

**THE REGIONAL MUNICIPALITY OF NIAGARA**

**REQUEST FOR PROPOSAL**

**CONSULTING ENGINEERING SERVICES FOR THE WAINFLEET  
WATER AND WASTEWATER SERVICING PROJECT**

**PROPOSAL NUMBER 2009-RFP-02**

**ISSUE DATE: TUESDAY, FEBRUARY 10<sup>TH</sup>, 2009**

**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, MARCH 3<sup>RD</sup>, 2009  
2:00 P.M. LOCAL TIME**

## **BID IRREGULARITIES**

### **RESPONSES FOR ADMINISTERING IRREGULARITIES CONTAINED IN BIDS**

<b><u>IRREGULARITY</u></b>	<b><u>RESPONSE</u></b>
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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## 1.1 Background

Significant problems with contaminated wells and aging/failing septic tank systems have been identified in residences located along the Lake Erie shoreline of Wainfleet Township (“the Lakeshore Area”). Studies conducted by Niagara Region Public Health (2001), Niagara Region Public Works (2002 and 2005) and the Ministry of the Environment (2003) all concluded that a sizeable number of private wells are contaminated with water-borne bacteria (*E. coli*) and that failing septic tank systems are contributing to the deterioration of local water quality in Lake Erie.

Regional studies concluded that inadequate and failing private septic tank systems are having a detrimental impact on groundwater supplies and on Lake Erie itself. Overall, soil conditions and fractured bedrock are not suitable for the effective management of septic effluent. In many cases, even properly constructed septic systems are not environmentally sustainable in this area. In order to ensure that the community was fully aware of the potential for a serious outbreak of waterborne illness, the Medical Officer of Health issued a Boil Water Advisory (BWA) for the Lakeshore Area on April 10, 2006. The BWA will remain in effect until a permanent solution is implemented.

From a land use perspective, development along the Lake Erie shore has occurred without an understanding of the cumulative and long-term effects of development actions on private services and the lot fabric. The Lakeshore Area remains the only area of significant population concentration within the Region yet to resolve a contamination issue of this nature.

The degree of contamination in the Lakeshore Area is considerable. Overall, the fractured bedrock aquifer is close to the surface and prevailing shallow clay soils provide little or no attenuation for effluent discharged from septic tank systems. These factors have combined to create a situation destined to result in groundwater contamination. Given that the bedrock also serves as the primary water supply aquifer for most residences, high levels of bacterial contamination in local wells are inevitable and result in a public health and safety issue.

From a land use perspective, most development has taken place over an 80-year period. In the vast majority of cases, the predominance of small lots, inadequate soils and high development density precludes the possibility of replacing outdated and failing septic systems with properly designed and functioning systems that would meet today’s standards, safeguard public health and safety and protect the environment. A number of seasonal cottages have been converted to permanent residences. Redevelopment of the cottages has also occurred. There are approximately 150 lots with infill development potential. The Township of Wainfleet is preparing a new Official Plan and Secondary Plan for the Lakeshore Area to determine whether any growth beyond the infill potential can occur.

## 1.2 Class Environmental Assessment

The Class Environmental Assessment (EA) process was initiated in June 2003 and after an extensive review, the Minister of the Environment did not require a Part II order for the Wainfleet Servicing EA in September 2006. The approved EA servicing solution is:

- **Wastewater:** extend municipal wastewater trunk system from Port Colborne and construct a local sewage collection system, and
- **Water:** extend municipal water supply from the existing system in Port Colborne and construct a local distribution system

The Class EA preferred solution was reviewed and confirmed in two separate technical workshops. The first workshop (the Value Analysis Workshop) was held in February 2005 and the second (the Technical Review Workshop) in April 2007, following Council's direction to further evaluate alternative technologies.

