

**AGREEMENT
FOR
PROFESSIONAL CONSULTING SERVICES**

MEMORANDUM OF AGREEMENT dated the _____ day of _____, 20XX

-BETWEEN-

THE CORPORATION OF TOWN OF AJAX

Hereinafter called the 'Town'

THE PARTY OF THE FIRST PART

-AND-

XXXBIDDER/PROPONENTXXX

Hereinafter called the 'Consultant'

THE PARTY OF THE SECOND PART

WHEREAS the Town called a Request for Bid No. _____, for _____
(Hereinafter called the 'Project');

AND WHEREAS the Consultant has submitted a Bid/Proposal, signed and dated the _____ day of _____, 20XX, hereafter called (the "Bid"/"Proposal"), a copy of which is attached to this Agreement as Schedule "A" in response to Bid No. _____, for _____
(Hereinafter called the 'Bid Document')

NOW THEREFORE, in consideration of the covenants contained herein, the Town and the Consultant mutually agree as follows:

ARTICLE 1 - GENERAL CONDITIONS

1.01 Retainer

The Town hereby retains the services of the Consultant in connection with the Project and the Consultant hereby agrees to provide the Consultant Services (as hereinafter defined) in accordance with the Bid Document under the general direction and control of the Town.

1.02 Services

The services to be provided by the Consultant (the Consultant Services) and by the Town (the Town Services) for the Project are set forth in Article 2 as changed, altered or added to under Section 1.08.

1.03 Compensation

The Town shall pay the Consultant in accordance with the provisions set forth in Article 3.

1.04 Staff and Methods

The Consultant shall perform the Consultant Services with that degree of care, skill and diligence normally provided in the performance of such services as contemplated by this Agreement at the time the Consultant Services are rendered and as required by the Professional Engineers Act (RSO 1990, Chapter P. 28) and regulations therein. The Consultant shall employ only competent staff who will be under the supervision of a senior member of the Consultant's staff.

1.05 Drawings and Documents

Drawings and documents or copies required for the Project shall be exchanged between the parties on a reciprocal basis. Documents prepared by the Consultant for the Town, including record drawings, may be used by the Town, for the Project herein described. The Town has ownership of the drawings. In accordance with Article 1.06, the Town indemnifies the Consultant for unauthorized use of the documents and deliverables.

1.06 Intellectual Property

All concepts, products or processes produced by or resulting from the Consultant 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 the "Consultant Services," and which are patentable, capable of trademark or otherwise, shall be considered as Intellectual Property and remain the property of the Consultant.

The Town shall have permanent 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 Consultant Services rendered by the Consultant in connection with the Project and for no other purpose or project.

1.07 Records and Audit

- a) In order to provide data for the calculation of fees on a time basis, the Consultant shall keep a detailed record of the hours worked by staff employed for the Project.
- b) The Town, its agents and representatives, may inspect timesheets and record of expenses and disbursements of the Consultant during regular office hours with respect to any item which the Town is required to pay on a time scale or disbursement basis as a result of this Agreement.
- c) The Consultant, when requested by the Town, shall provide copies of receipts with respect to any disbursement for which the Consultant claims payment under this Agreement

1.08 Changes and Alterations and Additional Services

With the consent of the Consultant the Town may in writing at any time after the execution of the Agreement or the commencement of the Consultant Services delete, extend, increase, vary or otherwise alter the Consultant Services, and if such action by the Town necessitates additional staff or services, the Consultant shall be paid in accordance with Section 3.2.1 for such additional staff employed directly thereon, together with such expenses and disbursements as allowed under Section 3.2. In the event that the Town delays the Project then the Consultant shall have the right to renegotiate the Agreement.

1.09 Suspension or Termination

Either party may at any time by notice in writing to the other party, suspend or terminate the Consultant Services or any portion thereof at any stage of the Project. Upon receipt of such written notice, the Consultant shall perform no further Consultant Services other than those reasonably necessary to close out the "Consultant Services." In such an event, the Consultant shall be entitled to payment in accordance with Section 3.2 for any of the Consultant's staff employed directly thereon together with such expenses and disbursements allowed under Section 3.2.

1.10 Indemnification

Indemnification as specified in the Bid Document.

1.11 Insurance

Insurance Coverage to be provided to the Town by the Consultant as specified in the Bid Document.

