipment required for the execution of the work, and are to remain firm for acceptance for a period of ninety (90) days after closing date.

25. Ability and Experience of the Proponents

Each proponent shall satisfy The Regional Municipality of Niagara, as to their ability and experience in supplying the services offered in their proposal. The Regional Municipality of Niagara will not award a contract to any company that cannot furnish evidence satisfactory to the Region, in its sole discretion, that they have the necessary ability, dedication, equipment, capital and experience to provide the services required.

26. Incurred Costs

The Regional Municipality of Niagara will not be liable nor reimburse any proponents for costs incurred in the preparation of proposals, attendance at meetings/related travel costs, or any other services that may be requested as part of the evaluation process.

27. Conflict of Interest

The proponent shall disclose to Niagara Region prior to award of the agreement, any potential conflict of interest. If such a conflict of interest does exist, the Region may, at its discretion, withhold the award until the matter is resolved or refuse to award.

28. Confidentiality

The proposal must not be restricted by any statement, covering letter or alteration by the proponent in respect of confidential or proprietary information. Niagara Region will treat all proposals as confidential. Niagara Region will comply *with the Municipal Freedom of Information and Protection of Privacy Act*, and its retention by-law pursuant to the *Municipal Act*, in respect of all proposals. All Public Reports approved by the Council of the Region will become public information. Such Public Reports will not include proposal documents. Niagara Region will not return or destroy all copies of any unsuccessful proposal.

29. Vendor Performance

The Corporation may, in its sole discretion, reject a Bid if a proponent:

- (i) has, at any time, threatened, commenced or engaged in legal claims or litigation against the Corporation;
- (ii) previously provided goods or services to the Corporation in an unsatisfactory manner;

29. Vendor Performance

- (iii) has failed to satisfy an outstanding debt to the Corporation;
- (iv) has a history of illegitimate, frivolous, unreasonable or invalid claims;
- (v) provides incomplete, unrepresentative or unsatisfactory references; or
- (vi) has engaged in conduct that leads the Corporation to determine that it would not be in the Corporation's best interests to accept the Bid.

30. Indemnification

The successful proponent shall indemnify and save harmless the Region, its elected officials, officers, employees and agents from and against any and 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 the negligence, errors, omissions, fraud or wilful misconduct of the successful proponent, its officers, employees, agents and subcontractors, or any of them, attributable to or in connection with the delivery or performance of the goods and services contemplated in this Request for Proposal, except to the extent that same is attributable to or caused by the negligence of the Region, its officers, employees and agents, or any of them. This indemnity shall be in addition to and not in lieu of any insurance to be provided by the successful proponent in accordance with this Request for Proposal.

31. Evaluation

i) Method

Proposals received on time will be reviewed and deviations and/or exceptions to the requirements of this RFP will be noted and assessed. Proponents may be contacted to explain or clarify their proposals however, they will not be permitted to alter information as submitted. The two envelope system will be utilized with the Form of Proposal and pricing information submitted in envelope "B" and the proposal itself submitted in envelope "A". The proposals will be evaluated and scored based on the listed criteria excluding the cost component. Each criterion will be scored between 0 and 10 and multiplied by the weight to establish the weighted score. The total technical weighted scores for each bid will be tabulated. Only proponents receiving a minimum technical score of 70% (i.e. 59.5 out of a possible 85 points, please refer to Section 31 ii) Criteria) will have their cost proposal envelope opened if warranted by the following:

Only proponents' Envelope "B" containing the pricing information will be opened if the price component of the evaluation criteria could still impact the total overall weighted score. The pricing information envelopes which are not opened will be returned to the proponents. The lowest priced proposal will receive the maximum score for the cost element. proposal costs will be prorated proportionally from the lowest cost to the highest cost up to a value of 1.5 times of low cost and that no points will be awarded for costs exceeding 1.5 times of low cost.

31. Evaluation

ii) Criteria

Proposals will be scored based on the following:

	Item/Factor	Weighting	Company 1 (1-10)	Weighted Score
1.	Applicable Technical Expertise and Resources	10%		
2.	Team Strength and Leadership	15%		
3.	Same or Very Similar Project Experience	10%		
4.	First Nations Consultation Experience	10%		
5.	Project Understanding	10%		
6.	Methodology (Work Plan, Innovation, Client Administrative Input, Workload, Schedule, Etc.)	20%		
7.	Local Expertise Factor	5%		
8.	Public Consultation Experience	5%		
	Sub-Total	85%		
9.	Cost Factor	15%		
	Grand Total	100%		

32. Award

Negotiations, if any, must be successfully concluded and documented before a final recommendation is made. The first ranked proponent, having acceptable terms and conditions, will be recommended for award. If approved, the Regional Municipality of Niagara will notify the successful proponent in writing of the acceptance of its proposal. The successful proponent shall be bound to execute an agreement with the Region within fourteen (14) days of contract award. The date of the contract award shall be taken as the date on which the proponent is notified of the acceptance of its proposal.

The successful proponent must submit the following to the Region within **fourteen (14) days** of the Contract award:

- (a) A fully executed agreement in triplicate;
- (b) A Certificate of Insurance which complies with the insurance requirements set out in Clause 20 of this Section.

33. Performance Unsatisfactory

The contract will be deemed to be in default when the proponent fails to:

- Perform any specification, term or requirement included herein, in a good and proper manner.
- Provide any deliverable(s) in accordance with the Requirements incorporated in the contract.
- Adhere to specified delivery requirements and/or dates.

34. Purchasing By-Law

Submissions will be solicited, received, evaluated, accepted and processed in accordance with Niagara Region’s Purchasing By-law as amended from time to time. In submitting a bid in response to this solicitation, the proponent agrees and acknowledges that it has read and will be bound by the terms and conditions of Niagara Region’s Purchasing By-law.

The Purchasing By-Law can be viewed on the Region’s website, www.niagararegion.ca

35. De-Briefing

After the selection has been made, an unsuccessful bidder may request a debriefing session to discuss their submission by contacting the project manager. The project manager will conduct a debriefing, by telephone, for the purpose of explaining the evaluation process, discussing only the bidder’s submission, its ranking, and explaining why they were not selected. The following is the manager contact information:

Name: Mary Lou Tanner, MCIP, RPP
Phone Number: 905-685-4225 ext 3518

All other inquiries are to be in accordance to clause 11, page 11.

36. Exclusion

Except as expressly and specifically permitted herein, no Bidder shall have any claim for any compensation of any kind whatsoever, as a result of participating in this RFP, and by submitting a proposal each Bidder shall be deemed to have agreed that it has no claim.