The workshop teams included Regional and Township staff, politicians, Wainfleet Public Advisory Committee members, engineering specialists, and contractors. The workshops reviewed all submissions and reached the following conclusions:

- On-site septic systems work for less than half the lots in the study area.
- The use of holding tanks is not considered viable since the Ontario Building Code dictates that tanks are only permitted where no other option is available.
- Individual water treatment devices will not eliminate the health risk.
- On-site systems have a greater life cycle cost than the Class EA recommended option of centralized systems, ultimately being more expensive for owners.
- Localized packaged treatment plants are more expensive to own, operate and maintain than connecting to the existing facilities in Port Colborne.
- The use of small bore gravity sewers or small bore low pressure sewers have the potential to reduce costs.
- The preferred option is a centralized water transmission/distribution system and wastewater collection/conveyance system connected to existing Regional treatment facilities in Port Colborne.

## 1.3 Enhanced Conceptual Design

Following the workshops, a Wainfleet Lakeshore Servicing Area Enhanced Conceptual Design: Long Beach & Burnaby/Morgans's Point was completed by Hydromantis (November 2007). This conceptual design report, which forms part of the basis for the Preliminary Design in this Request for Proposal (RFP), discusses a variety of the centralized options developed in the Technical Review Workshop. All of the sanitary sewer technologies evaluated shall be carried forward in the preliminary design phase. On the water distribution side, two options, one with consideration for fire flows and one without, shall be designed.

### 1.3 **Enhanced Conceptual Design (Continued)**

The entire Boil Water Advisory area was initially considered in the EA; however, the final EA document focuses solely on the narrow strip of land in the vicinity of Lakeshore Road. This area to be serviced is approximately 14 km long from Long Beach in the west to Reebes Bay in the East, the entire width of Wainfleet's waterfront. Special care must be taken to identify deviation from the final EA document.

## 2. **Objectives**

The purpose of this undertaking is to retain the services of a consulting engineering firm to provide preliminary engineering designs associated with both the water and sanitary sewer components of the Wainfleet Servicing Project. The servicing area is that identified in the previous EA plus additional components identified in the Township of Wainfleet's Visioning Exercise (January, 2009). An updated Official Plan will be provided prior to any detailed design assignment so any deviation from the Visioning Exercise shall be incorporated into that final design.

Two different water distribution designs are required in this proposal: one with consideration for fire flows and one without. Three distinct sanitary sewer designs are required: traditional gravity system, small bore pressure and small bore gravity.

## 3. **General Requirements**

The assignment shall be carried out in accordance with the latest editions of the following Regional documents:

- Project Design and Technical Specifications Manual
- Workplace Health & Safety Manual
- Niagara Peninsula Standard Contract Document
- Security Standards
- SCADA Standards
- Guide to the Production of Engineering Contract Drawings
- Standard Approach to Surge Protection
- CMMS Standards
- Equipment Tagging System Standards
- GIS Standards
- Pipe Materials Review and Analysis Update Report
- Energy Audit and Management Plan.

**3. General Requirements (Continued)**

The Region expects that the Consultant will normally comply with the requirements of the 'Project Design and Technical Specifications Manual'; however, those requirements should be considered as guidelines only and the Consultant should exercise best professional judgment and practice during the course of a project. If, in the opinion of the Consultant, deviations from these requirements are deemed to be in the best interest of the Region, then the Consultant is required to advise the Region's Project Manager (either as part of the Consultant's proposal or separately) of such deviations with an explanation of the benefits to the Region and to appropriately document the variations and benefits. Any such deviations must be approved by the Region in writing.

Projects shall incorporate measures to enhance energy efficiency and conservation wherever possible. This shall include reference to LEED (Leadership in Energy and Environmental Design) standards where appropriate.

Where applicable, standard drawings and specifications required by individual municipalities shall be used.

The Consultant must conform to all Regional security protocols during work at Regional facilities.

All reports will be prepared in Microsoft Word and all drawings will be created in AutoCAD Version 2002. Eight hard copies of all reports (draft and final) shall be submitted to the Region. Ownership of both hard copies and computer disk copies must be transferred to the Region upon completion of the project.

Metric units are to be used.

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

1. **Purpose**

It is the intention of the Regional Municipality of Niagara (the “Region”) to retain the services of a consulting engineering firm to provide preliminary engineering designs associated with both the water and sanitary sewer components of the Wainfleet Servicing Project 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, March 3<sup>rd</sup>, 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, March 3<sup>rd</sup>, 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.

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.