1.12 Contracting for Construction

Neither the Consultant nor any person, firm or corporation associated or affiliated with or subsidiary to the Consultant shall tender for the construction of the Project, or have an interest either directly or indirectly in the construction of the Project.

1.13 Assignment

Neither party may assign this Agreement without the prior consent in writing of the other.

1.14 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 Project.

1.15 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 Town, such applications for approval or review shall be the responsibility of the Consultant, but shall be submitted through the offices of the Town and unless authorized by the Town in writing, such applications for approval or review shall not be obtained by direct contact by the Consultant with such other authority, department of government or agency.

1.16 Principals and Executives

The use of Principals and Executives on a time basis by the Consultant, will be in accordance with Section 1.23.1 (c).

1.17 Sub-Consultants

The Consultant may engage others as sub-consultants for specialized services provided that prior approval is obtained, in writing, from the Town. The Consultant may add a mark-up of not more than 5% of the cost of such services to cover office administration costs when claiming reimbursement from the Town plus the cost of the additional insurance incurred by the Consultant for the specialized services.

1.18 Inspection

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

1.19 Publication

The Consultant agrees to obtain the consent in writing of the Town before publishing or issuing any information regarding the Project.

1.20 Confidential Data

The Consultant shall not divulge any specific information identified as confidential, communicated to or acquired by him, or disclosed by the Town in the course of carrying out the Consultant Services. These obligations of confidentiality shall not apply to information which is in the public domain, which is provided to the Consultant by a third party without obligation of confidentiality which is independently developed by the Consultant without access to the Town's information, or which is required to be disclosed by law or by court order. No such information shall be used by the Consultant on any other project without the approval in writing of the Town.

1.21 Dispute Resolution

- (a) If requested in writing by either the Town or the Consultant, the Town and the Consultant shall attempt to resolve any dispute between them arising out of or in connection with this Agreement by entering into structured non-binding negotiations with the assistance of a mediator on a without prejudice basis. The mediator shall be appointed by agreement of the parties. If a dispute cannot be settled within a period of ninety (90) calendar days with the mediator, the dispute shall be referred to a single arbitrator appointed by the agreement of the parties and failing agreement, shall be subject to the Arbitration's Act, R.S.O., 1991, Chapter 17 as amended.
- (b) No person shall be appointed to act as mediator or arbitrator who is in any way interested, financially or otherwise, in the conduct of the work on the Project or in the business or other affairs of either the Town or the Consultant.
- (c) The award of the arbitrator, including an award for costs if applicable, shall be final and binding upon the parties.
- (d) The provisions of The Arbitration's Act, R.S.O., 1991, Chapter 17, as amended shall apply.

1.22 Time

The Consultant shall perform the Consultant Services expeditiously to meet the requirements of the Town and shall complete any portion or portions of the Consultant Services in such order as the Town may require.

The Town shall give due consideration to all designs, drawings, plans, specifications, reports, tenders, proposals and other information submitted by the Consultant, and shall make any decisions which he is required to make in connection therewith within a reasonable time so as not to delay the work of the Consultant.

1.23 Estimates, Schedules and Staff List

Xxxxxxxx

1.23.1 Preparation of Estimate of Fees, Schedule of Progress and Staff List

When requested by the Town, and where payment is calculated on a time basis, the Consultant shall provide, for approval by the Town:

- (a) An estimate of the total fees to be paid for the Consultant Services.

- (b) A Schedule showing an estimate of the portion of the Consultant Services to be completed in each month and an estimate of the portion of the fee which will be payable for each such month.
- (c) A Staff list showing the number, classifications and hourly rate ranges for staff, Principals and Executives, for which the Consultant will seek payment on a time basis. The Consultant shall relate such information to the particular type of work that such staff is to perform, while employed on the Project. Such list shall designate the member of the Consultant's staff who is to be the liaison person between the Consultant and the Town.

1.23.2 Subsequent Changes in the Estimate of Fees, Schedule of Progress and Staff List

The Consultant will require prior written approval, from the Town for any of the following changes:

- (a) Any increase in the estimated fees beyond those approved under Subsection 1.23.1 (a).
- (b) Any change in the schedule at progress which results in a longer period than provided in Subsection 1.23.1 (b).
- (c) Any change in the number, classification and hourly rate ranges of the staff provided under Subsection 1.23.1 (c).

1.23.3 Monthly Reporting of Progress

When requested by the Town, the Consultant shall provide the Town with a written report showing the portion of the Consultant Services completed in the preceding month.