37. Minor Non-Compliance

Bids which fail to conform to the requirements of this invitation in form or content may be disqualified as non-compliant. However, the Region may, in its sole discretion, waive minor non-compliance and retain, for consideration and possible award, bids which do not conform to the requirements of the invitation in form or content, where such bids appear to offer the best value to the Region. Bidders are cautioned that any such retention of non-conforming bids for evaluation and possible award will be a rare event and solely at the Region’s discretion. Bidders are urged to ensure their bid is fully compliant with all requirements of the invitation.

PROJECT TASKS

The general approach should follow the tasks outlined below:

1. STUDY AREA

Appendix “C” identifies the study area (referenced on Appendix C as “Original Study Area and Boil Water Area”). The study area shall be the area identified as the study area in the Environmental Study Report. Additional maps are included in Appendix “C” which the servicing solutions for water and wastewater as well as the connection to the Port Colborne trunk infrastructure. The first maps show the Wainfleet Lakeshore Community which is an area located along the Lake Erie shoreline that was the focus of the Region/Township’s 2005 Environment Assessment submission. The Wainfleet Lakeshore Community is a developed area of approximately 1,250 permanent and seasonal residences relying on private water and wastewater services (i.e. private water wells and individual on-site septic systems). The Lakeshore Community stretches for approximately 16.5 kilometres from the Township boundary with Port Colborne in the east to the boundary with Haldimand County in the west.

The second set maps show the area that is located to the north and extends to the former railway right-of-way, located south of Highway 3, now known as the Gord Harry Trail. This area is predominantly rural in character with numerous scattered residential properties and a few commercial establishments and institutions that serve the local community. Both areas are currently the subject of a secondary planning analysis for the Lakeshore Area to be conducted in conjunction with a comprehensive review of the Township’s Official Plan.

2. STUDY PURPOSE

The purpose of this consulting agreement is to satisfy the requirements of the Minister of the Environment to undertake an Archaeological Assessment that builds upon the ecological investigations completed as part of the Region/Township’s Environmental Study Report (ESR), which will:

- Include a comprehensive evaluation of potential impacts to archaeological resources and features along the preferred alignment
- Provide professional advice on First Nations consultation; undertake consultation on behalf of the Township of Wainfleet and Niagara Region
- Evaluate construction-related impacts and any permanent impacts within the study area
- Identify specific mitigation measures that will be implemented

3. **CONSULTANT TEAM EXPERTISE**

The proposal is to identify a lead project manager with significant expertise in Archaeological Assessment for Water and Wastewater Environmental Assessments. At a minimum, the consultant team must demonstrate competencies and expertise in the following disciplines:

- Municipal Environmental Assessment
- Archaeological Impact Assessments for water and wastewater infrastructure
- First Nations consultation

Consultant teams are to submit the following information as part of their proposal:

- a) Legal name and address of the company, including legal form of company. This is to be included for any sub-consultants on the project team.
- b) Name of lead consultant if the project team includes sub-consultants.
- c) Name of consultant project manager.
- d) Company profile including number of employees, number of years in business (for lead firm and sub-consultants as appropriate).
- e) Summary of similar projects previously or currently undertaken and experience and qualification of key employees, including description of the work undertaken, date undertaken, client name and address, references, including address and telephone number and project title (for lead firm and sub-consultants as appropriate).
- f) Resumes of key personnel including, as a minimum, project manager, together with their qualifications, availability and experience on similar work.
- g) Project data sheets on similar projects that demonstrate the team's ability to complete the assignment (for lead firm and sub-consultants as appropriate).
- h) Detailed description of how the consultant project team fulfills the competencies required by Niagara Region (see above).
- i) A detailed description of First Nations consultation. This is to include the names of the proposed project team, their specific project experience, and the projects on which First Nations consultation has been successfully completed.
- j) Other pertinent data deemed important by the proponent.

4. **WAINFLEET SERVICING PROJECT – PHASE 2**

Through Staff Reports PWA 173-2007 and PWA 147-2007, Regional Council identified the project structure and scope of work for the next components of the Wainfleet Servicing Project. The following is a description of the project elements of Phase 2 together with their status.

4. WAINFLEET SERVICING PROJECT – PHASE 2 (Continued)

i) Work Program Tasks and Responsibilities

Niagara Region and the Township of Wainfleet are in the process of engaging several additional consultants to fulfil the Minister’s Conditions. The following is a brief description and status:

Assignment	Description	Project Lead	Status
Township of Wainfleet New Official Plan	Prepare a new Official Plan for the Township	Chuck Miller, Manager of Planning, Township of Wainfleet	Consultant Team Selected (Sorensen Gravely Lowes)
Engineering Design	Preliminary Engineering Design and Detailed Design Assignment	Robin Young, P. Eng. Project Manager Niagara Region	RFPQ Closed RFP To Be Issued
Natural Resources Impact Assessment	Impact Assessment and Environmental Monitoring Program	Mary Lou Tanner, MCIP, RPP Manager of Design and Construction (Wainfleet) Niagara Region	Consultant to be selected
Archaeological Impact Assessment	Impact Assessment	Mary Lou Tanner, MCIP, RPP Manager of Design and Construction (Wainfleet) Niagara Region	Subject of Current RFP
Geotechnical	Test Boreholes	Robin Young, P. Eng. Project Manager Niagara Region	As needed

Note on Engineering Design Assignment: Niagara Region is undertaking the engineering design in accordance with the Ministry endorsed Environmental Study Report. As part of the detailed design, Niagara Region will be examining alternative technologies to reduce the project’s overall cost. Consultants for the Archaeological Assessment Study are advised that the location of the pumping stations and booster stations may change as part of the engineering design assignment. Consultants are required to include a provisional item in their cost submission for additional field work and impact assessment for two alternative sets of pumping station and booster station locations.

ii) Project Structure

The Wainfleet Servicing Project, Phase 2, is lead by the Manager of Design and Construction (Wainfleet Project). The project is structured to ensure coordination, oversight, and input from senior staff and agency representatives from Niagara Region and the Township of Wainfleet. In addition, a Public Liaison Committee has been established consisting of members of the Wainfleet Community. The following are the key organizational elements:

- a) Joint Advisory Committee – This committee consists of three members of Regional Council, members of Council from Wainfleet and Port Colborne, as well as senior Regional staff.

4. WAINFLEET SERVICING PROJECT – PHASE 2 (Continued)

- b) Project Team – This team is the main working group of the project and is lead by the Project Lead. It includes key members of Regional and Township staff to provide technical input and oversight of the project.
- c) Public Liaison Committee – This Committee is to provide a mechanism for community-wide exchange, communication and collaboration to ensure that the public consultation process provides effective communication on the project.