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**

Eight (8) 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 26), 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 commencing on page 19.
- 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 Fee Schedule and Cost Breakdown provided in Appendix A and include in Cost-Envelope “B”.
- Include disbursement costs which may include mileage, telephone charges, printing and reproductions, fax charges, courier services, and computer services etc.;
- Provide evidence of compliance with the Niagara Region’s insurance requirements, as indicated in Clause 20 of this section and in Section 6.1 of the Engineering Agreement;
- Provide 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;

**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 from 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, February 25<sup>th</sup>, 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.

**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. 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.

**17. Billing (Continued)**

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.

**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 (Continued)**

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

(c) Errors and Omissions Liability

Errors and Omissions liability insurance insuring the Proponent 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 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, in 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;
- (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' 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 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:

	<b>Item/Factor</b>	<b>Weighting</b>	<b>Company 1 (0-10)</b>	<b>Weighted Score</b>
1.	Applicable Technical Expertise and Resources	10%		
2.	Team Strength and Leadership	15%		
3.	Same or Very Similar Project Experience	10%		
4.	Past Performance Record (Budget/Schedule/Project Success)	10%		
5.	Project Understanding	10%		
6.	Methodology (Work Plan, Innovation, Client Administrative Input, Workload, Schedule, Etc.)	20%		
7.	Local Expertise Factor	5%		
8.	Quality Assurance Program	5%		
9.	Interview Results	5%		
	<b>Sub-Total</b>	90%		
10.	Cost Factor	10%		
	<b>Grand Total</b>	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 in the form attached as Appendix “C”. 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 and Section 6.1 of the Engineering Agreement.

**33. Performance Unsatisfactory**

The contract will be deemed to be in default if 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 RFP or Engineering Agreement; or
- 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](http://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 it was not selected. The following is the manager contact information:

Name: Robin Young, Project Manager, Water and Wastewater Engineering  
Phone Number: 905-685-4225 ext 3740

All other inquiries are to be in accordance with 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.

**38. Presentation**

Due to the complexity of this project, the Region will require each consultant to give an oral presentation in support of their proposal to exhibit or otherwise demonstrate the information contained therein. Questions will be posed to each consultant, as they arise, during and after each presentation. It is anticipated that the duration of the presentation including questions will be approximately 30 to 45 minutes.

The purpose of the presentation shall be to:

- determine in greater detail the qualifications and relevant experience;
- explore in further detail the proposed methodology; and
- address any questions the evaluation committee may have for clarification purposes only.

Municipal staff shall grade these presentations and these grades will be used, in part, to score the consultant's proposal. Scoring methods arrays and results will remain confidential.

The tentative date for presentations is Wednesday, March 11, 2009.

## **PROJECT TASKS**

The general approach should follow the tasks outlined below:

### **1. Review of Documentation**

The Consultant will carry out a review of previous documents and drawings respecting the Wainfleet Servicing Project in order to identify any further technical analyses and additional data required. Based on this review, the Consultant will identify any impacts or propose revisions to the scope of the Wainfleet Servicing Project.

### **2. Geotechnical and Geoenvironmental Investigation**

The Consultant/Proponent shall review any available geotechnical information and confirm scope of any additional geotechnical investigation work; prepare Terms of Reference (TOR) for geotechnical investigation and forward to consultant(s) for quotation; review quotation(s) and make recommendation to Region; and schedule meeting(s) with consultant. Do not allow for cost of geotechnical investigation work as the consultant will be retained directly by the Region.

If geoenvironmental services, such as: materials testing, CCTV inspections and Subsurface Utility Engineering (SUE), are required by this RFP, or are identified during the course of a project, Consultant shall review any available relevant information, confirm scope of any additional investigation and testing work and prepare the TOR for this work. Consultant shall ensure that the geoenvironmental testing guidelines described in Appendix “B” are fulfilled, as a minimum.

Note that the Region has retained a consultant to prepare and maintain a property inventory database, which includes items like: frontage, area, setback and ownership.

### **3. 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 by the Minister. The Consultant shall identify in their proposal any amendments to the EA that they anticipate will be required based on their assessment of the project. The Consultant shall submit a provisional cost to provide their services to amend the EA for each design direction.