ARTICLE 2 - SERVICES

2.01 Services to be provided by Consultant

The Consultant shall carry out the work as outlined in the Bid Document and as responded to in the Bid/Proposal.

2.02 Services to be provided by Town

The Town shall provide the Consultant with the following Town Services:

- a) Designate in writing, an individual to act as its' representative who will transmit instructions to and receive information from the Consultant.
- b) General direction of the Consultant in the provision of the Consultant Services.
- c) Access to and where necessary, copies of existing plans, profiles or other topographic information showing or pertaining to existing conditions within the Project area and vicinity in the Town's possession.
- d) Registered land plans, legal documents and surveys, where necessary, defining the property limits of exiting rights-of-way and other parcels of land affected by the Project.
- e) Any information regarding utilities currently in the possession of the Town necessary for the preparation of plans.
- f) Any information currently in possession of the Town in regard to previous soil reports, completed in the vicinity of the Project.
- g) Arrange and make provision for the Consultant's entry and ready access to property (public and privates) as well as to the site of the Project, as necessary to enable it to perform the Consultant Services.

- h) Specimen contract documents for the guidance of the Consultant in the design of the Project to the standards required by the Town.

The Consultant shall be entitled to rely upon the information, direction and approvals provided by the Town pursuant to Clauses (a) through (h) hereof inclusive, as being accurate in the performance of the Consultant Services under this Agreement.

ARTICLE 3 - FEES AND DISBURSEMENTS

3.1 Definitions

(a) Cost of the Work:

- (i) The "Cost of the Work" shall mean the total cost of the Project including all materials, equipment, sales taxes, labour and Consultant's overhead and profit, necessary to complete the work for which the Consultant prepares designs, drawings or specifications, for which he is responsible. Where sales taxes are not included in the cost of the work, the fee shall be adjusted upwards by the factor equivalent to the sales taxes. The adjusted fee may be computed to the nearest one-tenth of one percent (1/10%).
- (ii) Wherever the Town furnishes labour or other service which is incorporated in the work, the current price of labour or other service when the work was executed shall be used to compute the Cost of the Work.
- (iii) Whenever used materials or equipment is furnished by or on behalf of the Town, the fair market value of such materials or equipment, as though it was purchased new, shall be used to compute the Cost of the Work.
- (iv) In computing the Cost of the Work, no deductions shall be made on account of any penalties or damages claimed by the Town from any contractor or on account of any other sum withheld from any contractor.
- (v) The Cost of the Work shall not include any fees and disbursements due to the Consultant, the Town's engineering and office expenses, or cost of land.

(b) Site:

- (i) Site includes the actual work site and other locations where the checking of materials, equipment and workmanship is carried out.

(c) Agreement:

This Agreement consists of and is all in accordance with; the content of the original Bid Document No. XXX0XX for NAME of PROJECT + any Addenda No.'s X-X and NAME of BIDDERS/PROPOSERS BID/PROPOSAL submission signed and dated XXXX XX, 20XX.

3.2 Basis of Payment

3.2.1 Fees Calculated on a Time Basis

The Town shall pay the Consultant a fee, calculated on a time basis, for that part of the Consultant Services described in Article 2. Fees on a time basis for all staff shall be hourly rates as set out in the Bid/Proposal, to a maximum amount of \$XX,XXX.00 (HST extra)

3.2.2 Reimbursable Expenses

The Town shall pay the Consultant a disbursement fee, calculated on X.X% of the Total Person Fee as set out in the Bid/Proposal, to a maximum of \$X,XXX.00 (HST extra)

3.3 Payment

3.3.1 Fees Calculated on a Time Basis

The Consultant shall submit an invoice to the Town for all Consultant Services completed in the immediately preceding month. Each month, the Consultant shall estimate the percentage complete, and apply this percentage to the total Fixed Fee. This total, less the amount previously invoiced, will be the amount invoiced for the month. Under no circumstances shall the Town be liable for the payment of any interest charges associated with the Consultant Services.

The Consultant and the Town have executed this Agreement by the signature of the duly authorized individual(s).

SIGNED AND DELIVERED

CONSULTANT

Signing Officer Name/Title

(I/We have the authority to bind the Company)

Signature

Witness Name/Title

Signature

TOWN

The Corporation of the Town of Ajax

65 Harwood Avenue South, Ajax, ON L1S 2H9

Signing Officer Name/Title

Signature

Signing Officer Name/Title

Signature