The selected consultant team will be expected to make presentations to each of the above committees. In the proposal, consultants must include in their pricing two presentations to each of the above three committees. Consultants are also to include in their pricing one presentation to each of Regional Council and Township of Wainfleet Council (total two presentations).

Consultants are also to include a provisional item for an additional two presentations to the project’s committees. Consultants are also to include a provisional item for an additional one presentation to each of Regional Council and Township of Wainfleet Council (total two additional presentations).

5. ARCHAEOLOGICAL ASSESSMENT WORK PLAN TASKS

In response to this Request for Proposal, the consultant will elaborate on how the following study requirements will be addressed.

Task One – Undertake a Background Review

The Archaeological Assessment will be prepared as part of the Project’s detailed design stage and will build upon the investigations completed as part of the ESR. The Consultant will review known information through the Ministry of Culture, Niagara Region, and the Township of Wainfleet. This will include local data sources. The consultant is to include in their proposal one day of interviews with local individuals in Wainfleet to obtain local knowledge.

Known archaeological sites will be reviewed for site locations within the study area. A data base will be created by using the following:

- Reviewing pertinent provincial and federal government files (Ontario Archaeological Sites Database);
- Reviewing and compiling the results of a literature search (published and unpublished).
- Consulting MCL staff for any additional information that may not be available through any of the above-mentioned sources.
- Identify any land claims and treaty obligations that may impact the servicing project.

Deliverable: A background review report of information with details on archaeological sites, land claims, and treaties. All sites are to be mapped (see mapping requirements).

5. **ARCHAEOLOGICAL ASSESSMENT WORK PLAN TASKS** (Continued)

Task Two –Archaeological Review

The archaeological site potential of the study area shown on Schedule A will be determined by:

- Reviewing archaeological site location data updated during Task 1;
- Reviewing the study area’s geo-morphological, hydrological and physiographic characteristics;
- Establishing the study area’s land use history through a review of historical atlases, maps and other relevant documents held at the Provincial Archives.
- Conducting a field review of the study area to confirm archaeological site potential and recommendations for further assessment.
- Contacting municipal cemetery and/or heritage officials (as cemeteries are located within the study area) to obtain relevant information. An on-site visit may be required as part of the field review;
- Contacting other key informants with local expertise on archaeological resources;
- Undertaking a specific field review of the preferred alignments identified in the Environmental Study Report to support determinations of archaeological potential.
- Identifying and photo-documenting high potential areas, through topographic indicators such as level terrain and watercourses, as well as any low potential areas such as disturbed and low-lying wet areas.

Deliverable: Archaeological Review Report summarizing outputs from Task Two.

Task Three – Draft Stage 1 Archaeological Assessment

The Stage 1 Archaeological Assessment report will describe the results of all background research and fieldwork and will contain all necessary photographic and cartographic documentation.

The Stage 1 Archaeological Assessment report will identify recommended actions to mitigate any adverse effects of the proposed undertaking on any known or potential archaeological resources present within the study area. The report will fulfill the Minister of the Environment’s requirements for this project and address all archaeological and licensing concerns outlined in the Ontario Heritage Act and the Environmental Assessment Act, where relevant.

The report will be submitted to the Region/Township for review and revisions, and submitted to the Ministry of Culture for purposes of review and licensing. Any recommendations made in the archaeological assessment report are subject to Ministry of Culture approval.

5. ARCHAEOLOGICAL ASSESSMENT WORK PLAN TASKS (Continued)

The consultant is to include time in the project schedule and cost for updating the Stage 1 Report based on the Ministry’s review as well as First Nations Consultation (see below).

The consultant will also make recommendations on the need for a Stage 2 Archaeological Assessment as well as outline the scope of work for such a study.

Deliverable: Stage 1 Archaeological Assessment (Draft); Advice Memo on Stage 2 Archaeological Assessment

Task Four – First Nations Consultation

The conditions in the Minister’s decision require Niagara Region and the Township of Wainfleet to complete consultation with Six Nations of the Grand River First Nation, Mississaugas of New Credit, and other aboriginal stakeholders as warranted. In this task, the consultant will provide advice to the Region/Township on the nature and extent of the required consultation; and the timing for such consultation. The second component of this task is the completion of the consultation with the identified First Nations communities. Based on the consultation, the Draft Stage 1 Archaeological Report may need to be updated to reflect the consultation outcomes. Please note that Niagara Region and the Township of Wainfleet are looking to the consultant for guidance and advice on First Nations consultation. Consultants should also be advised that it is not expected that consultation with First Nations will occur after the Draft Stage 1 Archaeological Assessment is complete; Niagara Region and the Township of Wainfleet expect early, meaningful, and ongoing consultation with First Nations.

Deliverables: 1) Record of consultation, outcomes, and agreed to initiatives to implement the project. 2) Consultation with First Nations.

Task Five – Environmental Assessment Process

The Region has completed a Schedule “C” Environmental Assessment (EA) as defined in the Municipal Engineers Association/MOE document for Class Environmental Assessment for Municipal Water and Wastewater projects (Class EA) and is currently satisfying conditions imposed the Minister. Niagara Region and the Township of Wainfleet are examining alternative technologies that may result in changes to the preferred alignment and pumping station locations. The Consultant shall identify in their proposal a provisional item to assist in any addendum to the Environmental Assessment.

6. PUBLIC CONSULTATION

This project will require the selected consultant to participate in and lead the public consultation program on the Archaeological Impact Assessment. Bidders must include in their submission the experience of the team members on public consultation and specifically address the following:

6. PUBLIC CONSULTATION (Continued)

- Project experience on similar projects
- Public speaking at large public meetings on controversial projects (include at least three examples for each team member)
- Provide sample public information centre material from three projects that are similar in size, nature, scope and public interest. The information must establish that the selected consultant is able to communicate complex scientific information on engineering projects in a way that is easily understood by the general public.

Within the pricing submission, consultants are to include the cost of material preparation and attendance at two public information centres for the project. Consultants are to include a provisional item for an additional one public information centre (material preparation and attendance).

Consultants are not to include a public consultation firm or facilitator on the project team; this will be provided by Niagara Region.

7. PROJECT DELIVERABLES

The deliverables for this assignment will include the following:

- Deliverables as listed above under the specific tasks.