### **4. Preliminary Engineering Design**

The Consultant will prepare a preliminary engineering design of the proposed works. Sufficient preliminary engineering detail must be provided and must include all relevant design criteria, and supporting documentation necessary to allow the Region to subsequently proceed with detailed design.

#### 4. **Preliminary Engineering Design (Continued)**

Wainfleet servicing policy is currently under development and it is anticipated that the resulting documents will not be finalized until after this assignment has been initiated; consequently, consideration must be given to being able to handle additions or deletions to the serviceable area.

The Township of Wainfleet is undertaking a visioning exercise in order to better define the service area for this RFP and an official plan update will take place concurrent to this exercise.

##### 4.1 **Linear Works**

Consultant shall carry out a field survey along the alignment of the proposed water mains and sewers.

Special attention shall be paid to drainage and private/public road issues.

The Preliminary Engineering Design and associated report shall include and address the following items:

- Confirmation/modification of conceptual design basis and criteria
- Investigation/testing requirements (e.g. geotechnical investigations), a summary of the results of such investigations, and the requirement for any further investigations
- Diameter and material of water main/sewer, and reasons for their selection
- Plan and profile drawings, at 1:500 horizontal scale, which include the following information
  - Existing and proposed road and water main/sewer alignments and grades, water main/sewer diameter, slopes/profile, manholes, drop structures, etc.
  - Key elevations and connectivity of the proposed works
  - Existing detail and terrain
  - Existing and proposed sidewalks, grading, swales and drainage features
  - Existing and proposed road allowances and property/easement requirements
  - Existing and proposed structures such as bridges and culverts
  - Limits of additional required property
  - Existing and proposed surface/underground utilities
  - Adjacent property owner information
  - Existing and proposed intersections and entrances, traffic islands/markings/signs/etc.
- Detailed property acquisition requirements (purchases and easements), including digital coordinates for preparation of survey reference plan(s)

#### 4.1 Linear Works (Continued)

- Typical cross-sections as required to detail the water main/sewer (incl. crossings at roads, utilities, etc.)
- Existing and proposed intersection/entrance operation and the need for temporary traffic signals during construction
- Natural environmental issues such as impacts to regulated areas, vegetation, fisheries, wildlife habitat, hydrology, and groundwater (the Region is hiring an Environmental consultant to cover this task; however, some interaction with the preliminary design team is anticipated.)
- Archaeological/heritage issues (the Region is hiring an Archaeological consultant to cover this task; however, some interaction with the preliminary design team is anticipated.)
- Roadway drainage and storm water management
- Utility impacts and relocation requirements. Consultant shall circulate base plans to the appropriate utilities for marking their existing and proposed infrastructure
- Structural issues such as required modifications to existing bridges, culverts and retaining walls, proposed structures, and foundation requirements
- Short and long term mitigation measures
- Construction issues including construction method alternatives, traffic control, staging and costs
- Regulatory/reviewing agency approval/permit issues and requirements
- Operation and maintenance aspects including access, odour control, cleaning, and impact on adjacent landowners/users
- Specific issues to be addressed during detailed design
- SCADA requirements
- Cost estimate to +20% to -10%
- Project implementation schedule.

Consultant will conduct two (2) half-day linear workshops with project staff and key members of the Consultant's team at a suitable point during the Preliminary Design. The objective of the workshop is to allow affected parties an opportunity to review and comment on the project. Consultant will lead the workshop and prepare notes of the discussion and conclusions. The Region will provide a location for the workshop.

Consultant will arrange and attend review meetings at the 40% completion and 90% completion stages. The Consultant shall submit draft documents a minimum of two (2) weeks prior to the meetings.

The consultant is to submit a draft Preliminary Design Report to the Region for review. Consultant will meet with the Region to review the Preliminary Design Report and will then finalize the report.

#### 4.1 Linear Works (Continued)

A key objective of this assignment is to confirm the optimal size of the watermains and sanitary sewers by use of hydraulic models. The Region has standardized on the following modeling software:

Water distribution	InfoWater (MWHSOFT Inc.)
Wastewater collection	InfoSWMM (MWHSOFT Inc.)
Transient analysis	InfoSurge (MWHSOFT Inc.)

Upon completion of the assignment, the Consultant will return to the Region a model which incorporates the final preliminary designs from the project. All documentation shall be complete and sufficient to be incorporated as metadata in the Regional GIS system.

Note that two different water models and three different sanitary models are required.

#### 4.2 Stations

Technical assessments must consider all factors including capital and lifetime costs. Assessments must also address operation and maintenance aspects including access, odour control, cleaning, impact on adjacent landowners/users, power supply, standby power, security, etc. The technical assessment should be compatible with a staged implementation approach.

The Preliminary Engineering Design and associated report shall include and address the following items:

- Confirmation/modification of conceptual design basis and criteria
- A summary of the design data and parameters that would be required for a Design Brief, for the relevant type of project, as described in Part III, Section 3.1.2 of the MOE ‘Guide for Applying for Approval of Municipal and Private Water and Sewage Works’ August 2000.
- List of major equipment
- Electrical system
- Emergency Standby Power
- Instrumentation and Control (provide process control narratives for each process unit describing how each unit process is intended to be operated.)
- SCADA System
- Ancillary Systems

## 4.2 Stations (Continued)

- Building design
  - Architectural elevations, description of internal and external architectural finishes including special finishes as appropriate (e.g., waterproofing between tanks and building, etc)
  - Specialties (include description and location)
  - Area Classification (in schedule form, the design occupation and classification of each room or building area)
  - Hazardous/Confined Areas
  - HVAC Requirements
- Operation and maintenance aspects including odour control and impact on adjacent landowners/users
- Investigation/testing requirements (e.g. geotechnical investigations), a summary of the results of such investigations, and the requirement for any further investigations
- Detailed property acquisition requirements (purchases and easements), including digital coordinates for preparation of survey reference plan(s)
- Natural environmental issues such as impacts to regulated areas, vegetation, fisheries, wildlife habitat, hydrology and groundwater (the Region is hiring an Environmental consultant to cover this task; however, some interaction with the preliminary design team is anticipated.)
- Utility impacts and relocation requirements
- Project implementation schedule
- Construction issues including construction method alternatives, traffic control, staging and costs
- Cost estimate to +20% to -10%
- Regulatory/reviewing agency approval/permit issues and requirements
- Drawings
  - Location Plan
    - Show land to be acquired if required
    - Site services (existing and required)
    - Access/egress
  - Preliminary layout plans
    - Show location and orientation of equipment and tanks including major ventilation units, electrical transformer(s), switchgear and motor control centres
  - Process Flow Diagrams (PFD)
    - Schematic depiction of equipment, piping, valves, in-line measurement devices etc
    - Show in-line measuring devices
    - Show all piping >150 mm and routing
  - Hydraulic Profile

#### 4.2 **Stations (Continued)**

- Indicate preliminary hydraulic profile and identify all major unit operating liquid levels
- SCADA system architecture
- Building architectural elevations and floor plans

Consultant will conduct two (2) half-day station workshops with project staff and key members of the Consultant’s team at a suitable point during the Preliminary Design. The objective of the workshop is to allow affected parties an opportunity to review and comment on the project. Consultant will lead the workshop and prepare notes of the discussion and conclusions. The Region will provide a location for the workshop.

Consultant will arrange and attend review meetings at the 40% completion and 90% completion stages. The Consultant shall submit draft documents a minimum of two (2) weeks prior to the meetings.

The consultant is to submit a draft Preliminary Design Report to the Region for review. Consultant will meet with the Region to review the Preliminary Design Report and will then finalize the report.

#### 5. **Project Management, Meetings and Reporting**

The Region’s lead contact person for this project will be Robin Young, P.Eng., Project Manager. 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.

If, at any time, additional work outside of the original scope is identified then the Consultant shall obtain a written authorization in advance of proceeding with this work. No written authorization will be issued without a complete and budgeted proposal from the Consultant. Under no circumstances will the Region entertain a request for additional fees that does not comply with this paragraph.