8. PROJECT MANAGEMENT, MEETINGS AND REPORTING

The Regional lead contact person for this project will be Mary Lou Tanner, MCIP, RPP, Manager of Design and Construction (Wainfleet Project). The consultant will also assign a lead contact person responsible for undertaking the project. No direction impacting the scope of the assignment shall be considered unless it is through the Region's Project Manager.

The proponent is required to review project progress on a regular basis with Regional staff. Written minutes of all meetings attended by the proponent shall be provided within seven (7) working days and will identify specific follow up action as required by specific individuals.

Any significant change in the proponent's assigned staff shall be approved by Niagara Region in advance.

Proposals shall include a reasonable amount to cover the general costs for required meetings, correspondence and documentation associated with this project. To assist in this regard, the minimum level of effort that will be expected from the proponent for this project is described below:

8. PROJECT MANAGEMENT, MEETINGS AND REPORTING (Continued)

- Meet with the Region’s Project Manager and other Regional staff, as appropriate or as directed by the Project Manager, at key milestone events, or as situations warrant, throughout the course of the project (monthly meetings at minimum) at no additional costs
- Proponent shall make the necessary changes based on input from Regional staff
- Provide written progress report to the Region’s Project Manager at least monthly indicating progress of the work, updated project schedule, budget, approvals, property report, changes, new issues, etc
- Coordinate, via the Region’s Project Manager, with other Regional staff and departments who may have an interest in or be affected by the project
- Provide adequate technical representation at all meetings
- Prepare and distribute “minutes of meetings” within seven (7) working days. Minutes shall identify specific follow up action as required by specific individuals
- Maintain a record of direct contact with all stakeholders and track communications, responses and comments.

9. FINAL REPORT

The Final Report should provide a complete description of all the work and conclusions involved in the Study, prefaced by an Executive Summary. It shall be submitted in hard copy along with an electronic copy in Word for Windows 2003 Office and Portable Document Format (PDF) on a CD. Ten copies of all draft and final reports, each with a full set of graphics, artwork and maps shall be submitted to the Town of Pelham.

Graphics

Graphics should be submitted in Microsoft PowerPoint format on a CD separately from the main report as well as incorporated into the main report.

Artwork

Artwork should be submitted in JPG format on a CD separately from the main report as well as incorporated into the main report.

Mapping

This study will deliver 1:2,000 mapping (both paper and digital) in the formats approved by the NPCA. A Digital Terrain Model (DTM) and digital orthoimagery are available from the NPCA for use in this study as the topographic base.

9. **FINAL REPORT** (Continued)

All spatial data produced during the study will be captured at 1:2000 scales or larger and be delivered to the NPCA in ESRI shapefile format (no CAD drawings accepted). Metadata using the Region of Niagara Metadata Standard will be generated along with supplemental data dictionaries for each shapefile to be delivered. Maps composed for the study should be provided in suitable resolution .pdfs for reproduction purposes.

Available Digital Resource Specifications

Niagara 2002 Ortho-based DTM Details:

Compiled by First Base Solutions, a Division of J.D. Barnes Limited in 2002.

RFP stated the DTM was to be developed generally "for pre-engineering survey and design, the production of municipal planimetric mapping and detailed topographic mapping at a minimum scale of 1:2000 with a contour interval of no less than one metre (1.0 m)."

Mass Points

Average Spacing (X-plane): 10m

Average Spacing (Y-plane): 10m

Horizontal Control: 0.5m if not better

Vertical Control: 0.5m if not better

3D Breaklines

Select linear point density supplementing the mass points to support the production of municipal planimetric mapping and detailed topographic mapping at a minimum scale of 1:2000 with a contour interval of no less than 1m.

Horizontal Control: 0.5m if not better

Vertical Control: 0.5m if not better

Vertical Datum Details: Canadian Geodetic Vertical Datum of 1928 (CGVD28)

Horizontal Datum is NAD 1983 UTM Zone 17T

Niagara Aerial Photography Details:

Two orthoimagery datasets will be made available for the study

1. Black and White 2006 orthoimagery.

Photography Scale: 1:10,000

Captured using the Vexcel Ultracam Digital Mapping Camera with a ground pixel resolution of 10cm.

Horizontal Datum is NAD 1983 UTM Zone 17T

Compiled by First Base Solutions, a Division of J.D. Barnes Limited 2006.

9. **FINAL REPORT (Continued)**

2. Colour 2002 orthoimagery
Photography Scale: 1:10,000
Film scanned in at 20 microns so resulting digital pixel resolution is 20cm.
Horizontal Datum is NAD 1983 UTM Zone 17T
Compiled by First Base Solutions, a Division of J.D. Barnes Limited 2002.

Niagara Region Metadata Standard:

(http://metadata.yourniagara.ca/metadata/GeoSmart_Niagara_Metadata_Standard_May2006.pdf)”

Tabular Attribute Data

Attribute data should be provided in Excel 2003 format files (preferred), dBase IV format files, or in formatted (i.e. with defined columns) ASCII files.

Textual Data for Graphics

Text should be provided in Word for Windows 2003 Office. Please be aware that any tabular data to be referenced to actual map features should **not** be provided as tables in a Word document.

Digital Photos

Digital photos, whether they are scanned photographs or computer-generated artwork, should be provided in JPG format.

10. **ASSISTANCE BY REGION OF NIAGARA**

Niagara Region will provide the successful proponent with the following:

- Fee Summary Forms, Change Order Forms, Payment Certificate Forms.

11. **REFERENCES**

The following references are available for viewing at Niagara Region – Environmental Centre:

- Wainfleet Water and Wastewater Servicing Plan Environmental Study Report and Wastewater Servicing Plan and Technical Reports
- Lake Erie North Shore Watershed Plan Watershed Characterization and Preliminary Issues Identification (Draft, September 2008) – also available on line from NPCA Web Site
- Compendium of Staff Reports – Niagara Region
- Request for Proposals – Wainfleet Official Plan Study
- Enhanced Conceptual Design (Hydromantis Study)
- Natural Areas Inventory (Niagara Peninsula Conservation Authority)

I/We, the undersigned, having the authority to bind the company, certify that I/We have examined all Sections of this Request for Proposal (Introduction, Information to Proponents & General Conditions, Scope of Work, Form of Proposal, and all Appendices), do hereby submit a proposal to enter into an Agreement with the Regional Municipality of Niagara, in accordance with the Terms and Conditions specified in this Request for Proposal document, subject to amendment by any addendum/addenda which are acknowledged below:

ADDENDUM/ADDENDA (If applicable **must** be filled in by bidder.)

I/We, the undersigned, acknowledge that I/We have received addendum/addenda Numbers _____* to _____* inclusive, and that all changes specified therein have been included in the prices submitted.