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 Consultant for this project is described below:

- Meet with the Region’s Project Manager and other project staff, as appropriate, at key milestone events, or as situations warrant, throughout the course of the project (monthly meetings at minimum).
- Meet with the Wainfleet Servicing Project Team, Joint Advisory Committee, Public Liaison Committee, Wainfleet Council and a Regional Committee or Council itself at least twice each.

**5. Project Management, Meetings and Reporting (Continued)**

- Meet with the Archeological and Natural Heritage consultant teams at least three times each.
- Meet with alternative technology vendors as needed.
- Provide a 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.
- Establish and maintain formal contact with all required government regulatory agencies, such as the Niagara Peninsula Conservation Authority, the Ministry of Natural Resources, as well as other identified stakeholders.
- Coordinate, via the Region’s Project Manager, with other project staff and departments who may have an interest in or be affected by the project.
- Coordinate with utilities, local agencies, municipalities, etc, as required to expedite the work
- Provide adequate technical representation at meetings with regulatory agencies.
- 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.

**6. Schedule**

The Region requires that the preliminary design for this project be completed by Tuesday, December 1<sup>st</sup>, 2009 (assuming an April 21<sup>st</sup>, 2009 start date.)

**7. Assistance by Region of Niagara**

The Region will provide the successful Consultant with the following:

- Fee Summary Forms, Change Order Forms, Payment Certificate Forms.
- All available plans, field notes, and construction information and condition surveys or studies.
- Geotechnical Investigation. The Region will retain a geotechnical consultant to undertake an investigation if it is deemed necessary.
- Legal Surveys and property negotiation services.

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:
	WITNESS:
POSTAL CODE:	SIGNATURE:
TELEPHONE NUMBER:	TITLE:
FAX NUMBER:	DATE:
E-MAIL ADDRESS (Must supply if available):	

**APPENDIX "A"**

**FEE SCHEDULE AND COST BREAKDOWN**



**APPENDIX "B"**

**GEO-ENVIRONMENTAL TESTING GUIDELINES**

## GEO-ENVIRONMENTAL TESTING GUIDELINES

Soil testing and assessment will be required for projects which involve the excavation of existing fill and/or native soil materials and require offsite disposal. Such projects may include

- new road construction
- rehabilitation of existing roadway including excavation of sub grade materials
- new or replacement underground utilities within roadway or adjacent to roadway.