COMPANY:	CONTACT NAME:
(Must Show Correct Legal Company Name)	(please print)
ADDRESS:	SIGNATURE:
	(I/We have the authority to bind the Corporation)
	TITLE:
POSTAL CODE:	WITNESS:
TELEPHONE NUMBER:	TITLE:
FAX NUMBER:	DATE:
E-MAIL ADDRESS IF AVAILABLE:	

APPENDIX "A"

FEE SCHEDULE AND COST BREAKDOWN

APPENDIX "B"
MINISTER'S DECISION

APPENDIX “C”
STUDY AREA MAPS

APPENDIX "D"

SAMPLE ENGINEERING AGREEMENT

THE REGIONAL MUNICIPALITY OF NIAGARA



ENGINEERING AGREEMENT

with

Company Name

for

Title of Project
Location

ENGINEERING AGREEMENT

THIS AGREEMENT MADE THIS [day] day of [month], 200__,

BETWEEN:

THE REGIONAL MUNICIPALITY OF NIAGARA
2201 St. David's Road, P.O. Box 1042
Thorold, ON L2V 4T7

OF THE FIRST PART

(hereinafter called the "Owner")

- AND -

COMPANY NAME

[Address]

[City, Province, Postal code]

OF THE SECOND PART

(hereinafter called the "Consultant")

WHEREAS the Owner intends to undertake [brief description of the work] (hereinafter called the "Project");

AND WHEREAS the Consultant has submitted a proposal dated [date] to furnish professional services in connection with the Project;

AND WHEREAS on [date], Regional Council approved resolution [number] that the Owner enter into an engineering agreement with the Consultant for services in connection with the Project;

or

AND WHEREAS the Owner has requested the Consultant to perform the services more particularly described in the Consultant's proposal dated [date] set out in Schedule "B" in accordance with the terms and conditions set forth in this Agreement;

NOW THEREFORE this Agreement witnesses that for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, and the mutual promises herein, the parties agree as follows:

ARTICLE 1 – INTERPRETATION

1.1 Definitions

In this Agreement and in the recitals and schedules hereto, the following words, terms and expressions shall have the following meanings:

- (a) “Applicable Law” means all applicable federal, provincial, municipal and other laws, statutes, regulations, by-laws and codes, now or hereafter in existence, having the force of law;
- (b) “As-built drawing” means documentation prepared by the Consultant and created by or based solely on information provided by a third party that reflects the installed, constructed or commissioned conditions of the Project. The information has not been verified to be complete or accurate by an engineer;
- (c) “Commissioner” means the Commissioner of Public Works of the Owner;
- (d) “Hazardous Materials” means any contaminants, pollutants, dangerous substances, asbestos, liquid wastes, industrial wastes, toxic substances, hazardous or toxic chemicals, hazardous wastes and similar substances, either in fact or as defined in or pursuant to any Applicable Laws;
- (e) “Project Site” means the actual work site(s) where the Project is being constructed, and may include other locations where the checking of materials, equipment and workmanship is carried out;
- (f) “Record drawing” means a document created to accurately reflect as-constructed, as-built or as-fabricated conditions that has been sealed by a professional engineer after verifying that the document is accurate;
- (g) “Services” means the services more particularly described in the Consultant’s proposal dated [date] and attached hereto as Schedule “B” and such services as are changed, altered or added to under Section 2.11; and
- (h) “Shop Drawings” means drawings submitted by the construction contractor, subcontractor, manufacturer or others showing in detail either or both of the following:
 - i) the proposed fabrication and assembly of structural elements; and
 - ii) the installation (i.e. form, fit, and attachment details) of materials or equipment.

1.2 Governing Law

This Agreement is governed by the laws of the Province of Ontario and the laws of Canada applicable therein. The parties agree that any legal actions arising out of this Agreement must be commenced in the Regional Municipality of Niagara in the Province of Ontario.

1.3 Order of Precedence

In the event of any inconsistency or conflict in the contents of the following documents, such documents shall take precedence and govern in the following order:

- (a) this Engineering Agreement;
- (b) the Consultant's proposal dated [date], as accepted by the Owner; and
- (c) the Request for Proposal [number] dated [date].

It is understood and agreed that signed and sealed drawings govern over electronic files.

1.4 Schedules

The following Schedules are attached hereto and form part of this Agreement:

- SCHEDULE "A": being Request for Proposal [number] dated [date];
- SCHEDULE "B": being the Consultant's proposal dated [date].

ARTICLE 2 – SCOPE OF AGREEMENT

2.1 Scope

The Consultant shall supply the Services, to the satisfaction of the Owner, in accordance with the terms and conditions set forth in this Agreement.

2.2 Schedule

The Consultant shall perform the Services in a professional, cost-effective and expeditious fashion, so as to meet the requirements of the Owner and shall complete any portion or portions of the Services in such order as the Owner may require and the Owner shall have the right to take possession of and use any completed or partially completed portions of the Services notwithstanding any provisions expressed or implied to the contrary.

2.3 Staff and Methods

The Consultant shall skillfully and competently perform the Services, with the standard of care, skill and diligence to be expected by reasonable, prudent professional engineers in the performance of services similar to those called for under this Agreement. The Consultant shall employ only skilled and competent staff who will be under the supervision of a senior member of the Consultant's staff.

All work performed in respect of the Services shall only be undertaken by persons named in Schedule 'B' attached hereto. Persons of equivalent qualifications may be substituted only with the written consent of the Owner.

2.4 Specialized Services

The Consultant may engage others for specialized services provided that prior approval as to the services to be provided, the cost and method of payment is obtained, in writing, from the Owner. Any consultant engaged for such specialized services shall be required to obtain and maintain the insurance coverage as set out in Section 6.1, pending the Owner's approval of alternate arrangements.

2.5 Approval by Other Authorities

Unless otherwise provided in this Agreement, where the work of the Consultant is subject to the approval or review of an authority, department of government or agency other than the Owner, the Consultant shall be responsible for the preparation of the application for approval. The Consultant shall submit the application to the Owner for review and approval, before submitting to the approval authority. The Owner shall pay the required fee for all such approvals relating to the Project.

2.6 Plans, Specifications, Designs and Cost Estimates

Any and all plans, specifications, drawings and designs furnished by the Consultant will be prepared on the assumption that all information supplied by the Owner or on behalf of the Owner by any person or persons other than the Consultant is correct and the Consultant shall not be liable for any loss or damage arising from any inaccuracy in such information. The Owner shall immediately notify the Consultant of any discrepancies or inaccuracies in such information as they become apparent. The Consultant shall be entitled to make any necessary change or changes in its plans, specifications, drawings or designs at the Owner's expense if any such information should be erroneous or inaccurate.

Construction cost estimates provided by the Consultant are opinions of probable construction costs based on the judgment of design professionals and are provided for the Owner's general guidance. Exact construction costs will be determined only when tenders have been received for the Project.

2.7 Shop Drawing Review

The Consultant shall, within a reasonable time, review Shop Drawings submitted by contractors and/or manufacturers solely to ensure conformance with the Consultant's design and specifications set out in the construction documents.

2.8 Project Site Safety

The Consultant shall be solely responsible for the safety of its employees, officers and agents on the Project Site. Notwithstanding, both parties acknowledge their commitment to conducting all of their activities on the Project Site in a safe manner. Both parties further acknowledge that the presence of the Consultant's personnel on the Project site does not relieve the contractor of any of its obligations with respect to site safety.

2.9 Hazardous Materials

The Consultant shall promptly advise the Owner when it encounters Hazardous Materials at the Project Site.

In the event the Consultant encounters Hazardous Materials at the Project Site, or should it become known in any way that such materials may be present at the Project Site or any adjacent areas that may affect the performance of the Consultant's Services, the Consultant may, at its option and without liability for consequential or any other damages, suspend performance of Services until the Owner retains the appropriate specialized consultant or contractor to identify, abate and/or remove the Hazardous Materials, and warrant that the Project Site is in full compliance with Applicable Laws.

2.10 Review of Services

The Owner, or persons authorized by the Owner, shall have the right, at all reasonable times, to inspect or otherwise review the Services performed or being performed under the Project, and the premises where the Services are being performed.

2.11 Changes and Alterations and Additional Services

The Owner may, in writing at any time before or after the execution of this Agreement or at any time before or after the commencement of the Services, delete, extend, increase, vary or otherwise alter the Services. If such action by the Owner necessitates additional staff or services, payment and scheduling will be negotiated and agreed to by the parties prior to the Consultant performing the additional work.

2.12 Confidentiality

The Consultant explicitly acknowledges and agrees that all information, material, documents, data, graphics, procedures, practices, standards and similar information created, obtained, developed or gathered by, or provided to, the Consultant as a result of this Agreement is confidential and is therefore governed by, and the Consultant agrees to comply with, the appropriate privacy legislation, including the *Municipal Freedom of Information and Protection of Privacy Act*, R.S.O. 1990, c. M.56, as amended.

The Consultant shall not divulge any confidential information communicated to or acquired by it or disclosed by the Owner in the course of carrying out the Services provided for herein, except:

- a) with the consent of the Owner;
- b) if required by law; or
- c) if the information is generally and publicly available.

No such information shall be used by the Consultant on any other project without the prior approval in writing of the Owner.

2.13 Conflict of Interest

During the term of this Agreement, the Consultant shall promptly disclose to the Owner any other assignments which may give rise to a potential conflict of interest. If in the opinion of the Owner, a real or perceived conflict of interest exists, the Consultant shall refuse or abandon the other assignment, as appropriate, or give such undertaking to the satisfaction of the Owner, failing which the Owner may at its discretion, terminate the Services to be

provided by the Consultant under this Agreement.

2.14 Contracting for Construction

Neither the Consultant nor any person, firm, organization or corporation associated or affiliated with or subsidiary to the Consultant shall tender for the construction of the Project, or have an interest, financial or otherwise, in any contractor bidding on the construction of the Project.

2.15 Drawings

The Consultant shall submit to the Owner a complete set of As-built drawings or Record drawings for the Project, as required by the Request for Proposal, within 180 days after the issuance of a Certificate of Completion of the Contract to the contractor. Without prejudice to any other rights the Owner may have, failure to submit such drawings may result in the Owner taking action against the Consultant including, but not limited to, withholding payment and/or disqualifying the Consultant from further work for the Owner until such time as an acceptable set of drawings has been submitted to the Owner.

ARTICLE 3 – OWNER’S RESPONSIBILITIES

3.1 Owner’s Responsibilities

The Owner shall:

- a) make available to the Consultant, within a reasonable time, all relevant information required by the Consultant, and shall instruct the Consultant fully as to the Owner's requirements, including design objectives, constraints, criteria, special equipment and systems, site requirements and construction budget. The Consultant shall be entitled to rely upon the accuracy and completeness of all such information and data furnished through the Owner;
- b) engage consultants directly, when reasonably required by the Consultant to perform services necessary to enable the Consultant to fully carry out the Services. Such services may include obtaining a legal survey of the site, site services data, geotechnical reports and appropriate testing;
- c) promptly review all designs, drawings, plans, specifications, reports, tenders, proposals and other information submitted by the Consultant to the Owner, and make any decisions which it is required to make in connection therewith within a reasonable time so as not to delay the work of the Consultant;
- d) arrange and make provision for the Consultant's entry and access to public and private property and the Project Site for performance of the Services;
- e) arrange and pay for tender advertising and any reasonably necessary legal, financial or insurance services required for the Project;
- f) designate in writing a representative having authority to transmit instructions to and receive information from the Consultant;
- g) immediately notify the Consultant whenever the Owner, or the Owner's representative, becomes aware of a defect or deficiency in the Services or the documents prepared thereunder; and
- h) where deemed appropriate, require that the successful bidder for construction of

the Project include the Consultant as an additional insured on its policy.

ARTICLE 4 – TERM AND TERMINATION

4.1 Term

This Agreement commences on the date appearing on page 1 of this Agreement and ends upon completion of the Services in accordance with this Agreement to the reasonable satisfaction of the Owner, [which completion should be no later than [date]], or until the Agreement is otherwise terminated in accordance with the terms herein.

Notwithstanding the above, the following provisions survive the termination or expiry of this Agreement and continue in full force and effect and do not merge: Section 2.12 – Confidentiality, Section 6.2 – Indemnity, and Article 7 – Intellectual Property.

4.2 Suspension or Termination

The Owner may at any time by notice in writing to the Consultant, suspend or terminate the Services or any portion thereof, at any stage of the Project. Upon receipt of such written notice, the Consultant shall perform no further Services other than those reasonably necessary to close out the Consultant's Services. The Consultant shall be entitled to payment for all Services performed and for all disbursements incurred pursuant to this Agreement in accordance with Article 5.