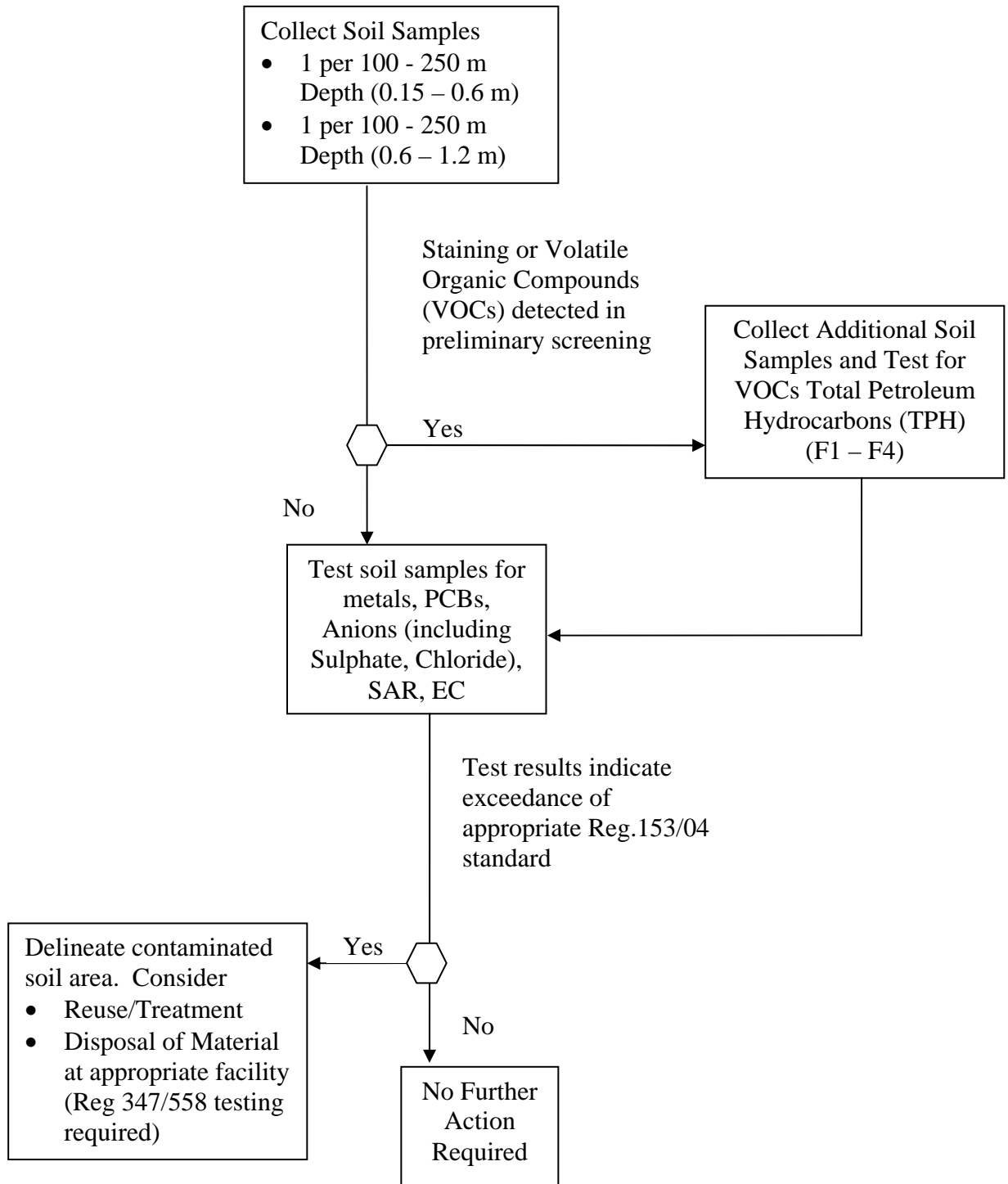
**The sampling and testing procedures described herein are guidelines only and shall be confirmed or modified, as necessary, by the geotechnical/geoenvironmental consultant employed by the Region.**

Soil samples shall be collected and tested as shown in Figure 1. Fill and/or soil composite samples shall be obtained at a depth of 0.15 to 0.6 m and at a frequency of 100 to 200 m along the proposed linear alignment of the facility. Should excavation be required at a depth greater than 1.5 m, additional soil samples shall be collected along the alignment of the proposed facility at the rate of 1 sample per 100 to 250 m. These samples shall be collected as composite samples over a depth interval of no greater than 0.6 m.

Soil samples shall be initially screened visually for staining and with a photoionization detector (PID) for volatile organic compounds (VOCs). As shown in Figure 1, if staining is observed or VOCs are detected in the sample, then the sample should be tested for VOCs and petroleum hydrocarbons (F1-F4) prior to testing for metals, anions, PCBs, SAR and EC.

The chemical test results shall be evaluated by comparison to the appropriate Ontario Reg. 153/04 Standard according to the sample depth and whether the location is in a non-potable (municipally-supplied drinking water) or potable (groundwater-supply wells) groundwater area. Should the chemical test results indicate that parameter concentrations are less than the appropriate Standard; then no further action is required. However, should chemical parameter concentrations exceed the appropriate Standard, then reuse/treatment options should be considered or disposal of the material at a facility that is licensed by the MOE to accept such material. Testing according to Ontario Regulation 347/558 would then be required prior to acceptance by such facilities. *NOTE: In many areas of the Niagara peninsula, SAR and EC concentrations may naturally exceed the permissible concentrations for these parameters in the appropriate Standards. In such cases, consultation with the MOE should be undertaken to determine suitable management options.*

The geotechnical/geoenvironmental consultant for the project shall be responsible for the collection and testing of samples, and interpretation of test results. A report shall be prepared by the geotechnical/geoenvironmental consultant to document the sampling and testing program, evaluate the findings of the investigation and testing program, and provide recommendations for use or disposal of excavated tested materials



**Figure 1**  
**Regional Municipality of Niagara**  
**Geo-environmental Testing Guidelines**

**APPENDIX “C”**

**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.