4.3 Termination for Default

The Owner may terminate this Agreement by providing written notice to the Consultant, if the Consultant is in default in the performance of any of its obligations set forth in the Agreement and, after notice in writing from the Owner to the Consultant, the Consultant fails to remedy such default within ten (10) days, or if such default cannot reasonably be remedied within ten (10) days, the Consultant fails to commence to remedy such default within ten (10) days of such default.

The Consultant may terminate this Agreement by providing written notice to the Owner, if the Owner is in default in the performance of any of its obligations set forth in the Agreement and, after notice in writing from the Consultant to the Owner, the Owner fails to remedy such default within ten (10) days, or if such default cannot reasonably be remedied within ten (10) days, the Owner fails to commence to remedy such default within ten (10) days of such default.

4.4 Death

If the Consultant is practicing as an individual and dies before his or her Services have been completed, this Agreement shall terminate as of the date of his or her death, and the Owner shall pay for the Services rendered and disbursements incurred by the Consultant to the date of such termination.

ARTICLE 5 – PAYMENT

5.1 Fees Calculated on a Time Basis

Fees on a time basis shall be calculated in accordance with the Consultant's hourly rate schedule outlined in Schedule "B". If the Owner approves of the Services which are the subject of the invoice, the Owner shall pay the Consultant the amount of the approved invoice.

The current year hourly rate schedule included in Schedule "B" shall only be revised with prior approval in writing from the Owner.

The total fee to complete the Services shall not exceed the estimated total fee including disbursements, exclusive of GST, as set out in Schedule "B" [set out estimated total fee if not included in Schedule "B"] without the prior approval in writing from the Owner.

5.2 Time Expended

All time expended on the Services, whether in the Consultant's office, at the Owner's premises or elsewhere, shall be chargeable. Chargeable time includes, but is not limited to, clerical services arising from the preparation of reports and specifications, and duties directly related to the Services. With the exception of construction inspectors, travel time shall also be chargeable.

5.3 Computer Services

The Consultant may be reimbursed for specialized computer services only with the prior approval in writing from the Owner. Specialized computer services do not include the use of computers for the Consultant's normal office administration.

5.4 Reimbursable Expenses

The Consultant shall be reimbursed for all reasonable expenses properly incurred by it in connection with the Services, including but not limited to: vehicle use charges, traveling and living expenses, long distance telephone charges, cell phone usage, fax charges, printing and reproductions, progress photography, special delivery, courier and express charges, overtime premium costs, if approved by the Owner in advance, and approved special consultations.

5.5 Invoicing

The Consultant shall submit an invoice to the Owner within fifteen (15) days of the end of the month, with documentation satisfactory to the Owner, for all Services completed in the immediately preceding month.

All invoices submitted to the Owner shall include a *Project Summary of Engineering Fees* form and must show:

- (a) Project Title and Owner's Project Number;
- (b) Category of Services;
- (c) Approved Budget;
- (d) Summary of Services provided;

- (e) Names, position titles and hourly rates of those providing Services; and
- (f) Full description of additional fees for disbursements.

Invoices shall be paid within forty-five (45) days of receipt. In the event the Owner objects to an invoice, the Owner shall provide written notice of all objections to the Consultant, along with payment of all undisputed invoice items, within forty-five (45) days of receipt. If the Owner fails to pay any undisputed invoice or undisputed item included in an invoice within ninety (90) days of receipt, the Consultant may terminate performance of the Services upon written notice in accordance with Section 4.3, without liability to the Owner and without waiving any right to collect compensation due hereunder.

5.6 Records and Audit

The Consultant shall keep detailed records of the hours worked by and salaries paid to its staff employed for the Project. All invoices shall be verified and signed by a signing officer or authorized designate of the Consultant.

Upon ten (10) days written notice to the Consultant, the Owner may inspect and audit the books, payrolls, accounts and records of the Consultant during regular office hours with respect to any item which the Owner is required to pay on a time scale or disbursement basis as a result of this Agreement.

The Consultant, when requested by the Owner, shall provide copies of receipts with respect to any disbursement for which the Consultant claims payment under this Agreement.

ARTICLE 6 – INSURANCE AND INDEMNITY

6.1 Insurance

The Consultant and all sub-consultants shall purchase and maintain at all times during the term of this Agreement, or as otherwise set out in this Agreement, the insurance coverage listed below:

- (a) Comprehensive General Liability Insurance

Commercial General Liability insurance insuring the Consultant and covering all Services as described in the Agreement. The policy will be extended to include bodily injury and property damage, personal and advertising injury, products and completed operations, blanket contractual, a severability of interest and cross liability clause to a limit of not less than FIVE MILLION DOLLARS (\$5,000,000) per occurrence. A commercial general liability policy that has a general aggregate limit will be acceptable. The policy shall be endorsed to include the Owner as an additional insured. The policy shall include a cross liability clause written as follows:

The insurance as is afforded by this policy shall apply in respect to any claim or action brought against anyone insured by any other insured. The coverage shall apply in the same manner and to the same extent as though a separate policy had been issued to each insured. Any breach of a condition of this

policy by any insured shall not affect the protection given by this policy to the owner.

(a) Non-owned Automobile to a limit of no less than TWO MILLION DOLLARS (\$2,000,000).

(a) Errors and Omissions Liability

Errors and Omissions liability insurance insuring the Consultant in an amount not less than TWO MILLIONS DOLLARS (\$2,000,000) per claim and in the aggregate. The coverage under the policy shall be maintained continuously during the term of this Agreement and for two (2) years after the termination or expiration of this Agreement and shall cover insurable losses arising out of or in association with an error or omission in the rendering of or failure to render the Services.

(d) Automobile Insurance

Automobile Insurance (OAP1) for both owned and leased vehicles with inclusive limits of not less than TWO MILLION DOLLARS (\$2,000,000).

(e) Other Insurance

Any other type (e.g. Environmental), form or as otherwise may be required from time to time as identified at any time by either party.

All policies of insurance shall: (a) be written with an insurer licensed to do business in Ontario; (b) be non-contributing with, and will apply only as primary and not excess to any other insurance or self-insurance available to the Owner; and (c) contain an undertaking by the insurers to notify the Owner in writing not less than thirty (30) days before any material change in risk or cancellation of coverage.

If coverage under the Errors and Omissions policy is cancelled within the two (2) year period after the termination or expiration of this Agreement, the Consultant shall provide the Owner with notice within ninety (90) days of cancellation and shall be required to purchase an extended reporting endorsement to confirm that coverage is maintained.

Certificates of insurance originally signed by authorized insurance representatives, or if required by the Owner, certified copies of all the above-mentioned policies, shall be delivered to the Owner prior to the commencement of the Services. All subsequent policy renewals and certificates of insurance thereafter, during the time that this Agreement is in force, shall be forwarded to the Owner within sixty (60) days of their renewal date.

6.2 Indemnity

The Consultant shall indemnify and save harmless the Owner, its elected officials, officers, employees and agents from and against any and 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 the negligence, errors, omissions,

fraud or willful misconduct of the Consultant, its officers, employees, agents and subcontractors, or any of them, attributable to or connected with the performance, non-performance or purported performance of the Consultant's obligations pursuant to this Agreement, except to the extent that same is attributable or caused by the negligence of the Owner, its officers, employees and agents, or any of them. This indemnity shall be in addition to and not in lieu of any insurance to be provided by the Consultant in accordance with Section 6.1 of this Agreement. Further, this indemnity shall survive the expiration or early termination of this Agreement and continue in full force and effect.

ARTICLE 7 – INTELLECTUAL PROPERTY

7.1 Ownership of Drawings and Documents

All information and data in any form, including but not limited to, drawings, documents and As-built or Record drawings, which are prepared by the Consultant pursuant to this Agreement, together with all designs or materials capable of intellectual property protection, prepared, developed or created by the Consultant, its employees or agents during the performance of the Services pursuant to this Agreement shall automatically become the property of the Owner unless specifically noted otherwise in this Agreement. The parties acknowledge that the Consultant shall not be liable for subsequent changes to or alterations of such drawings and documents.

The Consultant hereby waives its moral rights to any such work as defined in the *Copyright Act*, R.S.C.1985, c. C.42, as amended, or successor legislation.

7.2 Patents

All concepts, products or processes produced by or resulting from the Services rendered by the Consultant in connection with the Project, or which are otherwise developed or first reduced to practice by the Consultant in the performance of its Services and which are patentable, capable of trademark or otherwise, shall be and remain the property of the Consultant.

The Owner shall have a perpetual, non-exclusive, royalty-free license to use any concept, product or process which is patentable, capable of trademark or otherwise, produced by or resulting from the Services rendered by the Consultant in connection with the Project for the purpose for which they are intended.

ARTICLE 8 – DISPUTE RESOLUTION

8.1 Dispute Resolution

If a dispute occurs between the parties concerning any matter governed by the Agreement, the project manager of the party raising the dispute shall promptly advise the project manager of the other party in writing, and the two project managers shall work together and use all reasonable efforts to resolve the dispute.

If the project managers are unable to resolve the dispute informally within five (5) business

days of it being referred to them, the dispute shall be forwarded in writing to the Commissioner and the President of the Consultant for resolution. Using direct communications, the Commissioner and President will have fifteen (15) business days from the matter being referred to them to resolve the dispute.

If the Commissioner and President do not resolve the dispute, the dispute may, with the consent of both parties, be referred to and finally resolved by arbitration under the *Arbitration Act, 1991*, S.O. 1991, c. 17, as amended. The place of arbitration will be the Regional Municipality of Niagara in the Province of Ontario.

ARTICLE 9 - GENERAL

9.1 Compliance with Laws

The Consultant shall comply with all Applicable Law in its performance of the Services, including but not limited to, the *Occupational Health and Safety Act*, R.S.O. 1990, c. O.1, as amended, and the *Construction Lien Act*, R.S.O. 1990, c. C.30, as amended.

9.2 Disclaimer of Partnership

The parties disclaim any intention to create an agency, partnership or employer-employee relationship. Nothing in this Agreement shall bind the parties or any of them partners or agents nor, except as may be expressly provided in this Agreement, constitute any of them the agent of the other party.

9.3 Waiver

The Owner may, at any time, insist upon strict compliance with this Agreement regardless of past conduct or practice with this or any other Consultant.

9.4 Force Majeure

Neither party shall be responsible for any delay or failure to perform its obligations under this Agreement where such delay or failure is due to fire, flood, explosion, war, embargo, governmental action, act of God, or to any other cause beyond its control, except labour disruption.

In the event that a Force Majeure event occurs or appears inevitable, the party who is delayed or fails to perform shall promptly and fully advise the other party and shall take all reasonable steps to eliminate the cause and mitigate the effects of the event. In such an event, the project schedule and compensation may be adjusted.

9.5 Assignment

Neither party may assign this Agreement, either in whole or in part, without the prior written consent of the other.

9.6 Time

Time shall be of the essence of this Agreement. Any time limits specified in this Agreement may be extended with the consent in writing of both the Owner and the Consultant, but no such extension of time shall operate or be deemed to operate as an extension of any other time limit, and time shall be deemed to remain of the essence of this Agreement notwithstanding any extension of any time limit.

9.7 Notices

Any notice, direction, request or document required or permitted to be given by either party to the other in writing shall be deemed to have been sufficiently and effectually given if delivered by hand or by prepaid registered mail at the addresses provided for below during normal business hours, or sent by facsimile transmission, with original to follow by regular mail or courier, to the numbers shown below.

The Regional Municipality of Niagara
2201 St. David's Road, P.O. Box 1042
Thorold, Ontario L2V 4T7

Attention:
Facsimile No.:

[Consultant]
[Address]
[City, Province] [Postal code]

Attention:
Facsimile No.:

or to such other address of a party as it shall specify to the other party by written notice given in the manner aforesaid. Any such notice, direction, request or document shall be deemed to have been given to and received by the party to whom it is addressed if:

- (a) delivered, on the date of delivery;
- (b) mailed, on the fifth business day after the mailing thereof; and
- (c) facsimile transmission, on the next business day following transmission and receipt of the appropriate confirmation.

9.8 Previous Agreements

This Agreement supersedes all previous agreements, arrangements or understandings between the parties whether written or oral in connection with or incidental to the Services.

9.9 Amendments

This Agreement may not be modified or amended except with the written consent of both parties hereto.

9.10 Severability

In the event any provision of this Agreement is deemed invalid or unenforceable, in whole or in part, by any court of competent jurisdiction, the remaining terms and provisions of this Agreement remain in full force and effect.

9.11 Successors and Assigns

This Agreement enures to the benefit of and is binding upon the parties hereto and their respective successors and permitted assigns.

IN WITNESS WHEREOF the parties hereto have duly executed this Agreement.

(COMPANY)

Per: _____ c/s

Name:

Position:

Per: _____ c/s

Name:

Position:

I/We have authority to bind the Corporation.

THE REGIONAL MUNICIPALITY OF NIAGARA

Per: _____ c/s

Name:

Position: Regional Chairman

Per: _____ c/s

Name:

Position: Regional Clerk

I/We have authority to bind the Corporation.